



Noah Beach on the coastline in Eastern Kuku Yalanji country.

Eastern Kuku Yalanji People's native title determination

Far north Queensland
9 December 2007



National
Native Title
Tribunal

Resolution of native title issues over land and waters.



Eastern Kuku Yalanji People's rights

On 9 December 2007 the Federal Court of Australia made a consent determination recognising the Eastern Kuku Yalanji People's native title rights and interests over 126,900 ha of land and waters in far north Queensland. The determination area includes term and special leases, a timber reserve and Unallocated State Land.

The consent determination is an important turning point because it formally recognises the Eastern Kuku Yalanji People's native title rights under Australian law for the first time.

Exclusive native title rights

The Federal Court recognised that the Eastern Kuku Yalanji People have exclusive native title rights over 30,300 ha of Unallocated State Land in the determination area.

These are the rights to:

- possess, occupy and use the area to the exclusion of all others
- inherit and succeed to the native title rights and interests.

Non-exclusive native title rights

In the majority of the determination area, 96,600 ha of timber reserve, term leases and special leases, the Eastern Kuku Yalanji People have the non-exclusive rights to:

- access, camp on or traverse the area
- hunt animals, gather plants (except in some specified coastal areas) and take natural resources for personal, domestic needs, but not for trade or commerce
- conduct ceremonies
- be buried in the ground
- maintain springs and wells where the underground water rises naturally, for personal, domestic and non-commercial, communal needs
- inherit and succeed to their native title rights and interests.

Native title rights to water

The Federal Court recognised that the Eastern Kuku Yalanji People also have the non-exclusive native title rights to:

- hunt and fish in, or gather from, the water for personal, domestic and non-commercial communal purposes
- take, use and enjoy the water to satisfy personal, domestic, communal needs but not for commercial purposes
- inherit and succeed to their native title rights and interests.

These areas where the Eastern Kuku Yalanji People's non-exclusive rights have been recognised will continue to be shared by all those with an interest in the area.

What the consent determination means

The consent determination is recognition that the Eastern Kuku Yalanji People's native title has always existed, and continues to exist, under their traditional laws and customs.

A native title determination is a decision by the Federal Court of Australia that native title does or does not exist over an area of land or water. If the parties to a native title claim reach agreement, and the Federal Court endorses the agreement, it is called a consent determination.



Black palm in Myall Valley in the Daintree Rainforest in Eastern Kuku Yalanji country

"We want it for our future, we didn't have this before... everything is good. The government is letting his hand open up for our bubu, for our country. I will be going out hunting."

Eileen Walker, Yalanji traditional owner

"If you don't look after country, it won't look after you. I have taught a few young people. Taking kids into country and teaching them about country."

David Solomon, Yalanji traditional owner

"To go back on country is going to be a big thing for me and my family. I want to look at living there and looking after my country."

Peter Wallace, Yalanji traditional owner

Stepping stones

7 December 1994

The Cape York Land Council lodged the native title application on behalf of the Kuku Yalanji People in the Federal Court. The application was over about 144,000 ha on the eastern side of Cape York Peninsula, between Walsh Bay and south to Port Douglas. Several amendments were later made to the application, including the reduction of the claimed area to 126,900 ha.

March 1996

The applicant and groups and individuals with interests in the claim area who became respondent parties met at the first plenary mediation conference at Mossman.

1997

The Queensland Premier endorsed a Protocol Agreement with the Cape York Land Council, which committed the parties to negotiating an agreement about native title rights and interests and how land tenure would be allocated within Yalanji traditional country. The area of national park in this region would significantly increase as a result of this agreement.

December 2000 – August 2003

The Tribunal convened a series of Section 136A Mediation Conferences to resolve issues relating to the claim and the associated land tenure resolution package.

September 2003 – June 2006

Negotiation and drafting of Cook Shire Council and Douglas Shire Council Negotiator Agreements took place. These agreements provide details of agreed tenure resolution for each parcel of land within the 'TLUA Area' which lies between Mossman and Cooktown. These formed the basis of instructions for drafting 13 ILUAs between the applicant and various respondent parties including the State of Queensland, local government councils, and leaseholders. A further two ILUAs were negotiated separately to the Negotiator Agreements.

April 2007

ILUA signing ceremony takes place at Wujal Wujal.

October 2007

The Tribunal registered 15 ILUAs between the applicant and respondent parties which included agreement about future acts within the ILUA areas, agreement to various access arrangements and the respondents' agreement that a native title consent determination could be made over the claimed area.

9 December 2007

The Federal Court made the consent determination at a hearing at Diwan Reserve, north of the Daintree River, recognising the Yalanji People's native title rights and interests in the claimed area.

Relationship between the native title rights and other rights

The consent determination recognises the Eastern Kuku Yalanji People's native title rights while protecting the rights of the other parties. All of the parties' rights will be exercised in accordance with Queensland and Commonwealth laws, and the Eastern Kuku Yalanji People will also exercise their rights in accordance with their traditional laws and customs.

Managing the native title rights

The *Native Title Act 1993* (Cwlth) requires the native title holders to set up an incorporated body, called a prescribed body corporate, to manage their native title rights and interests. The prescribed body corporate for this determination is the Jabalbina Yalanji Aboriginal Corporation. This corporation is the first point of contact for anyone wanting to discuss any issues relating to native title with the native title holders.

Agreements related to the determination

The Eastern Kuku Yalanji People's consent determination follows the signing of 15 indigenous land use agreements (ILUAs) in April 2007. The agreements are between the Eastern Kuku Yalanji People, Queensland Government, Douglas Shire Council, Cook Shire Council, Wujal Wujal Aboriginal Shire Council, Burungu Aboriginal Corporation, Bana Mindilji Aboriginal Corporation, the Wet Tropics Management Authority, Telstra, Ergon, and grazing and mining lessees. The agreement area is around 103,272ha larger than the determination area.

ILUAs are agreements about the use and management of land and waters made between one or more Indigenous groups and other people.

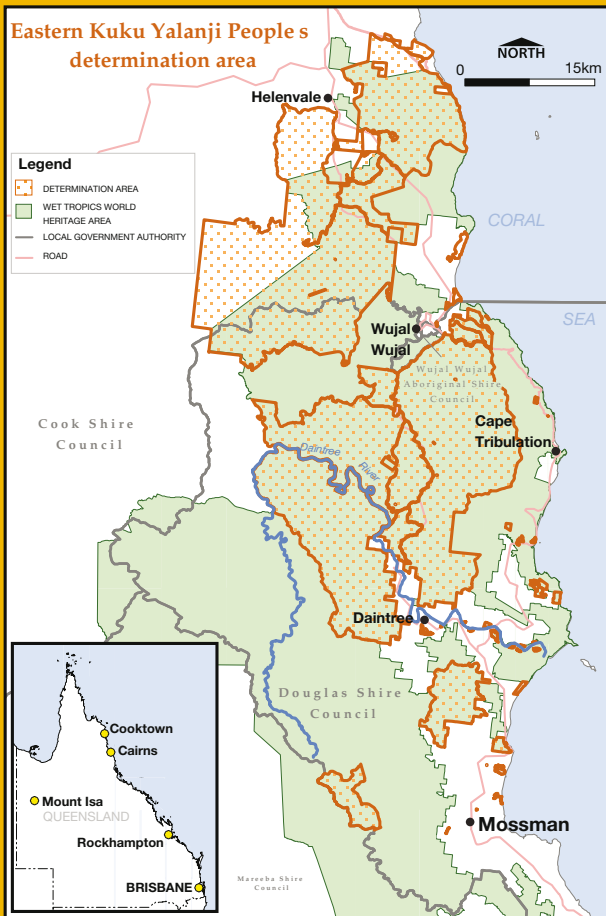
The Eastern Kuku Yalanji ILUAs settled a range of land use issues and ensured the protection of environmentally and culturally sensitive areas. The agreement package established a cooperative approach to land ownership, land use, land management and community development.

The agreement package includes:

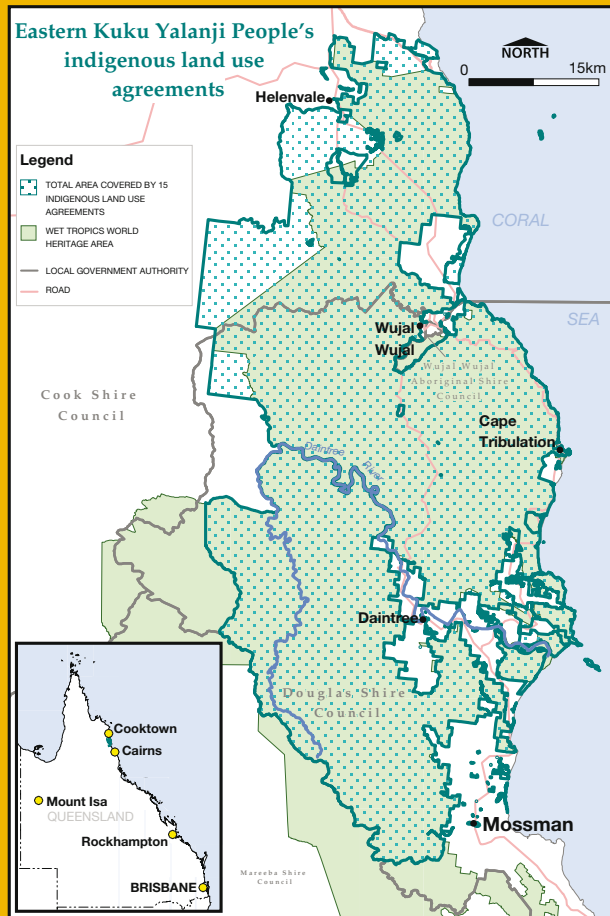
- almost doubling the national park estate in the coastal area from Mossman to Black Mountain, south of Cooktown, to about 159,000 hectares
- a greater role for the Kuku Yalanji people in the management of national parks and some reserves
- ensuring the further preservation of environmental and cultural values through State granted tenures over an area of about 48,000 hectares to be held and managed by the Eastern Kuku Yalanji as Aboriginal freehold, subject to conservation agreements
- the Eastern Kuku Yalanji holding smaller areas totalling about 16,500 hectares as Aboriginal freehold for their use in providing some residential and economic potential. These areas are also subject to regulatory controls such as the Wet Tropics Management Plan, the Vegetation Management Act and Shire planning schemes.

The Tribunal registered all 15 ILUAs in October 2007.

Determination and ILUA areas



Location of native title determination.



Location of ILUA

Do you need more information?

National Native Title Tribunal
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 In your capital city or
 Freecall 1800 640 501
 Website www.nntt.gov.au

Cape York Land Council
 32 Florence Street
 Cairns QLD 4870
 Telephone (07) 4053 9222

Jabalbina Yalanji Aboriginal Corporation
 C/- Michelle Cohen
 PO Box 2496
 Cairns Qld 4870
 Telephone (07) 4053 9222

For a copy of the judgment and determination
 Federal Court of Australia
 Website www.fedcourt.gov.au
 Search under 'Judgements'

Librarian
 Federal Court of Australia
 Level 6, Commonwealth Law Courts
 119 North Quay
 Brisbane QLD 4000
 Telephone (07) 3248 1100

The Tribunal welcomes feedback on whether this information was useful. Email Public Affairs with your comments and suggestions to enquiries@nntt.gov.au or telephone 08 9268 7495.



National Native Title Tribunal