



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD673/2014
NNTT Number: QCD2023/011

Determination Name: [Ross on behalf of the Cape York United #1 Claim Group v State of Queensland \(No 20\) \(Thaypan determination\)](#)

Date(s) of Effect: 2/11/2023

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 02/11/2023

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Awu-Laya Indigenous Corporation RNTBC
Trustee Body Corporate
32 Florence Street
CAIRNS Queensland 4870

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

ORIGINAL REGISTERED NATIVE TITLE BODY CORPORATE(S):

Awu-Laya Indigenous Corporation

Note: details of the Corporation name change can be found on the Office of the Registrar of Indigenous Corporations website www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

7. The native title is held by the Thaypan People described in Schedule 1 (the **Native Title Holders**).

Schedule 1 – Native Title Holders

1. The Native Title Holders are the Thaypan People. The Thaypan People are those Aboriginal persons who are descended by birth, or adoption in accordance with the traditional laws acknowledged and the traditional customs observed by the Thaypan People, from one or more of the following apical ancestors:

- (a) Georgie Guts (Thidara aka Old Bob);
- (b) Topsy Miller (mother of Harold Ford);
- (c) Nellie (mother of Maggie Solomon);
- (d) Father of George Meldrum Snr;
- (e) Minnie Shephard (Royang);
- (f) Walakutha (aka Dingo);
- (g) George Musgrave Snr (aka George Deafy);
- (h) Nellie Costello;
- (i) Jack Morehead;
- (j) Charles Mimo Schrieber;
- (k) Tom Twaddle;
- (l) Nellie Wunhthay;
- (m) Dolly (mother of Nellie Moran); or
- (n) Maggie (mother of Robert Turpin).

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in the terms proposed in these orders, despite any actual or arguable defect in the authorisation of the applicant to seek and agree to a consent determination pursuant to s 87A of the *Native Title Act 1993* (Cth).

BY CONSENT THE COURT ORDERS THAT:

1. Pursuant to s 199C(1A) of the *Native Title Act 1993* (Cth), the Registrar is not to remove the following indigenous land use agreements from the Register of Indigenous Land Use Agreements, at least to the extent the indigenous land use agreements fall within the External Boundary:

- (a) Rinyirru (Lakefield) National Park ILUA (QI2011/052);
- (b) Peninsula Development Road ILUA (QI2016/049);
- (c) Kalinga Mulkey ILUA (QI2010/036);
- (d) Oikola Land Transfer ILUA (QI2014/085); and
- (e) Thingalkal (Mary Valley) ILUA (QI2014/071).

2. There be a determination of native title in the terms set out below (the **Determination**).

BY CONSENT THE COURT DETERMINES THAT:

DEFINITIONS AND INTERPRETATION

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

“Animal” has the meaning given in the *Nature Conservation Act 1992* (Qld);

“External Boundary” means the area described in Schedule 3;

“land” has the same meaning 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;

“Local Government Area” has the meaning given in the *Local Government Act 2009* (Qld);

“Native Title Determination Application” means the Cape York United #1 native title claim filed on 11 December 2014 in QUD 673 of 2014;

“Natural Resources” means:

(a) an Animal, a Plant, or any other non-human life form; and

(b) inorganic material;

but does not include:

(c) Animals that are the private personal property of any person;

(d) crops that are the private personal property of another;

(e) minerals as defined in the *Mineral Resources Act 1989* (Qld); and

(f) petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“Plant” has the meaning given in the *Nature Conservation Act 1992* (Qld);

“Reserve” means a reserve dedicated, or taken to be a reserve, under the *Land Act 1994* (Qld);

“Spouse” has the meaning given in the *Acts Interpretation Act 1954* (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;

(c) water from an underground water source; and

(d) tidal water; and

“waters” has the same meaning as in the *Native Title Act 1993* (Cth).

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).

5. The determination area is the land and waters described in Schedule 4 and depicted in the map attached to Schedule 6 to the extent those areas are within the External Boundary and not otherwise excluded by the terms of Schedule 5 (the **Determination Area**). To the extent of any inconsistency between the written description and the map, the written description prevails.

6. Native title exists in the Determination Area.

7. The native title is held by the Thaypan People described in Schedule 1 (the **Native Title Holders**).

8. Subject to orders 10, 11, and 12 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 4 are:

(a) other than in relation to Water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others; and

(b) in relation to Water, the non-exclusive right to take the Water of the area for personal, domestic, and non-commercial communal purposes.

9. Subject to orders 10, 11, and 12 below, the nature and extent of the native title rights and interests in relation to the

land and waters Part 2 of Schedule 4 are the non-exclusive rights to:

- (a) access, be present on, move about on and travel over the area;
 - (b) live and camp on the area and for those purposes to erect shelters and other structures thereon;
 - (c) hunt, fish and gather on the land and waters of the area;
 - (d) take the Natural Resources from the land and waters of the area;
 - (e) take the Water of the area for personal, domestic and non-commercial communal purposes;
 - (f) be buried and to bury Native Title Holders within the area;
 - (g) maintain places of importance and areas of significance to the Native Title Holders under their traditional laws and customs on the area and protect those places and areas from harm;
 - (h) teach on the area the physical and spiritual attributes of the area and the traditional laws and customs of the Native Title Holders to other Native Title Holders or persons otherwise entitled to access the area;
 - (i) hold meetings on the area;
 - (j) conduct ceremonies on the area;
 - (k) light fires on the area for cultural, spiritual or domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation; and
- (l) be accompanied on to the area by those persons who, though not Native Title Holders, are:
- (i) Spouses of Native Title Holders;
 - (ii) people who are members of the immediate family of a Spouse of a Native Title Holder; or
 - (iii) people reasonably required by the Native Title Holders under traditional law and custom for the performance of ceremonies or cultural activities on the area.

10. 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.

11. The native title rights and interests referred to in orders 8(b) and 9 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

12. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

13. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 2 (the **Other Interests**).

14. The relationship between the native title rights and interests described in orders 8 and 9 and the Other Interests described in Schedule 2 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 rights and interests continue to exist in their 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.

THE COURT DETERMINES THAT:

15. The native title is held in trust.

16. The Awu-Laya Indigenous Corporation (ICN: 10045), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:

(a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and

(b) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

REGISTER ATTACHMENTS:

1. QCD2023/011 Schedule 2 - Other Interests in the Determination Area, 4 pages - A4, 02/11/2023

2. QCD2023/011 Schedule 3 - External Boundary, 2 pages - A4, 02/11/2023

3. QCD2023/011 Schedule 4 - Description of Determination Area, 3 pages - A4, 02/11/2023

4. QCD2023/011 Schedule 5 - Areas Not Forming Part of the Determination Area, 1 page - A4, 02/11/2023

5. QCD2023/011 Schedule 6 - Map of Determination Area, 9 pages - A4, 02/11/2023

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.