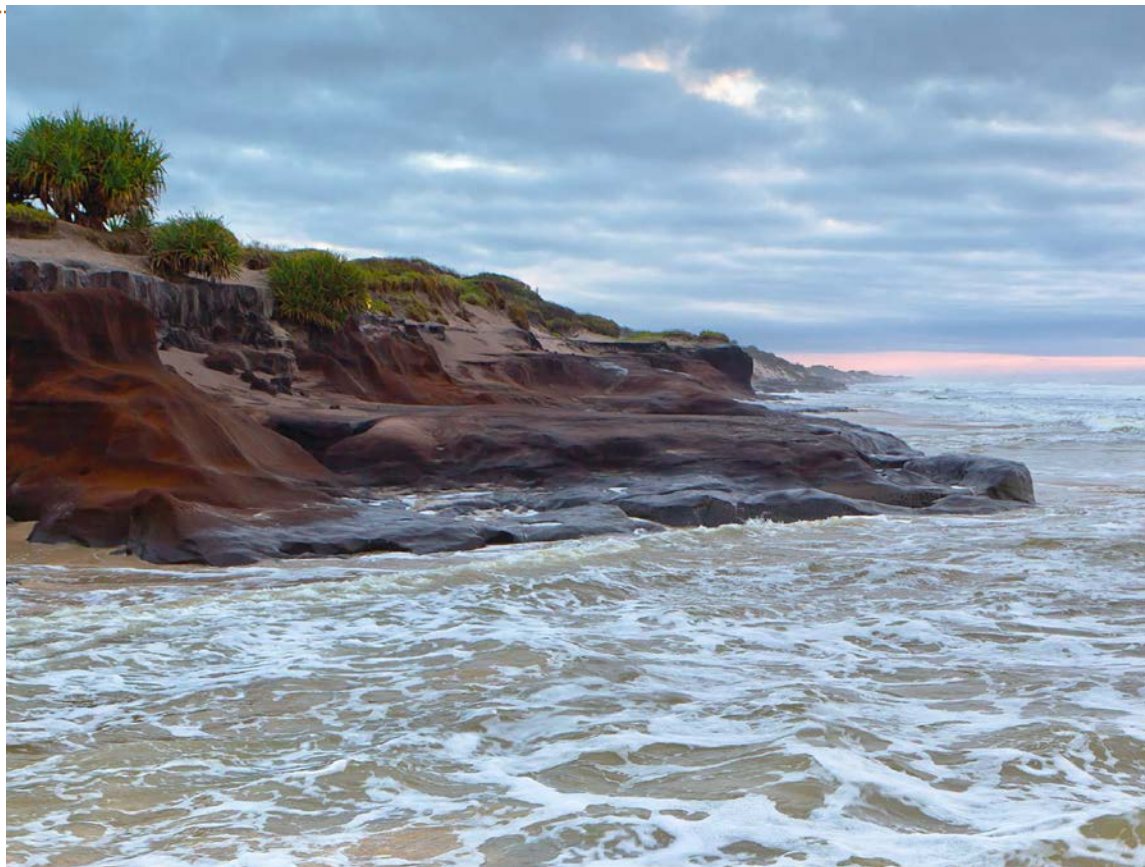


Getting to Consent...

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***Acknowledgement of
Gumbaynggirr Country
and of Bandjalang People***



***Black Rocks, Bandjalang Country
North Coast NSW***

Aim of this presentation

- To share a NSW experience of the native title process – Bandjalang People’s were only the third, and fourth determinations since 1993
- To share experience of two perspectives – legal representative, and Traditional Owner
- To provide some insight into some of the things that we did along the long road (seventeen years) in “getting to consent”

Bandjalang – milestones

- **1996** – original claim over coastal area of land and waters in northern NSW including town of Evans Head
- **1998** - Second more extensive claim over national parks to the west
- **2010** - Connection of Bandjalang People accepted by State of NSW
- **2 December 2013** - consent determination recognising certain non-exclusive native title rights and interests on
- **2014** - Parties continuing to negotiate Indigenous Land Use Agreements



Credible Evidence process

- NSW has no published policy/credible evidence guidelines for native title matters
- Bandjalang People provided:
 - Affidavits from members of the claim group;
 - Research material including anthropological, historical and linguistic reports; and
 - Extensive genealogies for the members of the claim group.
- Early evidence hearings held on Country in 2002
 - Justice Hely heard eight days of evidence from members of the claim group;
 - Witnesses were cross-examined by Counsel for State and several respondent parties, including commercial fishers

On Country Negotiations

- Held on Bandjalang Country from 2010 onwards, focus on:
 - Terms of consent determinations
 - Terms of whole of State government ILUA
- Initially convened by National Native Title Tribunal as mediations with a Member presiding
- July 2012 shift to Federal Court case management
 - Increased pressure on all parties;
 - Loss of some resources – e.g. dealing with respondents;
 - Setting of deadline for completion of ILUAs and determination



- December 2012 – consent determination listed for 2 December 2013
- Splitting of the Consent Determination and ILUA processes to enable this timeframe to be met
- Discussions about ways to fast-track analysis of tenure, and agreement on where native title could be recognised



Tenure Issues in NSW

- 9 500 parcels in the two Bandjalang claim areas
- Each was searched, and analysed. State provided:
 - Raw data; and
 - Extinguishment tables
- Applicant then conducted it's own analysis of this tenure information to determine where it thought native title could be recognised
- A number of tenure issues are peculiar to NSW
 - Long & complex tenure history dating back to first half of 19th century

Aboriginal Land Rights Act issue

- Interaction of land granted under the *Aboriginal Land Rights Act* 1983 (NSW) and native title is a contentious issue in NSW
- Effect of a land rights claim filed pre-1994 on native title is an issue that the Courts are yet to deal with
- Decision made in Bandjalang to withdraw parcels granted to LALCs pursuant to the *ALRA* to preserve future rights for extinguishment to be disregarded under s.47A NTA

Military Orders – impact on native title

- Substantial portion of Bandjalang #1 covered by the Evans Head Air Weapons Range
 - Defence (Air Force) facility used to train Super Hornet aircraft
- Large part of this area was the subject of orders made in WW2 under *National Security Regulation 54*
 - Recently considered by the Full Court in *Bar Burrum #4*
- State and Applicant had not reached agreement on impact of orders on native title

Military Orders – impact on native title

- Compromise reached:
 - Land subject to orders included in the determination area;
 - Notation in determination that should a Full Court or High Court decision hold that an order under Regulation 54 wholly extinguishes native title, that the State of NSW could seek to vary the Bandjalang determination

Business Opportunity Analysis

- Aspiration of Bandjalang People to use native title process to pursue economic development opportunities
- Initial Business Opportunity Analysis (BOA) jointly undertaken by State and Applicant in 2011
- Aim of BOA
 - To identify potential and existing business opportunities to generate revenue;
 - To analyse care control and management of land in Bandjalang Country; and
 - To analyse the feasibility of preferred business opportunities

Interim Joint Management

- Joint management of National Parks a key aspiration of Bandjalang People in native title process
- Interim joint management committee for parks in the claim areas established in 2011, and has met regularly since
- Deals with issues relating to the care, control and management of National Parks land

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National Parks temporary employment programme

- Established in 2011
- Three positions offered on a rotating six-monthly basis – Administration Officer, Field Officer, Senior Field Officer
- Positions reserved for Bandjalang People – cultural knowledge as a job requirement
- 23 Bandjalang People have participated since the programme's commencement
- Variety of training has been included with the positions

Continuing ILUA negotiations

- 2014 – Bandjalang People are native title holders
- Bandjalang People continue to negotiate ILUAs with:
 - State of NSW – to include National Parks, Fisheries, Forestry Corporation NSW and Crown Lands in a whole-of-government settlement in NSW; and
 - Commonwealth (Department of Defence) regarding the area covered by the Evans Head Air Weapons Range.

