



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6066/1998
NNTT Number: QCD2004/008

Determination Name: [Newie on behalf of the Gebaralgal v State of Queensland](#)

Date(s) of Effect: 13/12/2004

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 13/12/2004

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Gebaralgal (Torres Strait Islanders) Corporation RNTBC
Trustee Body Corporate
Yam Island Council,
Yam Island via Post Office,
THURSDAY ISLAND QLD 4875

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:

The Gebaralgal, being:

- (a) The descendants of one or more of the following ancestors: Kelam, Rusia, Kebisu, Porrie Daniel, Gawadi, Ausa or Auda, being members of the Luffman, Whap, Kris, Levi, David, Daniels, Kelly, Kepa, Baluz and Samuel families; and
- (b) Torres Strait Islanders who have been adopted by the above people in accordance with the traditional laws acknowledged and traditional customs observed by those people.

MATTERS DETERMINED:

THE COURT ORDERS BY CONSENT THAT:

1. Native title exists in relation to the land and waters on the landward side of the High Water Mark of Lot 43 on Plan TS216 referred to as Gebara Island, Gabba Island or Two Brothers Island and shown on the plan in Schedule 1 ("the Determination Area").

2. Native title is held by the people described in Schedule 2 ("the Native Title Holders").

3. Subject to paragraphs 4 and 5, the native title is a right to possession, occupation, use and enjoyment of the Determination Area to the exclusion of all others.

4. Subject to paragraph 5, the native title in relation to Water is a non-exclusive right to:

(a) hunt and fish in or on, and gather from, the Water for the purpose of satisfying personal, domestic or non-commercial communal needs; and

(b) take, use and enjoy the Water for the purpose of satisfying personal, domestic or non-commercial communal needs.

The native title in relation to Water does not confer possession, occupation, use and enjoyment of the Water on the Native Title Holders to the exclusion of all others.

5. The native title is subject to and exercisable in accordance with:

(a) the laws of the Commonwealth of Australia and the State of Queensland including the common law; and

(b) traditional laws acknowledged and traditional customs observed by the Native Title Holders.

6. The nature and extent of the other interests in relation to the Determination Area are set out in Schedule 3.

7. The relationship between the native title and the other interests referred to in paragraph 6 is that:

(a) the other interests continue to have effect and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of native title; and

(b) the other interests and any activity done in exercise of the rights conferred by or held under the other interests prevail over the native title and any exercise of the native title.

8. If a word or expression is not defined in this order, but is defined in the Native Title Act 1993 (Cth) then it has the meaning given to it in the Native Title Act 1993 (Cth). In addition to the other words defined in this order:

(a) "High Water Mark" has the meaning given to it in the Land Act 1994 (Qld);

(b) "Local Government" has the meaning given to it in the Local Government Act 1993 (Qld); and

(c) "Water" has the meaning given to it in the Water Act 2000 (Qld).

9. The native title is to be held in trust by the Gebaralgal (Torres Strait Islanders) Corporation for the benefit of the Native Title Holders.

SCHEDULE 2 - NATIVE TITLE HOLDERS

The Gebaralgal, being:

(a) The descendants of one or more of the following ancestors: Kelam, Rusia, Kebisu, Porrie Daniel, Gawadi, Ausa or Auda, being members of the Luffman, Whap, Kris, Levi, David, Daniels, Kelly, Kepa, Baluz and Samuel families; and

(b) Torres Strait Islanders who have been adopted by the above people in accordance with the traditional laws acknowledged and traditional customs observed by those people.

SCHEDULE 3 - OTHER INTERESTS

The nature and extent of the other interests in relation to the Determination Area are:

(a) the interests of the Urapun Tubudal Gal Land Trust and the beneficiaries under deed of grant No. 40032520;

(b) the interests, powers and functions of the Torres Shire Council as Local Government for Lot 43 on Plan TS216;

(c) the interests recognised under the Treaty between Australia and the Independent State of Papua New Guinea

concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters signed at Sydney on 18 December 1978 as in force at the date of this order including the interests of indigenous Papua New Guinea persons in having access to the Determination Area for traditional purposes; and

(d) any other interests that may be held by reason of the force or operation of the laws of the Commonwealth of Australia or the State of Queensland including the common law.

REGISTER ATTACHMENTS:

1. SCHEDULE 1 - Native Title Determination Plan, 1 page - A4, 13/12/2004

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.