



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): QUD6052/1998  
NNTT Number: QCD2004/009

**Determination Name:** [David on behalf of the Iama People and Tudulaig v State of Queensland](#)

**Date(s) of Effect:** 24/05/2005

**Determination Outcome:** Native title exists in the entire determination area

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## 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:

Magani Lagaugal (Torres Strait Islanders) Corporation RNTBC  
Trustee Body Corporate  
C/- Native Title Office  
9 Poruma Street  
Tamway Town  
THURSDAY ISLAND Queensland 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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

The Yam Islanders/Tudulaig People, being:

(a) the descendants of one or more of the following apical ancestors: Kebisu, Rusia, Ausa, Auda, Porrie Daniel, Gawadi or Kelam; 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:

Note: The Indigenous Land Use Agreement (QI2004/038) referred to at Order 9 was registered on the Register of Indigenous Land Use Agreements on 24 May 2005.

THE COURT ORDERS BY CONSENT THAT:

1. Native title exists in relation to the land and waters described in Schedule 1 and shown on the plan in Schedule 2 ("the Determination Area").

2. Native title is held by the people described in Schedule 3 ("the Native Title Holders").

3. Subject to paragraphs 4 and 5, the native title is a right to possession, occupation, use and enjoyment 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 4.

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 the 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);

(c) "Roads" means the roads shown on the plan in Schedule 2 and all other roads whether declared, notified, constructed, surveyed or taken under the laws of the Commonwealth of Australia or the State of Queensland including the common law, to be a road; and

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

9. Paragraphs 1-7 will take effect on the agreement referred to in item (d) of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.

10. In the event that the agreement referred to in paragraph 9 is not registered within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.

11. Upon paragraphs 1-7 taking effect, the native title is to be held in trust by the Magani Lagaugal (Torres Strait Islanders) Corporation for the benefit of the Native Title Holders.

12. Each party to the proceeding is to bear its own costs.

SCHEDULE 1 - DETERMINATION AREA

The land and waters on the landward side of the High Water Mark of:

(a) Lot 13 on Plan TS177 being part of the island referred to as Yam Island excluding the areas described as:

- (i) Lots 4-6 on Plan AP9680; and
- (ii) Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177;
- (b) Lot 40 on Plan TS216 referred to as Zagai Island or Jeaka Island;
- (c) Lot 42 on Plan TS216 referred to as Tudu Island; and
- (d) Lot 44 on Plan TS216 referred to as Cap Islet or Mukar Islet or Muquar Islet.

Lot 14 on Plan TS178, Lot 1 on Plan TS362, Lot 50 on Plan TS283, Lot 2 on Plan TS117, Lots 4-6 on Plan AP9680, Lease A on Deposited Plan 149845 in Lot 13 on Plan TS177 and Roads are not subject to native title determination application Yam Islanders/Tudulaig Combined QG 6052 of 1998 and do not form part of the land and waters described above.

### SCHEDULE 3 - NATIVE TITLE HOLDERS

The Yam Islanders/Tudulaig People, being:

- (a) the descendants of one or more of the following apical ancestors: Kebisu, Rusia, Ausa, Auda, Porrie Daniel, Gawadi or Kelam; 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 4 - OTHER INTERESTS

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

- (a) the interests of the Iama Island Council and the beneficiaries under deed of grant No. 21296138;
- (b) the interests of the Urapun Tubudal Gal Land Trust and the beneficiaries under deed of grant No. 40032519;
- (c) the interests of the State of Queensland in the following reserves, the interests of the persons in whom they are vested and the interests of the persons entitled to access and use those reserves for the respective purposes for which they are reserved:
  - (i) Reserve 21 over Lot 40 on Plan TS216; and
  - (ii) Reserve 201 over Lot 44 on Plan TS216;
- (d) the interests of the State of Queensland under an indigenous land use agreement dated 22 November 2004 between it and Lui David, Charles David, Silen David, Cyril Stephen, Philomena David and Patrick Thaiday;
- (e) the interests of Ergon Energy Corporation Limited, being:
  - (i) rights and interests as the owner and operator of electricity generation, transmission and distribution facilities within the Determination Area;
  - (ii) rights and interests in exercising its statutory powers and responsibilities;
  - (iii) rights to enter the Determination Area by employees, agents or contractors of Ergon Energy Corporation Limited to enable access to its facilities in, and in the vicinity of, the Determination Area or otherwise as required in the exercise of their powers or the performance of their responsibilities; and
  - (iv) the rights and interests under an indigenous land use agreement between the Native Title Holders and Ergon Energy Corporation Limited dated 25 November 2004;
- (f) the rights and interests of Telstra Corporation Limited, being:
  - (i) rights and interests as the owner or operator of telecommunications facilities installed within the Determination Area and as the holder of a carrier licence under the Telecommunications Act 1997 (Cth);
  - (ii) rights and interests created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth);
  - (iii) rights to enter the Determination Area by employees, agents or contractors of Telstra Corporation Limited in the performance of their duties, to enable access to its telecommunications facilities in, and in the vicinity of, the

Determination Area; and

(iv) rights and interests under an indigenous land use agreement between the Native Title Holders and Telstra Corporation Limited dated 29 November 2004;

(g) the interests of the State of Queensland in the accommodation facilities located within the areas described as Lease B on Crown Plan 825770 in Lot 13 on Plan TS177 and Lease S on Deposited Plan 151800 in Lot 13 on Plan TS177 including the:

(i) rights to use, operate and maintain the facilities;

(ii) rights to control access to and use of the facilities; and

(iii) rights of its employees, contractors, agents, representatives, licensees, permittees and invitees to enter the Determination Area for the purposes of accessing the facilities;

(h) the interests of the State of Queensland in the community health centre located within the area described as Lease H on Deposited Plan 150248 in Lot 13 on Plan TS177 including the:

(i) rights to use, operate and maintain the centre;

(ii) rights to control access to and use of the centre; and

(iii) rights of its employees, contractors, agents, representatives, licensees, permittees and invitees to enter the Determination Area for the purposes of accessing the centre;

(i) any interests under an application under the Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Qld) set out below:

(i) Application No. 1/89;

(ii) Application No. 2/89;

(iii) Application No. 3/89;

(iv) Application No. 4/89;

(v) Application No. 5/89;

(vi) Application No. 7/89;

(vii) Application No. 8/89;

(viii) Application No. 9/89;

(ix) Application No. 10/89;

(x) Application No. 11/89;

(xi) Application No. 12/89;

(xii) Application No. 13/89;

(xiii) Application No. 14/89;

(xiv) Application No. 15/89;

(xv) Application No. 16/89;

(xvi) Application No. 17/89;

(xvii) Application No. 18/89;

(xviii) Application No. 19/89;

(xix) Application No. 20/89;

(xx) Application No. 21/89;

(xxi) Application No. 22/89;

(xxii) Application No. 23/89;  
(xxiii) Application No. 24/89;  
(xxiv) Application No. 25/89;  
(xxv) Application No. 26/89;  
(xxvi) Application No. 27/89;  
(xxvii) Application No. 28/89;  
(xxviii) Application No. 29/89;  
(xxix) Application No. 30/89;  
(xxx) Application No. 31/89;  
(xxxi) Application No. 32/89;  
(xxxii) Application No. 33/89;  
(xxxiii) Application No. 34/89; and  
(xxxiv) Application No. 35/89;

(j) the powers of the Iama Island Council under the Community Services (Torres Strait) Act 1984 (Qld) to discharge the functions of Local Government over the area under deed of grant No. 21296138 and exercise the powers of good rule and government thereof in accordance with the customs and practices of the inhabitants of that area;

(k) the interests, powers and functions of the Torres Shire Council as Local Government for Lots 40, 42 and 44 on Plan TS216;

(l) 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

(m) 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 2 - 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.*