



BANDJALANG PEOPLE'S NATIVE TITLE RECOGNISED AFTER CLOSE TO SEVENTEEN YEARS

By **Tori Edwards, Senior Solicitor, NTSCORP Ltd.**

On 2nd December 2013, NSW saw the third and fourth consent determinations in the State's native title history, and the first determination since 2007. For Bandjalang People, the determination by consent of their two native title determination applications brought to a close one chapter in the process of seeking recognition of their native title that had begun almost seventeen years earlier with the filing of the original claim in 1996.

Following a Welcome to Country from Aunty Grace Cowan*, supported by Applicant Doug Wilson, the Court convened a special sitting in Evans Head to formally recognise Bandjalang People as the Traditional Owners of an area of land in northern NSW centred on the coastal town of Evans Head, and taking in a number of National Parks and State Conservation Areas including parts of Bundjalung, Broadwater and Bungawalbin National Parks.

Bandjalang native title holder Warren Williams addressed those assembled for the hearing, stating:

"It's been a long and hard journey. A lot of people have put in time and effort over many years to get to today. This is recognition of who we are – Bandjalang People".

Justice Jagot also used the occasion to remark on the need for parties to work to achieve swifter outcomes for Traditional Owners:

"Renewed dedication to ensuring that native title disputes are resolved justly, according to law, and as quickly, inexpensively and efficiently as possible is required. That dedication, and the flexibility of mind to see constructive resolutions and new ways of doing things, which I do see in the terms of the proposed determination in the present case, is a responsibility we share".

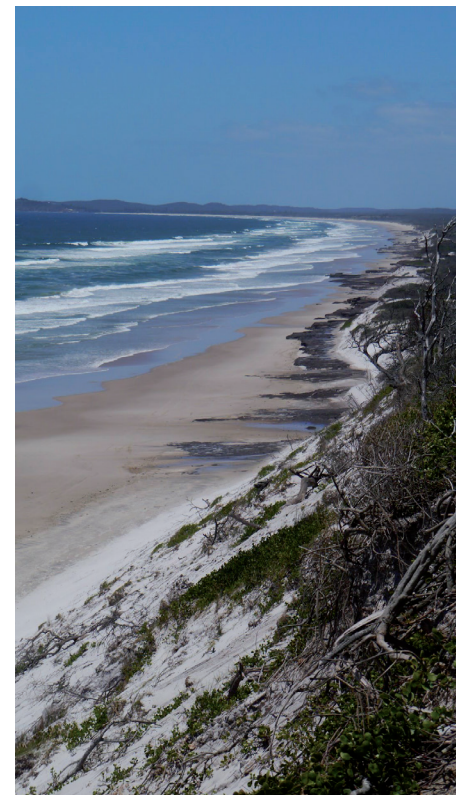
As the native title service provider for NSW, NTSCORP Limited has long advocated publicly for the need for substantial change to State government policy to enable more timely outcomes for native title claimants, and to avoid matters spending years in the credible evidence assessment process. Under the case management of the Federal Court of Australia, matters such as the Bandjalang People's applications have moved swiftly towards resolution, requiring the creativity of the parties which Justice Jagot alluded to in her judgment. These determinations will hopefully pave the way for more judicious outcomes for NSW Traditional Owners in other matters.

The content of the determinations was negotiated over the course of several years following the State of NSW accepting Bandjalang People's connection to the country under claim in 2010. The native title holding group is made up of five main families, and Bandjalang People appointed a Family

Representative Group with individuals from each of these families to conduct negotiations with the State. These Bandjalang People gave substantial time and energy to the finalisation of these matters, not only through attending negotiations, but through being a means of communicating with the wider Bandjalang community about what was happening in their native title claims.

The Bandjalang People determinations (#1 & #2) recognise the non-exclusive rights of the Bandjalang People to:

- Hunt, fish and gather traditional natural resources for non-commercial, personal and domestic use;
- Take and use waters;
- Access and camp;
- Conduct ceremonies;
- Teach the physical, cultural and spiritual attributes of places and areas of importance; and
- Have access to sites of significance, and maintain and protect them from physical harm.



Above left: Daniel Wilson & Bill Drew celebrating at the Bandjalang determination.

Credit: Merinda Dutton

Above: Bandjalang Country.

Credit: Merinda Dutton

The process of negotiating the consent determinations also brought Bandjalang People into contact with a range of respondent parties, including the Commonwealth, local governments, Reserve Trust management boards and individual commercial fishers and bee keepers. Where possible, the Bandjalang Family Representative Group used this process to establish or build upon existing relationships with stakeholders such as Richmond Valley Council. These interactions have already led to positive outcomes in addressing vital issues such as burial of Bandjalang People in cemeteries on Country.

The State and Bandjalang People have also signalled they intend to continue negotiating an Indigenous Land Use Agreement in 2014, through which they will enter into arrangements relating to National Parks, State Forests, Crown Land and Fisheries resources. This ILUA will establish practical arrangements for the exercise and management of native title rights and interests, address how future acts within the determination

areas will be dealt with, and constitute compensation for the native title holders for past extinguishment of native title.

The determinations therefore pave the way for the Bandjalang People to work with the State on opportunities for input into the management of lands in which native title has been recognised. This input commenced even prior to the determinations with the establishment in late 2011 of a National Parks Interim Joint Management Committee comprised of Bandjalang People and staff from the Office of Environment and Heritage (National Parks and Wildlife Service). This Committee has met regularly for the past two years to discuss matters relating to Park management, and a programme for the temporary employment of Bandjalang People with the National Parks and Wildlife Service.

In 2011, the native title claimant group and the State collaborated to undertake a Business Opportunity Analysis. This project was a stock-take of the economic development

aspirations of the Bandjalang People, and an examination of the various opportunities presented in Bandjalang Country, including a fast-growing eco-tourism industry. Bandjalang People intend that the native title determinations be used as a spring board for pursuing such opportunities to develop businesses on Country, to manage land, and to employ Bandjalang People.

For the native title holders, the Federal Court sitting in Evans Head in December 2013 was an occasion of celebration and recognition of the hard work of seventeen years of prosecuting the claims. It was also a day of some sadness in remembrance of those who had passed away in the past seventeen years. Bandjalang People used the occasion to recognise the many Elders and community members who did not live to see the positive outcome, including original Applicant Uncle Lawrence Wilson. Susan Phillips, Counsel for the Applicant addressed the Court at the time of the determinations regarding the significance of the day for the native title holders:

“This is a day that the people have worked towards for 17 years, it is a day of relief, a day of celebration and a day tinged with sadness. So many of the people who were part of this effort have passed away. The years of negotiation and court proceedings have been a heavy burden for the people but a burden they have carried in order to demonstrate to others the depth of their connection to their land and the survival of their law.”

In addressing those assembled on 2 December, Bandjalang native title holder Margaret Yuke said: “Today we thank all the people who have joined us on this journey, particularly our Elders who showed us the way, and our children, who are the reason we have persisted to today”.

*Sadly Aunty Grace, a respected Bandjalang Elder passed away soon after the determination in early 2014

Top left: Bandjalang People celebrating at the determination.

Credit: Merinda Dutton

Left: Jagot J, Registrar Irving and Bandjalang People.

Credit: Merinda Dutton

