



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD168/2011
NNTT Number: NCD2015/003

Determination Name: [Yaegl People #2 v Attorney-General of New South Wales](#)

Date(s) of Effect: 25/06/2015

Determination Outcome: Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 25/06/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yaegl Traditional Owners Aboriginal Corporation RNTBC
Trustee Body Corporate
94 Wharf Street
MACLEAN New South Wales 2463

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

5. Native title in the Determination Area is held by the Yaegl People who comprise all the descendants of the following apical ancestors:
 - (a) Dugald Cameron (who was born in Chatsworth Island around 1870);
 - (b) Jack Freeburn (who was born in Yamba around 1868);
 - (c) Sailor Morris (who was born in Chatsworth Island around 1831);
 - (d) Nodo Combo (who was born in Yamba around 1859);

(e) Rose Combo nee Yamba and also known as Rosie Yamba (who was born in Yamba around 1856); and persons adopted or incorporated into the families of those persons and who identify as and are accepted as Yaegl People in accordance with Yaegl traditional laws and customs (and the biological descendants of any such adopted or incorporated persons).

MATTERS DETERMINED:

BEING SATISFIED that a determination of native title in the terms agreed by the parties, as recorded in the agreement between the parties made under s 87A(1) of the *Native Title Act 1993* (Cth) (the **NTA**) and filed on 19 June 2015 (the **agreement**), is within the power of the Court, and appearing appropriate to so by consent of the parties,

PURSUANT TO SS 87A(4) AND (5) AND 94A OF THE NTA, THE COURT ORDERS THAT:

1. There be a determination that native title exists in the terms set out below (the **Determination**).
2. The native title as determined is to be held on trust by Yaegl Traditional Owners Aboriginal Corporation RNTBC.
3. The Yaegl Traditional Owners Aboriginal Corporation RNTBC is to:
 - (a) be the prescribed body corporate for the purposes of section 57(1) of the NTA; and
 - (b) perform the functions set out in section 57(1) of the NTA and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

THE DETERMINATION

Existence of native title

1. The Determination Area comprises the areas of land or waters described in Schedule One and depicted on the Determination Plan in Schedule Two.
2. Native title exists in relation to the areas of land or waters in the Determination Area in the manner set out in paragraphs 6 to 10.
3. Section 47A of the *Native Title Act 1993* (Cth) (*'Native Title Act'*) applies to that part of the Determination Area described in Schedule Three.
4. Native title has been extinguished and does not exist in the land and waters described in Schedule Five ('the Extinguished Areas').

Native title holders

5. Native title in the Determination Area is held by the Yaegl People who comprise all the descendants of the following apical ancestors:
 - (a) Dugald Cameron (who was born in Chatsworth Island around 1870);
 - (b) Jack Freeburn (who was born in Yamba around 1868);
 - (c) Sailor Morris (who was born in Chatsworth Island around 1831);
 - (d) Nodo Combo (who was born in Yamba around 1859);
 - (e) Rose Combo nee Yamba and also known as Rosie Yamba (who was born in Yamba around 1856); and

persons adopted or incorporated into the families of those persons and who identify as and are accepted as Yaegl People in accordance with Yaegl traditional laws and customs (and the biological descendants of any such adopted or incorporated persons).

Nature and extent of native title rights and interests

6. Subject to Paragraphs 7 to 10, the nature and extent of the native title rights are:
- (a) the right to enter, travel over and remain on a non-permanent basis on the Determination Area;
 - (b) the right to live on the land, to camp, to erect shelters, and to move about the land in the Determination Area but not extending to a right to permanently occupy or possess the land;
 - (c) the right to engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death in the Determination Area;
 - (d) the right to hunt in the Determination Area;
 - (e) the right to fish in the Determination Area;
 - (f) the right to take and use the water of the Determination Area for personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers;
 - (g) the right to gather and use the natural resources in the Determination Area including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments;
 - (h) the right to light fires on the Determination Area for domestic purposes, but not for the clearance of vegetation;
 - (i) the right to share, offer and exchange traditional resources derived from the Determination Area;
 - (j) the right to have access to, maintain and protect from physical harm, sites and places of importance in the Determination Area which are of significance to Yaegl People under their traditional laws and customs;
 - (k) the right to teach on the Determination Area the physical, cultural and spiritual attributes of places and areas of importance on or in the Determination Area; and
 - (l) the right to be accompanied on the Determination Area by persons who, though not native title holders, are:
 - (i) spouses, partners or parents of native title holders, together with their children and grandchildren;
 - (ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and
 - (iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.
7. The native title rights and interests referred to in paragraph 6(a) to 6(l) are not exclusive.

General qualifications on native title rights and interests

8. Native title does not exist in:
- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
 - (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).
9. The native title rights and interests in Paragraph 6 do not confer:
- (a) possession, occupation, use or enjoyment to the exclusion of all others; and
 - (b) any right to control public access or public use of the land or waters in the Determination Area.
10. The native title rights and interests in the Determination Area are subject to and exercisable in accordance with:

- (a) The laws of the State of New South Wales and of the Commonwealth;
- (b) The traditional laws acknowledged and traditional customs observed by the Yaegl People; and
- (c) The terms of any Indigenous Land Use Agreement which may at any time be registered by the National Native Title Tribunal in respect of any part of the Determination Area.

Nature and extent of other interests

- 11. The other interests in the Determination Area are the interests described in Schedule Seven ('Other Interests').

Relationship between native title rights and Other Interests

- 12. Subject to paragraphs 13 and 14, the relationship between the native title rights and interests in the Determination Area and the Other Interests is that:
 - (a) the Other Interests continue to have effect;
 - (b) the Other Interests co-exist with the native title rights and interests;
 - (c) the native title holders do not have the right to control access to or the use of the land or waters by the holders of the Other Interests, acting in accordance with those Other Interests; and
 - (d) to the extent of any inconsistency, the Other Interests and any activity that is required or permitted by or under the exercise of a right conferred or held under the Other Interests, while they are in existence, prevail over but do not extinguish the native title rights and interests and any exercise of those native title rights and interests.
- 13. In relation to the area of land and waters described in Schedule Three (where section 47A of the *Native Title Act* applies and prior extinguishment is disregarded), the relationship between the native title rights and interests in the Determination Area that are described in paragraph 6 and the Other Interests is that:
 - (a) the Other Interests continue to have effect;
 - (b) the non-extinguishment principle in section 238 of the *Native Title Act* applies to the grant or vesting of the Other Interests or any other prior interest in relation to the area in accordance with section 47A(3)(b) of the *Native Title Act*, and
 - (c) the native title rights and interests continue in their entirety but have no effect in relation to the Other Interests, and any activity that is required or permitted by or under and done in accordance with the Other Interests prevails over the native title rights and interests and any exercise of the native title rights and interests, but does not extinguish them except in accordance with law.
- 14. In relation to the land and waters described in Schedule Four and any other land and waters in the Determination Area transferred to an Aboriginal Land Council under the *Aboriginal Land Rights Act 1983* (NSW) ('*Aboriginal Land Rights Act*') as a result of claims lodged on or after 28 November 1994, the Other Interests will be subject to the native title rights and interests.

Definitions

- 15. In this Determination and the associated orders, unless the contrary intention appears:

'Determination Area' means the land and waters described in Schedule One and depicted on the Determination Plan in Schedule Two.

'Determination Plan' means the plan in Schedule Two.

'Excluded Area' means land and waters in respect of which the parties have agreed that no determination of native title is to be made at present being the areas described in Schedule Six.

'Extinguished Areas' means the land and waters described in Schedule Five and depicted on the Determination Plan in Schedule Two.

'laws of the State of New South Wales and of the Commonwealth' include statutes, regulations and other

subordinate legislation and the common law.

'*Native Title Act*' means the *Native Title Act 1993* (Cth).

'**Other Interests**' means the interests described in Schedule Seven.

'**validated**' means acts validated in accordance with the *Native Title Act* or the *Native Title (New South Wales) Act 1994* (NSW).

'**Yaegl People**' means the native title holders as described in Paragraph 5.

'**Yaegl Traditional Owners Aboriginal Corporation RNTBC**' means Yaegl Traditional Owners Aboriginal Corporation RNTBC incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

16. If a word or expression is not defined in these orders, but is defined in the *Native Title Act*, then it has the meaning given to it in the *Native Title Act*.

Schedule One

Description of the Determination Area

[See NNTR attachment 1: "Schedule One - Description of the Determination Area"]

Schedule Two

Determination Plan

[See NNTR attachment 2: "Schedule Two - Determination Plan"]

Schedule Three

Parts of the Determination Area to which section 47A of the *Native Title Act 1993* (Cth) Applies

1. The areas of land or waters to which s 47A of the *Native Title Act* applies, are the following:

Area ID	Area Description	Parish/Locality
3833	Lot 96 DP822831	Nanegai
10141	Lot 165 DP751395	Yamba
12352	Lot 2 DP565241	Yamba
10479	Lot 199 DP729133	Yamba
12238	Lot 3 DP565241	Yamba
12508	Lot 275 DP1054783	Yamba
13178	Lot 277 DP1134745	Yamba
2430	Lot 199 DP 751373	Harwood
2988	2/70/758604	Lawrence
3287	1/70/758604	Lawrence
3309	3/70/758604	Lawrence
3415	Lot 298 DP 822835	Lawrence
5403	Lot 426 DP 727422	Taloumbi
7000	Lot 440 DP 47654	Taloumbi
7436	Lot 438 DP 824497	Taloumbi

7849	Lot 196 DP 48753	Tyndale
9832	Lot 221 DP 727421	Woombah
9921	Lot 222 DP 824485	Woombah
9926	2/8/759119	Woombah
9955	3/8/759119	Woombah
9970	4/8/759119	Woombah
10094	Lot 118 DP751395	Yamba
10133	Lot 121 DP751395	Yamba
13170	Lot 278 DP1134758	Yamba

Schedule Four

Parts of the Determination Area Comprising Lands vested in Aboriginal Land Councils Subject to Native Title

Area ID	Area Description	Parish/Locality
7168	Lot 441 DP 48751	Taloumbi

Schedule Five

Extinguished Areas

[See NNTR attachment 3: "Schedule Five - Extinguished Areas"]

Schedule Six

Excluded Area

The following is a description of the Excluded Area, being land or waters in respect of which the parties have agreed no determination of native title is to be made at present.

Commencing at the intersection of the Mean High Water Mark of the South Pacific Ocean and the southern bank of Woolli River and extending generally northerly, generally north westerly and again generally northerly along that Mean High Water Mark, crossing the mouths of any waterways between the seaward extremities of each of the opposite banks of each such waterway to a point on the north eastern boundary of Wooded Bluff (Shark Bay) at Longitude 153.362980° East; then east to the 3 Nautical Mile Limit; then generally southerly along that 3 Nautical Mile Limit to Latitude 29.886218° South; then westerly back to the commencement point.

Note:

- For the avoidance of doubt, the Excluded Area does not comprise any land and waters subject to Native Title Determination Application NSD6052/1998 - The Yaegl People (NC1996/038).
- Application boundary data compiled by the National Native Title Tribunal normally from data sourced from the LPM Authority, Land and Property Information Division, NSW.
- Maritime boundaries data is © Commonwealth of Australia (Geoscience Australia) 2006. AMB 6th Edition released in February 2006.
- Native Title Determination Application: NSD6052/1998 - The Yaegl People (NC1996/038) - as accepted for registration 11th December 2006.
- Woolli River and High Water Mark based on Cadastral data.

Reference Datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, National Native Title Tribunal (20 May 2015).

Schedule Seven

Other Rights and Interests in the Determination Area

[See NNTR attachment 4: "Schedule Seven - Other Rights and Interests in the Determination Area"]

Schedule Eight

External Boundary of Determined Area and Extinguished Areas

[See NNTR attachment 5: "Schedule Eight - External Boundary of Determined Area and Extinguished Areas"]

REGISTER ATTACHMENTS:

1. Schedule One - Description of the Determination Area, 15 pages - A4, 25/06/2015
2. Schedule Two - Determination Plan, 1 page - A3, 25/06/2015
3. Schedule Five - Extinguished Areas, 225 pages - A4, 25/06/2015
4. Schedule Seven - Other Rights and Interests in the Determination Area, 4 pages - A4, 25/06/2015
5. Schedule Eight - External Boundary of Determined Area and Extinguished Areas, 3 pages - A4, 25/06/2015

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.