



Backgrounder

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Kuuku Ya'u native title determination

Today's consent determination*

The Federal Court of Australia has made a consent determination recognising the Kuuku Ya'u People's native title rights and interests over approximately 1,980 sq km of land and waters to the north of Lockhart River township on the east of Cape York Peninsula in far north Queensland.

This area includes land in the vicinity of the township of Portland Roads, Rocky Island, Sandy Islet, Pigeon Island, Quoin Island National Park, Piper Islands National Park, part of Forbes Islands National Park, and surrounding seas.

The consent determination is recognition that the Kuuku Ya'u People's native title has always existed, and continues to exist, under their traditional laws and customs. It formally recognises the Kuuku Ya'u People's native title rights under Australian law for the first time.

The native title claim

The Cape York Land Council lodged the Kuuku Ya'u People's original application in July 1995 over the seas, reefs, islands and resources from Olive River in the north, out to the Great Barrier Reef, then south to Nyllichii Point. In April 1997 they lodged two more applications with the Tribunal over parts of Restoration and Forbes islands. The applications were combined in the Federal Court in November 1999.

Parties to the claim

The following governments, organisations and individuals became respondent parties:

- State of Queensland
- Commonwealth of Australia
- Australian Maritime Safety Authority
- Cook Shire Council
- Lockhart River Aboriginal Shire Council
- Fishing licence holders

These respondent parties and the Kuuku Ya'u People, with mediation assistance from the National Native Title Tribunal, negotiated about their rights and interests in the claimed areas to reach this consent determination.

Native title rights recognised

Exclusive native title rights

The Federal Court recognised the Kuuku Ya'u People's exclusive native title rights over part of the claimed land area. Exclusive native title has been recognised over approximately 10 sq km of mostly reserves and unallocated State land. They therefore have the right to exclusively possess, occupy, use and enjoy these areas.

Non-exclusive native title rights

The Federal Court also recognised the Kuuku Ya'u People's non-exclusive native title rights over approximately 1,970 sq km of the sea.

These rights are to:

- be present on, including by accessing and traversing the area; and
- take and use traditional natural resources for non-commercial cultural, spiritual, personal, domestic or communal purposes.

The Kuuku Ya'u People's non-exclusive rights over other areas such as part of Forbes Islands National Park, Quoin Island National Park and the Piper Islands National Park have been recognised. These include rights to:

- access, traverse and camp on the determination area
- take, use, share and exchange traditional natural resources from the determination area for personal, domestic, cultural, spiritual, ceremonial and non-commercial communal needs
- maintain and protect places of importance to native title holders
- light camp fires on the determination area for cultural, spiritual or domestic purposes including cooking, but not for hunting or clearing vegetation.

Indigenous land use agreements (ILUAs)**

During negotiations the Kuuku Ya'u People and a number of the respondent parties developed three indigenous land use agreements (ILUAs) to establish how their respective rights will be exercised alongside one another in the agreement area.

1. **Marine Park ILUA** - between Kuuku Ya'u People, the State Government and the Great Barrier Reef Marine Park Authority on behalf of the Commonwealth of Australia about the exercise of any native title rights in the ILUA areas to ensure good management of these areas. It deals with the management and conservation of the sea's resources in line with the Great Barrier Reef Marine Park Authority plan.
2. **Protected Area ILUA** - between the Kuuku Ya'u People and the State Government regarding the exercise of native title rights and protection, use and management of the

Forbes Islands National Park, Quoin Island National Park and Piper Islands National Park.

3. **Portland Roads ILUA** – between the Kuuku Ya’u People and the Cook Shire Council regarding the manner in which Council would carry out its responsibilities in the determination area. It provides a framework for communication with the Kuuku Ya’u People leading to more effective delivery of local government services in the future.

The native title determination takes effect upon the registration of the three ILUAs on the Tribunal’s Register of Indigenous Land Use Agreements.

Native title over the sea

Native title was first recognised over Australian seas in October 2001 when, after more than five years of litigation, the High Court ruled that members of the Croker Island community in the Northern Territory had non-exclusive native title rights over their traditional seas. This case charted the way for further sea claims. In March 2004 the Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples won recognition of their non-exclusive native title rights to the sea around the Wellesley, South Wellesley, Forsyth and Bountiful Island groups in Queensland’s Gulf of Carpentaria through a litigated case in the courts. The Kuuku Ya’u People are the first Indigenous group in Queensland to have their native title rights recognised over their traditional sea country through agreement.

**A native title determination is a decision by the Federal Court of Australia that native title does or does not exist over an area of land or water. If the parties to a native title claim reach agreement, and the Federal Court endorses the agreement, it is called a consent determination.*

***ILUAs are voluntary agreements about the use and management of land, made between a native title group and other people. ILUAs are flexible and can be made about a variety of matters to ensure a practical relationship is established and that each party obtains the security and benefits they are seeking, such as arrangements for sharing land, ensuring that public infrastructure can continue to be developed and how native title rights and interests will be exercised.*

See map of determination area at www.nntt.gov.au

Pronounce: Kuuku Ya’u = goo goo yow

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