

# Queensland Government Native Title Work Procedures

**Module AD: Determining that native title continues to exist or doesn't exist over the proposed dealing**

*Commonwealth Native Title Act 1993: Part 4 - Determinations of the Federal Court*

**August 2017**

## Version history

Version	Comments	Date published
1		August 2017

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## Introduction

Module AD requires you to consider if there is a determination that native title exists or doesn't exist over your proposed dealing area.

If there is no determination of native title, proceed to **Module BA**.

## Application of module

If native title has been determined to exist over the proposed dealing area then your proposed dealing can only be assessed under one of the future act Modules (F to Q). **This means that there is no point in carrying out a tenure history.**

However, whilst the proposed dealing area may be within the external boundaries of a determination, it may not be covered by the determination itself for a number of reasons, including:

1. The proposed dealing area may be specifically excluded from the determination, even though the QNTIME or National Native Title Tribunal mapping may show that the determination covers the proposed dealing area; or
2. The determination states that any area subject to a valid public work is specifically excluded from the determination and your proposed dealing area is or was covered by a valid public work. In these instances, you will still be required to carry out a public work assessment - refer to **Modules CA** and **CB**; or
3. Post determination -
  - Native title has been surrendered via a registered ILUA - refer to **Module AB**; or
  - Native title has been compulsorily acquired - refer to **Module AB**; or
  - Native title is extinguished by the construction of a valid public work post determination – refer to **Module J**.

**Important:** Determinations that native title does not exist or native title is extinguished are covered in Module AB.

For this Module to apply, the proposed dealing area will either fall into Requirement 1 or Requirement 2 will apply.

Requirement 1 is where there is a determination that native title exists over the proposed dealing area.

Requirement 2 is where there is an impending native title determination that will cover the proposed dealing area.

## Requirement 1: There is a determination that native title exists over the proposed dealing area

If there is a determination that native title exists you will need to check:

- (a) The determination to see whether native title has been determined to exist over the proposed dealing area; or
- (b) Whether the proposed dealing area has been specifically excluded from the determination.

**Important:** The following issues should be noted when dealing with determinations of native title and where it has been recognised to continue to exist.

No.	Issue
1	Where a determination has been made that native title continues to exist over your proposed dealing area, you will not be able to rely on an assessment under <b>Module BA</b> post the determination.
2	There is a difference between an area being excluded from a determination and a determination that native title does not exist.  Where an area is excluded from a determination, then for an assessment to be made that native title has been extinguished, the requirements of <b>Module BA, CA</b> or <b>CB</b> will need to be satisfied.  Where it has been determined that native title does not exist, refer to <b>Module AB</b> .

## Helpful tips

For government agencies, the recommended option to access determination information is via QNTIME.

### QNTIME search

**Important:** Whilst QNTIME makes all attempts to ensure the data it receives from the National Native Title Tribunal is uploaded as soon as possible, there may be instances when there is a delay in having the determination details put into the system.

Determination details can be accessed either from the Main Menu on the Home Page or via the interactive Keymap.

QNTIME will identify:

1. The determination status - consent, litigated, partial determination, etc.
2. The date of the determination
3. A link to the determination details on the National Native Title Tribunal website; and
4. The name of the Registered Native Title Body Corporate who holds the native title on trust or acts as agent for the common law holders.

Status

Status date



## QNTIME Version 1.13

[QNTIME > Native Title Application Search > Native Title Application](#)

### Native Title Application

Application

Native Title Application	
<b>Application Type:</b>	Claimant
<b>NNTT Reference (keyword):</b>	QC97/19
<b>Federal Court Reference (keyword):</b>	QUD6249/98
<b>Claim Group Name:</b>	Juru (Cape Upstart)
<b>Lodgement Date:</b>	19/06/1997
<b>Status:</b>	Fully determined (consent)
<b>Status Date:</b>	12/12/2011
<b>NNTT Application Page:</b>	
<b>Associated Reference Numbers:</b>	
<b>NNTT Determination Page:</b>	<a href="http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/NNTR_details.aspx?NNTT_FileNo=QCD2011/003">http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/NNTR_details.aspx?NNTT_FileNo=QCD2011/003</a>
<b>Determination Desc:</b>	Spatial 23/03/2015
<a href="#">View on Keymap</a>	
<b>Registered Native Title Body Corporates:</b>	
<b>Name:</b>	<b>Address:</b>
<b>City:</b>	<b>State:</b>
<b>Post Code:</b>	<b>Attention:</b>
<b>Phone:</b>	<b>Fax:</b>
Kyburra Munda Yalga Aboriginal Corporation	5 Charles Street
TOWNSVILLE	QLD
4810	

Link to the determination details on the National Native Title Tribunal website Registered Native Title Body Corporate

By clicking on the link in QNTIME, you will be taken to the determination summary page on the National Native Title Tribunal website.

HOME | GLOSSARY | EXTERNAL LINKS | CONTACT US | LOGIN

National Native Title Tribunal

Search this site...

ABOUT US | FUTURE ACTS | INDIGENOUS LAND USE AGREEMENTS | NATIVE TITLE CLAIMS | ASSISTANCE | SEARCH THE REGISTERS & APPLICATIONS

Search Register of Native Title Claims

Search National Native Title Register

Search Register of Indigenous Land Use Agreements

Search Applications and Determinations

Search Future Act Applications and Determinations

### National Native Title Register Details

#### QCD2011/003 - Juru (Cape Upstart) People

Tribunal file no.	QCD2011/003
Federal Court file no(s)	QUD6249/1998
Short name	Juru (Cape Upstart) People
Case name	Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2)
Determination type	Claimant
State or Territory	Queensland
Legal process	Consent
Determination outcome	Native title exists in the entire determination area
Representative A/TSI body area(s)	Northern Queensland Region
Local government area(s)	Whitsunday Regional Council
Determination date	26/07/2011
Date/s of effect	12/12/2011
Registered on National Native Title Register	Registered
Registered Native Title Body Corporate	Kyburra Munda Yalga Aboriginal Corporation RNTBC

#### Register extract and attachments

Register extract	<a href="#">NNTRExtract_QCD2011_003.pdf</a>
Register extract attachment/s	<a href="#">QCD2011_003 1. Determination Area.pdf</a>

Link to the Register Extract

Native title exists

This page will provide a summary of the determination and a link to the Register Extract for the determination.

Please refer to the QNTIME User Manual for further details.

If Requirement 1 is not met, check whether Requirement 2 applies instead.

## **Requirement 2: There is an impending determination that will cover the proposed dealing area**

The Federal Court of Australia establishes the list of native title applications that are to be finalised (i.e. a determination to be made) for a particular 12 to 18 month period.

Aboriginal and Torres Strait Islander Land Services (ATSILS), in conjunction with Crown Law, is responsible for managing these claims and the timeframes set down by the Federal Court. An important part in that process is finalising the tenure analysis which will list parcels where the State is of the view that native title cannot be claimed (because it believes that native title is extinguished) and parcels where it is prepared to recognise exclusive or non-exclusive native title rights and interests.

In order to achieve a successful negotiated outcome, the State will, to its best endeavours, ensure that where native title is to be recognised, then as at a particular date (i.e. **the line in the sand**) all future dealings in land and resources need to be managed in a more controlled way to minimise potential impacts on the determination outcome, until such time as a determination is made by the Federal Court.

Whilst dealings otherwise progressed in accordance with the Native Title Work Procedures may still be valid from a native title perspective, continuing to deal in this period can potentially jeopardise already negotiated outcomes and create unnecessary changes to any determination products, e.g. mapping.

### **What is the 'line in the sand' date?**

This will be the date when an in-principle agreement for a consent determination is reached. From that time, all future dealings in land and resources need to be managed in a more controlled way to minimise potential impacts on the determination outcome.

### **How will I be notified of this date?**

When an in-principle agreement for a consent determination is reached, you will be notified by:

1. An agency interest letter
2. A QNTIME Alert
3. A QNTIME pre-determination layer.

### **What are my options during this period?**

Because of the potential implications, any dealings that need to be progressed post the line in the sand date need to be referred to the relevant ATSILS Senior State Negotiator for advice.

## **Finalising your assessment**

If all the requirements of Module AD are met, finalise your Native Title assessment using **Annexure 7.1**.