



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6109/1998
NNTT Number: QCD2012/012

Determination Name: [Owens on behalf of the Tagalaka People v State of Queensland](#)

Date(s) of Effect: 10/12/2012

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: 10/12/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Tagalaka Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 719
Townsville Queensland 4810

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:

6. The native title is held by the Tagalaka People described in Schedule 3 ("the native title holders").

SCHEDULE 3 - NATIVE TITLE HOLDERS

The native title holders are the Tagalaka People who are descendants of the following people:

(a) Nelly Robertson (nee Grogan);

- (b) Edith Echo;
- (c) Edith Sargent;
- (d) Charlie Hayes (aka Short Charlie);
- (e) Herbie East;
- (f) Topsy Cane (aka Topsy Owens);
- (g) Jack Fortune; or
- (h) Left hand Charlie.

MATTERS DETERMINED:

BEING SATISFIED that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87 of the *Native Title Act 1993* (Cth),

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below ("the Determination").
2. Each party to the proceeding is to bear its own costs.

THE COURT DETERMINES THAT:

3. The Determination Area is the land and waters described in Schedule 1, and depicted in the map attached to Schedule 1.
4. Native title exists in relation to that part of the Determination Area described in Part 1 and Part 2 of Schedule 1.
5. Native title does not exist in relation to that part of the Determination Area described in Part 3 of Schedule 1.
6. The native title is held by the Tagalaka People described in Schedule 3 ("the native title holders").
7. Subject to paragraphs 9, 10 and 11 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1 are:
 - (a) other than in relation to Water, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
 - (b) in relation to Water, the non-exclusive rights to:
 - (i) hunt, fish and gather from the Water of the area;
 - (ii) take and use the Natural Resources of the Water of the area; and
 - (iii) take and use the Water of the area,
 for personal, domestic and non-commercial communal purposes.
8. Subject to paragraphs 9, 10 and 11 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 1 are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the area;
 - (b) camp on the area and, for that purpose, erect temporary shelters on the area;
 - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;

- (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
- (f) light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
- (g) conduct ceremonies on the area;
- (h) teach on the area the physical and spiritual attributes of the area; and
- (i) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm.

9. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the Laws of the State and the Commonwealth; and
- (b) the traditional laws acknowledged and traditional customs observed by the native title holders.

10. The native title rights and interests referred to in paragraphs 7(b) and 8 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

11. There are no native title rights in or in relation to:

- (a) minerals as defined by the *Mineral Resources Act 1989* (Qld); and
- (b) petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

12. The nature and extent of other rights and interests in relation to the Determination Area (or respective parts thereof) are the rights and interests set out in Schedule 4 (the "Other Interests").

13. The relationship between the native title rights and interests described in paragraphs 7 and 8 and the Other Interests described in Schedule 4 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 rights and interests;
- (b) to the extent the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency for so long as the Other Interests exist; and
- (c) the Other Interests and any activity that is required or permitted by or under, and done in accordance with, the Other Interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.

14. The native title is not to be held in trust.

15. An Aboriginal Corporation whose name will be nominated in writing within three months is to:

- (a) be the prescribed body corporate for the purposes of s 57(2) of the *Native Title Act 1993* (Cth);
- (b) perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth).

16. In the event that there is no nomination within the time specified in paragraph 15 or such later time as the Court may order, the Registered Native Title Claimants are to forthwith apply to the Court for further directions.

17. Until such time as there is a prescribed body corporate in relation to the Determination Area any notices required under the *Native Title Act 1993* (Cth) or otherwise to be served on the Native Title Holders, the native title claim group or the Registered Native Title Claimants may be served upon the North Queensland Land Council Native Title Representative Body Aboriginal Corporation, and such notice shall be deemed to be sufficient.

18. In this Determination, unless the contrary intention appears:

“Determination Area” means the land and waters described in Schedule 1 (which excludes the land and waters described in Schedule 2) and shown on the map in Schedule 1, and to the extent of any inconsistency between the written description and the map, the written description prevails;

“land” and **“waters”**, respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

“Laws of the State and the Commonwealth” means the common law and the laws of the State of Queensland and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

“Natural Resources” means:

- (a) any animal, plant, fish and bird life found on or in the Determination Area; and
- (b) any clays, soil, sand, gravel or rock found on or below the surface of the Determination Area,

that have traditionally been taken and used by the native title holders, but does not include:

- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

“Water” means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream;
- (b) any natural collection of water, whether permanent or intermittent; and
- (c) water from an underground water source.

Other words and expressions used in this Determination have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth).

SCHEDULE 1 – DETERMINATION AREA

[See NNTT attachment 1: “Schedule 1 - Determination Area”]

SCHEDULE 2 – AREAS NOT FORMING PART OF THE DETERMINATION AREA

The areas in this Schedule are excluded from the Determination Area on the grounds that at the time at which the native title determination application was made:

- i. these areas were the subject of one or more previous exclusive possession acts, as defined in s 23B of the *Native Title Act 1993* (Cth), despite the fact that the areas, or parts of them, may have been subject to earlier acts that extinguished native title; and
- ii. therefore, in accordance with s 61A of the *Native Title Act 1993* (Cth), these areas could not be claimed.

Public Works Based Exclusions:

A. Land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established, or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and/or s 23B(7) of the *Native Title Act 1993* (Cth) and s 21 of the *Native Title (Queensland) Act 1993* (Qld) applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth).

B. Land or waters described in paragraph A immediately above includes, for the avoidance of doubt:

1. the whole of the land and waters shown on the map included in this Schedule and described as Lot 40 on Plan SY1 (Croydon Landfill);

2. part of the land and waters shown on the map included in this Schedule and described as:

- i. Lot 952 on Plan SP178689 (Croydon Town Reserve), the parts being more particularly described as all the land within the areas bounded by the following sets of co-ordinates:

Sandstone Quarry 1

Latitude	Longitude
-18.202763	142.236062
-18.201893	142.236908
-18.202182	142.235154
-18.201417	142.235850

Sandstone Quarry 2

Latitude	Longitude
-18.211193	142.238099
-18.211339	142.238770
-18.210907	142.238920
-18.210739	142.238246

Mittagong Gravel Pit

Latitude	Longitude
-18.233631	142.233030
-18.236612	142.234303
-18.235377	142.241071
-18.229551	142.244741
-18.228508	142.240140

Pump shed and well

Latitude	Longitude
-18.206733	142.231821
-18.207.816	142.231344
-18.207711	142.232064
-18.206695	142.232244

Storage shed

Latitude	Longitude
-18.213506	142.241852

-18.214966	142.240376
-18.215598	142.241760
-18.213280	142.240792

Water Treatment Plant and Tank

Latitude	Longitude
-18.192243	142.249035
-18.191362	142.249859
-18.191292	142.247261
-18.190167	142.248105

Golden Butterfly North (Dam)

Latitude	Longitude
-18.193159	142.233301
-18.192098	142.234378
-18.194344	142.234692
-18.193753	142.235833

Water Tank

Latitude	Longitude
-18.198557	142.240278
-18.199007	142.241396
-18.198511	142.240888
-18.198054	142.241517

Airport Road Gravel Pit

Latitude	Longitude
-18.214952	142.253460
-18.215086	142.251092
-18.213322	142.251070
-18.213275	142.253181

Lake Belmore Access and Gravel Area

Latitude	Longitude
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-18.187228	142.237505
-18.182989	142.241803
-18.185529	142.246672
-18.192339	142.240740

Sandstone Quarry Area

Latitude	Longitude
-18.206762	142.235684
-18.206954	142.233842
-18.208330	142.233828
-18.208426	142.235442

Iguana Consul Mining Museum

Latitude	Longitude
-18.192710	142.245505
-18.193600	142.246003
-18.194512	142.245216
-18.194287	142.244911
-18.194030	142.244967
-18.193923	142.244427

ii. Lot 952 on Plan SP178689 (Croydon Town Reserve), the parts being more particularly described as all the land within the distance nominated from either side of the centreline of the following sets of co-ordinates:

Airport Access Road - 15 metres from the centreline

Latitude	Longitude
-18.205519	142.250591
-18.206416	142.250415
-18.206594	142.250405
-18.206733	142.250423
-18.206920	142.250473
-18.207064	142.250548
-18.207445	142.250792
-18.208093	142.251263

-18.208674	142.251732
-18.209918	142.252929
-18.210224	142.253135
-18.210390	142.253197
-18.211009	142.253274
-18.214202	142.253279
-18.219325	142.253315
-18.214454	142.253362
-18.215914	142.253992
-18.216098	142.254018
-18.216282	142.253979
-18.216859	142.253.722

Water main 2 - 10 metres from the centreline

Latitude	Longitude
-18.192142	142.247960
-18.191460	142.247945
-18.193356	142.248707
-18.196420	142.247889
-18.196769	142.247731
-18.197064	142.247488
-18.197285	142.247128
-18.197460	142.246427
-18.197603	142.246105
-18.197827	142.245996
-18.199928	142.245657
-18.200686	142.245443

Water main 3 - 10 metres from the centreline

Latitude	Longitude
-18.190336	142.245135
-18.191300	142.244829
-18.192855	142.244441
-18.196785	142.243872

-18.197392	142.243698
-18.198012	142.243134
-18.198617	142.241528

Water main 4 - 10 metres from the centreline

Latitude	Longitude
-18.193518	142.235146
-18.193676	142.235513
-18.196918	142.237396
-18.197211	142.237598
-18.198476	142.239290
-18.198698	142.240926
-18.198662	142.2401356

iii. Lot 952 on Plan SP178689 (Croydon Town Reserve) and Lot 1 on Plan SP186241 (Term Lease), the part being more particularly described as all the land within the distance nominated from either side of the centreline of the following set of co-ordinates:

Water main 1 - 10 metres from the centreline

Latitude	Longitude
-18.178509	142.261475
-18.178645	142.259767
-18.178750	142.259044
-18.179734	142.254898
-18.182312	142.249934
-18.182565	142.249720
-18.185754	142.248383
-18.186055	142.248176
-18.188194	142.246423
-18.189296	142.245652
-18.191471	142.249172

iv. Lot 50 on Plan C3593 (Croydon Landing Reserve) and Lot 952 on Plan SP178689 (Croydon Town Reserve), the part being more particularly described as all the land within the area bounded by the following co-ordinates:

Croydon Airport Area

Latitude	Longitude
-18.216958	142.246402
-18.217186	142.249794
-18.216903	142.253528
-18.216726	142.253821
-18.216804	142.254327
-18.218034	142.254200
-18.218.563	142.255503
-18.219775	142.263328
-18.219610	142.264138
-18.221007	142.263387
-18.219812	142.255953
-18.220422	142.255825
-18.220344	142.255386
-18.219732	142.255501
-18.218241	142.246416

Note: to the extent of any inconsistency between the written description in this Schedule and the map, the written description prevails.

[See NNTR attachment 2: "Map - Public Works Based Exclusions"]

SCHEDULE 3 – NATIVE TITLE HOLDERS

The native title holders are the Tagalaka People who are descendants of the following people:

- (a) Nelly Robertson (nee Grogan);
- (b) Edith Echo;
- (c) Edith Sargent;
- (d) Charlie Hayes (aka Short Charlie);
- (e) Herbie East;
- (f) Topsy Cane (aka Topsy Owens);
- (g) Jack Fortune; or
- (h) Left hand Charlie.

SCHEDULE 4 – OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of the Other Interests in relation to the Determination Area are the following, as they exist as at the date of the Determination:

1. The rights and interests of the parties under the following indigenous land use agreements:

(a) Tagalaka People and the State of Queensland as parties to the Tagalaka Croydon Area Indigenous Land Use Agreement #1 registered on 19 August 2005;

(b) Tagalaka People and the State of Queensland as parties to the Tagalaka (Town of Croydon) Indigenous Land Use Agreement registered on 5 September 2008;

(c) native title holders and the Croydon Shire Council as parties to the Croydon Shire Council/Tagalaka People True Blue Tourist Facility ILUA (QIA 2009/068) registered on 14 May 2010;

(d) native title holders and the Croydon Shire Council as parties to the Tagalaka Croydon Area ILUA #2 (QIA 2006/047) registered on 11 February 2008; and

(e) native title holders and Ergon Energy Corporation Limited authorised on 1 May 2012.

2. The rights and interests of Croydon Shire Council (the "Council") including any rights the Council, its employees, agents or contractors have;

(a) under its local government jurisdiction and functions under the *Local Government Act 2009* (Qld), under the *Land Protection (Pests and Stock Route Management) Act 2002* (Qld) and under any other legislation, for that part of the Determination Area within its local government area, as defined in the *Local Government Act 2009* (Qld);

(b) as the:

(i) lessor under any leases which were entered into as at the date of the Determination;

(ii) grantor of any licences or other rights and interests which were granted as at the date of the Determination;

(iii) holder of any estate or interest in land, and as trustee of any reserves, that exist in the Determination Area as at the date of the Determination;

(c) as the owner and operator of infrastructure, facilities and other improvements located in the Determination Area as at the date of the Determination, including but not limited to:

(i) dedicated roads operated by Council;

(ii) gravel pits operated by Council;

(iii) undedicated but constructed roads except for those not operated by Council;

(iv) water pipelines and other water supply infrastructure;

(v) drainage facilities; and

(vi) cemetery and cemetery related facilities; and

(d) to enter the land described in paragraph (a) to (c) to:

(i) exercise any of the rights and interests referred to in paragraphs 2(a) to 2(c) of Schedule 4;

(ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in paragraph 2(c) of Schedule 4; and

(iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.

3. The rights and interests of Telstra Corporation Limited:

(a) as the owner or operator of telecommunications facilities within the Determination Area;

(b) 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) including rights:

- (i) to inspect land;
 - (ii) to install and operate telecommunication facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunication facilities; and
- (c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties.
4. The rights and interests of Ergon Energy Corporation Ltd:
- (a) as the owner and operator of any "Works" as that term is defined in the *Electricity Act 1994* (Qld) within the Determination Area;
 - (b) as a distribution entity and the holder of a distribution authority under the *Electricity Act 1994* (Qld);
 - (c) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld), including:
 - (i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date on which these orders are made;
 - (ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph; and
 - (iii) to inspect, maintain and manage any Works in the Determination Area.
5. The rights and interests of the holders of any authorities, licences, permits or allocations issued under the *Water Act 2000* (Qld);
6. The rights and interests of the holders of any leases, licences, reservations, permits, easements or authorities granted under the *Land Act 1994* (Qld), and any relevant regulations or subordinate legislation made under the Act;
7. The rights and interests of the holders of any permits, claims, licences or leases granted under the *Mineral Resources Act 1989* (Qld); and
8. Any other rights and interests held by the State of Queensland or Commonwealth of Australia, or by reason of the force and operation of the Laws of the State or Commonwealth.

REGISTER ATTACHMENTS:

- 1. Schedule 1 - Determination Area, 5 pages - A4, 10/12/2012
- 2. Map - Public Works Based Exclusions, 1 page - A4, 10/12/2012

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.