



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6002/1996
NNTT Number: QCD1998/001

Determination Name: [Western Yalanji or "Sunset" Peoples v Alan & Karen Pedersen & Ors](#)

Date(s) of Effect: 28/09/1998

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: 28/09/1998

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Western Yalanji Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 2682
MAREEBA Queensland 4880

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:

- (a) The CUMMINS/KING-COSTELLO group, being descendants of Tippo King (aka Deppo/King of Maytown), and his sons Joe Cummins, Dick Cummins (aka Dick Wannacott/Simon King);
- (b) The ROSENDALE group, being descendants of Leo Rosental and Eric Rosental Snr;
- (c) The QAWANJI/BRADY group, being descendants of Qawanji Donald Brady;
- (d) The DAVIS-O'SHANE and others group, being descendants of Caroline Kiju Rose Roberts;
- (e) The LEE CHEU group, being descendants of Charlie Lee Cheu and Georgina Banjo;
- (f) The GROGAN group, being descendants of Rosie Maytown (aka Rosie Palmer/Rosie Grogan);

- (g) The BURTON-BRICKY group, being descendants of Jack Burton, Rupert Burton and Bula Burton;
- (h) The MELDRUM group, being descendants of Ruby Meldrum and Molly Banjo;
- (i) The MACNAMARA group, being descendants of Dolly and Harry and Frank MacNamara (MacNamara aka Quinlan);
- (j) The MITCHELL group, being descendants of Wildtime, Mingkiji and Sambo Wannacott;
- (k) The CROWLEY-RILEY group, being descendants of Jack and George Crowley and George Riley;
- (l) The BANJO/GORDON group, being descendants of Lena Palmer and Bob Banjo (Banjo aka Gordon);
- (m) The ROBERTS group, being descendants of Charlie and Dolly Curramore;
- (n) The OLIVER-COLLESS group, being descendants of Janie Maytown;
- (o) The SNIDER group, being descendants of Charlie Snider;
- (p) The ROGERS group, being descendants of Rowdy Rogers and Charlotte (Rogers aka Davis);
- (q) The FULLERTON-BRIM group, being descendants of Annie Fullerton and Dinah Fullerton-Brim

on behalf of their own groups and the Aboriginal tribal grouping known by the alternative designations "Western Yalanji", "Western Kuku-Yalanji", "Sunset Yalanji", and "Maytown People" ("the native title holders").

MATTERS DETERMINED:

1. Subject to order 2, native title rights and interests exist in relation to the determination area, marked on the map in Schedule 1 headed Plan of Determination Area, which Schedule is incorporated in Annexure A to these orders.
2. Native title rights and interests do not exist in relation to the areas described as "Area E" and shown on the said map or in relation to opened roads, dedicated roads and roads legally constructed for public use within the determination area referred to in order .
3. Native title rights and interests have not been extinguished by the grant of the interests over the land and waters set out in Schedules 2A and 2B incorporated in Annexure A to these orders.

The Court notes, however, that the parties acknowledge that the native title rights and interests may have been affected by a lawful physical activity carried out prior to the date of this determination on such land or waters pursuant to the granted interest.

4. The native title rights and interests are held by the following people as native title holders:
 - (a) The CUMMINS/KING-COSTELLO group, being descendants of Tippo King (aka Deppo/King of Maytown), and his sons Joe Cummins, Dick Cummins (aka Dick Wannacott/Simon King);
 - (b) The ROSENDALE group, being descendants of Leo Rosental and Eric Rosental Snr;
 - (c) The QAWANJI/BRADY group, being descendants of Qawanji Donald Brady;
 - (d) The DAVIS-O'SHANE and others group, being descendants of Caroline Kiju Rose Roberts;
 - (e) The LEE CHEU group, being descendants of Charlie Lee Cheu and Georgina Banjo;
 - (f) The GROGAN group, being descendants of Rosie Maytown (aka Rosie Palmer/Rosie Grogan);
 - (g) The BURTON-BRICKY group, being descendants of Jack Burton, Rupert Burton and Bula Burton;
 - (h) The MELDRUM group, being descendants of Ruby Meldrum and Molly Banjo;
 - (i) The MACNAMARA group, being descendants of Dolly and Harry and Frank MacNamara (MacNamara aka Quinlan);
 - (j) The MITCHELL group, being descendants of Wildtime, Mingkiji and Sambo Wannacott;
 - (k) The CROWLEY-RILEY group, being descendants of Jack and George Crowley and George Riley;

- (l) The BANJO/GORDON group, being descendants of Lena Palmer and Bob Banjo (Banjo aka Gordon);
- (m) The ROBERTS group, being descendants of Charlie and Dolly Curramore;
- (n) The OLIVER-COLLESS group, being descendants of Janie Maytown;
- (o) The SNIDER group, being descendants of Charlie Snider;
- (p) The ROGERS group, being descendants of Rowdy Rogers and Charlotte (Rogers aka Davis);
- (q) The FULLERTON-BRIM group, being descendants of Annie Fullerton and Dinah Fullerton-Brim

on behalf of their own groups and the Aboriginal tribal grouping known by the alternative designations "Western Yalanji", "Western Kuku-Yalanji", "Sunset Yalanji", and "Maytown People" ("the native title holders").

5. The native title rights and interests do not confer possession, occupation, use and enjoyment of the determination area referred to in order 1 on the native title holders, to the exclusion of all others, because the native title rights and interests held by them or their predecessors:

(a) are and have been subject to:

(i) the operation of the laws of the Commonwealth and of the State (past and present) including any Local Government Planning Scheme, Local Laws or other Local Government regulations;

(ii) the rights (past and present) conferred upon persons pursuant to the laws of the Commonwealth and of the State; and

(iii) any rights and interests conferred by or the subject of an agreement under s 21 the Native Title Act 1993 (Cth); and

(b) have been diminished or modified over time such that they are not exclusive as against all others. To avoid doubt, it is declared that to the extent that the native title rights and interests were ever exclusive, the character of exclusivity has been extinguished.

6. The native title rights and interests which the Court considers to be of importance are the rights of the common law holders in accordance with and subject to their traditional laws and customs to:

(a) have possession, occupation, use and enjoyment of the determination area referred to in order 1;

(b) have access to and use of the natural resources of the determination area including the right to:

(i) maintain and use the determination area;

(ii) conserve the natural resources of the determination area;

(iii) safeguard the determination area and the natural resources of the determination area for the benefit of the native title holders;

(iv) manage the determination area for the benefit of the native title holders;

(v) use the determination area and its natural resources for social, cultural, economic, religious, spiritual, customary and traditional purposes;

and more particularly to:

A. reside on, camp on, and travel across the land within this area and, subject to regional customary-lawful expectations and protocol, permit non-native title holders to do so;

B. exercise rights of use and disposal over the natural resources, including the right to confer use of those natural resources upon non-native title holders;

C. exercise and carry out economic life on the determination area including the creation, growing, production, husbanding, harvesting and exchange of natural resources and that which is produced by the exercise of the native title rights and interests;

D. discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to, and concerning this determination area and its welfare including to:

(i) preserve sites of significance to the native title holders and other Aboriginal people on the determination area;

- (ii) conduct secular ritual and cultural activities on the determination area;
- (iii) conduct burials on the determination area;
- (iv) determine, give effect to, pass on, and expand the knowledge and appreciation of the culture and tradition;
- (v) regard the determination area as part of the inalienable affiliation of the native title holders to the determination area;
- (vi) maintain the cosmological relationship beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the determination area and special and sacred sites, to ensure the continued vitality of culture, and the well being of the native title holders;
- (vii) inherit or dispose of native title rights and interests in relation to the determination area in accordance with custom and tradition;
- (viii) determine who are the native title holders and determine amongst them the connections of particular individuals and sub-groups to specific portions of the determination area (such determinations being made by reference to multiple criteria, eg, descent, birth/conception sites, succession practices and indigenous subdivisions of the land); and
- (ix) resolve disputes between the native title holders and other Aboriginal persons in relation to the determination area;

E. construct and maintain structures for the purpose of exercising the native title rights.

7. Any other native title rights and interests are derived from those native title rights and interests listed in order 6.

8. The native title rights and interests are subject to the laws of the Commonwealth and of the State, including any Local Government Planning Scheme, Local Laws or other Local Government regulations.

9. The native title rights and interests are or may be affected by, and to the extent of any inconsistency yield to, all rights and interests validly created within the determination area which exist or may hereafter exist pursuant to valid laws of the Commonwealth of Australia and of the State of Queensland, including the rights and interests of the holder of Occupation Licence 285, Cooktown, and those of the mining interests set out in Schedule 2A incorporated in Annexure A as are validly existing at the date of this determination.

10. The exercise of the native title rights and interests is subject to the rights conferred on any other party by or pursuant to any of the agreements contained in Schedules 3 and 4 incorporated in Annexure A.

11. The native title rights and interests are held by the native title holders and are not held on trust for the native title holders.

(Please Note: On 4 February 2002 Justice Drummond ordered and directed that Order 11 of the Orders of the Court of 28 September 1998 be varied to read as follows:

The Native Title rights and interests are held by the Western Yalanji Aboriginal Corporation on trust for the Native Title holders.)

12. The native title rights and interests will be affected by the future acts authorised by the Land Tenure Agreement contained in Schedule 3 incorporated in Annexure A.

13. The exercise of the native title rights and interests over the determination area other than area A on the map contained in Schedule 1 headed Plan of Determination Area and incorporated in Annexure A is governed by the Land Use and Access Agreement contained in Schedule 4 that is also incorporated in Annexure A.

14. The agreements referred to in orders 12 and 13 commence to operate and are effective from the time of making of this determination (whether those agreements are executed or not).

15. Each of the Schedules in Annexure A to these orders forms part of this determination.

16. The native title rights and interests set out in this determination are the particular property of the native title holders and the enunciation of those rights is based to an extent on material contained in and referred to in the report prepared by Mr Ray Wood, and filed in the Court on 22 May 1998 ("the Wood Report").

17. Accordingly, where in this determination it is necessary to decide whether a particular right exists, or the nature or extent of a right where that right is said to be a "customary right, duty or obligation", or to be exercised "in accordance with custom and tradition", initial reference is intended to be made to the custom, tradition, right, duty or obligation referred to in the Wood Report.

18. In this determination, unless the context otherwise requires:

(a) Terms used in this determination have the meanings given to those terms in the Native Title Act 1993 (Cth).

(b) "determination area" means the land and waters marked as areas A and B on the map contained in Schedule 1, headed Plan of Determination Area and incorporated in Annexure A, namely the area described as lot 285 on plan OL455, County of Dagmar, Parishes of Tregoora and Gorilbee but excluding the area described as area D on the map contained in Schedule 1, headed Plan of Determination Area and incorporated in Annexure A.

(c) "fauna" has the meaning given to it in the Fauna Conservation Act 1974 (Qld).

(d) "laws of the Commonwealth and of the State" includes the common law.

(e) "minerals" has the same meaning as "mineral" in s 5 the Mineral Resources Act 1989 (Qld);

(f) "natural resources" means animal, fish and plant life found on the determination area from time to time (but does not include fauna) and water, clays and soils but excludes minerals, petroleum and other resources won by mining;

(g) "party" means the party and includes any assignee or successor of that party;

(h) "site of significance" means a site or area of land or water that is sacred to the native title holders or is otherwise of significance according to Aboriginal custom and tradition, and includes burial, birth, conception, navel, story and social history sites;

(i) the expressions "native title holders" and "common law holders" have the same meaning.

19. Pursuant to sub-section 57(2) the Native Title Act 1993 (Cth), Derrick Oliver, a representative of the common law holders, must nominate in writing to the Court within six months of the date of this determination, a prescribed body corporate to perform the functions mentioned in sub-section 57(3) the Native Title Act 1993 (Cth) after that prescribed body corporate becomes a registered native title body corporate.

20. That where any common law holder named in this determination ("the existing person") is unable, by reason of death, infirmity or incapacity or other reasons associated with custom and tradition, to do anything required pursuant to this determination within the time set out in that determination, any other common law holder has liberty to apply to be substituted as the representative of the common law holders in place of the existing person.

21. Until such time as a body is registered as the registered native title body corporate representing the common law holders, any agreement, certificate or other document which would otherwise be entered into or executed by the registered native title body corporate may be so entered into or executed on behalf of the common law holders by the person entitled to make the nomination referred to in order 19, together with four other common law holders.

22. Until such time as body becomes registered as the registered native title body corporate for the common law holders, any notice, correspondence or other document required to be forwarded to the registered native title body corporate may be given to the representative of the common law holders at the following address:

Attn: Mr Michael Neal

Phillips Fox

Lawyers

PO Box 2043

Cairns Mail Centre Q 4870.

23. The Deed of Agreement (exhibit 1) incorporating the various schedules will be Annexure A to the orders of the Court and the Agreement between the applicants, the State of Queensland and Mr Adam (exhibit 3) will be Annexure B to these orders.

24. The applicants have leave to uplift the exhibits and to prepare a consolidated Agreement to be filed as soon as reasonably practicable.

25. There be liberty to all parties to apply.

26. There be no order as to the costs of or incidental to this action.

REGISTER ATTACHMENTS:

1. Attachment A - Map showing lands to be dealt with under the agreement dealing with QC95_10, 1 page - A4, 28/09/1998
2. Attachment B - Map showing determination area to be dealt with under the use and access agreement dealing with QC95/10, 1 page - A4, 28/09/1998
3. Attachment C - List of current mining tenures and previous mining tenures where native title not extinguished (Annexure A to determination), 7 pages - A4, 28/09/1998
4. Attachment D - Land Tenure Agreement (authorising future acts which will affect the native title rights and interest), 9 pages - A4, 28/09/1998
5. Attachment E - Land Use and Access Agreement (governing the exercise of native title rights and interests over the determination area, other than area A on determination map), 14 pages - A4, 28/09/1998
6. Attachment F - Agreement between the Western Yalanji, State of Queensland and Mr Noel Adam, 6 pages - A4, 28/09/1998

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.