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Combined Dulabed Malanbarra Yidinji determination

17 December 2009
Far North Queensland

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Facilitating timely and effective outcomes.

Combined Dulabed Malanbarra Yidinji determination

On 17 December 2009 the Federal Court of Australia made a consent determination recognising the Combined Dulabed Malanbarra Yidinji peoples' native title rights over 16,460ha of land and waters, 37km south of Cairns in Far North Queensland. The determination area includes parts of Gadgarra Forest Reserve, Wooroonooran National Park and areas of unallocated state land located near the upper reaches of the Mulgrave River.

The Combined Dulabed Malanbarra Yidinji peoples negotiated with parties to their claim to reach this outcome. They also negotiated four indigenous land use agreements (ILUAs) that establish how their respective rights and interests will be carried out on the ground. ILUAs are agreements about the use and management of land and waters made between one or more native title groups and other people. The consent determination comes into effect when the four ILUAs are registered with the National Native Title Tribunal.

It was the 84th consent determination to be made in Australia and the 45th in Queensland.

What is native title?

Native title rights are a set of rights over land or waters where Aboriginal and Torres Strait Islander groups have practised traditional laws and customs since before the time of European occupation.

Under the *Native Title Act 1993* (Cwlth) Aboriginal and Torres Strait Islander people can apply to the Federal Court to have their native title recognised under Australian law.

A native title determination is a decision by a court or recognised state or territory body that native title does or does not exist in an area. A consent determination can be made if all parties reach an agreement about native title through mediation.

"The Federal Court does not grant native title. I want you to understand that this land has always been yours. The determination that the Federal Court makes today is simply the recognition and the confirmation of your native title."

Justice Jeffrey Spender



Justice Jeffrey Spender presents the determination to Dulabed woman Lorraine Muckan.

The determination

The Dulabed and Malanbarra Yidinji peoples negotiated with the Queensland Government, Cairns Regional Council, Tablelands Regional Council, Ergon Energy and individual residents to reach agreement about their native title rights. The agreement was ratified through the consent determination on 17 December 2009. The National Native Title Tribunal mediated between the parties to help them resolve issues and reach agreement.

The Dulabed Malanbarra and Yidinji Aboriginal Corporation has been established as the Prescribed Body Corporate to manage the native title rights on behalf of all native title holders.

Combined Dulabed Malanbarra Yidinji determination

On 17 December 2009 the Federal Court of Australia made a consent determination recognising the Combined Dulabed Malanbarra Yidinji peoples' native title rights over 16,460ha of land and waters, 37km south of Cairns in Far North Queensland.

The Federal Court recognised the Combined Dulabed Malanbarra Yidinji peoples' exclusive native title rights over one third of their claimed area, 6,540ha of unallocated state land. This means they have the right to possess, use and occupy this area exclusively and will not be required to share the land with others.

The Court also recognised their non-exclusive rights over 9,920ha of reserves and national parks, including the right to:

- access, traverse and camp on the area
 - take and use traditional natural resources for personal, domestic, non-commercial and communal purposes, and
 - perform cultural or spiritual activities.
- Their non-exclusive rights to water are to:
- hunt and fish in, or gather from, the water for personal, domestic and non-commercial communal purposes.
 - take, use and enjoy the water to satisfy personal, domestic, communal needs but not for commercial purposes.
- The groups will exercise their non-exclusive rights alongside the rights of others.

Elders' dreams fulfilled with recognition

Completing the journey their elders began 15 years ago, the Dulabed and Malanbarra Yidinji peoples gathered in Gordonvale, north Queensland, on 17 December 2009 for the formal recognition of their native title rights under Australian law.

Sitting in a temporary court set up in Djarragun College Hall, Justice Spender recognised the group's exclusive and non-exclusive native title rights to their traditional land and waters. "Today is a day of happiness and should be a day of great pride," he said.

For Dulabed woman, Lorraine Muckan, the day was exactly that, and more. "I'm just so pleased — especially for our elders who passed so long ago," she said.

Lorraine's father, George Davis (Nungabana), was one of the elders who started the native title process, and on his death bed in 2002 had said 'carry this through'.

Now the Dulabed, Malanbarra and Yidinji peoples have the legal right, subject to the conditions agreed in various agreements, to access the determination area to camp, take and use traditional natural resources, perform cultural or spiritual activities, and to hunt and fish in the waters.

Malanbarra Yidinji spokesperson, Len Royee, said the determination was a step forward but there was more work to do — they would be seeking ways to benefit from the tourism industry and other economic opportunities. "We want to be independent," he said.

The native title applicants achieved the consent determination by negotiating with parties to their claim.

Lorraine said it had been a bumpy road and involved a lot of time but negotiation was the way to proceed. "It was excellent negotiating with the parties," she said. "Negotiation is a good way — the right way."



Dulabed boys Jayden Rudken and Camerin Rudkin celebrate the determination with a traditional dance.

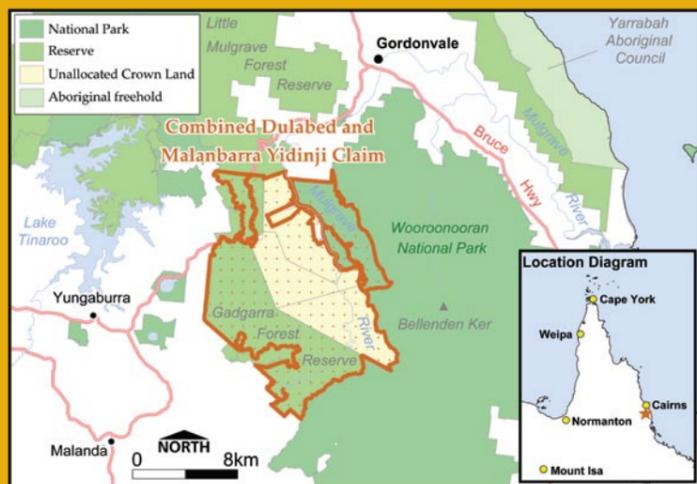
"It [the determination] gives us a sense of belonging and we have our identity now through that — who we are and what we are about." **Lorraine Muckan, native title holder**

ILUA areas

The Combined Dulabed and Malanbarra Yidinji and Ergon Energy ILUA, and the State Government Wooroonooran ILUA cover a similar area, which extends beyond the boundary of the determination area, covering about 16,710ha of land and waters, located approximately nine kilometres southwest of Gordonvale. This area includes parts of Gadgarra Forest Reserve, Wooroonooran National Park and areas of unallocated state land located near the upper reaches of the Mulgrave River.

The Cairns Regional Council - Combined Dulabed and Malanbarra Yidinji - Goldsborough Valley ILUA covers about 4,711ha, located approximately nine kilometres southwest of Gordonvale. This area includes parts of Wooroonooran National Park and areas of unallocated state land within the Cairns Regional Council area, excluding Gadgarra Forest Reserve.

The Combined Dulabed and Malanbarra Yidinji - Tablelands Regional Council Area ILUA covers about 12,000 ha, located approximately 15km southwest of Gordonvale. This area includes parts of Gadgarra Forest Reserve and areas of unallocated state land within the Tablelands Regional Council area, excluding Wooroonooran National Park.



Case name:
Combined Dulabed Malanbarra Yidinji People v State of Queensland [2009] FCA 1498 (17 December 2009)
How to say the claim name:
Dool-a-bed Mal-an-burra Yid-in-gee
Rights to co-exist
The non-exclusive native title rights and interests will co-exist with the

other parties' rights and interests, which are protected under the determinations.
Parties to the application:

- Queensland Government
- Cairns Regional Council
- Tablelands Regional Council
- Ergon Energy
- Individual residents

Stepping stones

21 October 1994

Yidinji member, Len Royee, lodged a claim, QC94/9, with the Tribunal on behalf of the Yidinji People.

23 February 1995

Dulabed member, George Davis, lodged an application, (QC 95/3) with the Tribunal on behalf of the Dulabed People. The claim was over Toohey Creek which was also included in the Yidinji application.

May 1996

The Yidinji claim, QC94/9, was amended to remove the overlap over the Toohey Creek area.

12 June 1996

Malanbarra Clan members, David and Flo Ambrum, Frank Bailey, Mavis Royee, Saunders Ambyrum and Frances Saunders lodged a claim, (QC96/18) with the Tribunal on behalf of the Malanbarra Clan.

24 March 1997

The Yidinji application was amended so it could be combined with the Malanbarra claim, in accordance with an agreement signed 21 January 1997.

7 February 2000

The Malanbarra claim, (QC96/18) was discontinued in the Federal Court.

23 March 2001

The Federal Court ordered that the two remaining applications be amended and combined. The resulting claim was called the Combined Dulabed and Malanbarra/Yidinji claim. (QC01/14)

May 2004 – July 2009

The Tribunal mediated between the parties and helped them work through issues and reach agreement that the Dulabed and Malanbarra Yidinji peoples are the native title holders of the area.

31 July 2009

Justice Spender ordered that the matter be tentatively scheduled for a consent determination hearing on 17 December 2009.

17 December 2009

Justice Spender made the consent determination at Gordonvale, south of Cairns.