

FAQ Sheet

The Proposed Determination of Native Title to be Made in the Yinhawangka Gobawarra Claim

Why is YAC involved in the Yinhawangka Gobawarra native title claim?

Following the 2017 Yinhawangka native title determination (**2017 Determination**), the Yinhawangka Gobawarra (**YG**) claimants continued to progress the Yinhawangka Gobawarra native title claim (**YG Claim**) which overlapped the majority of the claim areas covered by the Jurruru native title claims (**Jurruru Claims**) to the west of the 2017 Determination area.

Federal Court records show several contested hearings involving the Jurruru and YG Claims from 2017 to 2021. YAC was not a party to the YG Claim for any of these contested hearings. As there were no applications seeking leave to appeal any of these decisions, the Court now wishes to finalise the determination of native title to be made in the Jurruru and YG Claims (**Proposed Determination**).

Before the Proposed Determination can be made, the Court requires the YG Applicant to nominate a PBC to hold the determined native title on trust for the Yinhawangka People in the Proposed Determination. The nominated PBC has to accept that nomination in writing.

The YG Applicant wishes to nominate YAC to be the PBC for the Yinhawangka People in the Proposed Determination.

On 28 March 2022, on the application of the State of Western Australia (**State**), YAC was joined as a respondent party to the YG Claim legal proceedings, solely for the purpose of understanding whether YAC wishes to be the PBC for the Yinhawangka People in the Proposed Determination.

How did YAC respond to the State's application to be joined as a party to the YG Claim?

YAC did not consent to, nor did it oppose, being joined as a party to the YG Claim legal proceedings, on the basis that YAC needs to remain neutral and be guided by the Yinhawangka Common Law Holders (**Yinhawangka CLHs**) to the 2017 Determination.

What is the basis for the Federal Court’s ruling for Yinhawangka native title in the YG Claim?

The YG claimants to the YG Claim were limited to the descendants of the couple Thurantajinha and Wilga and the couple Nijawarla and Gujarda who identify as Yinhawangka or Gobawarra Yinhawangka. The YG Applicant presented an argument to the Court that the YG claimants could hold native title in the YG Claim area separately to the Yinhawangka People.

The Federal Court did not accept this argument. Instead, the Court found that the YG claimants could not hold native title in the YG Claim area separately to the Yinhawangka People. The Court also found that the YG Applicant only succeeded in proving that two of their four nominated Yinhawangka apical ancestors, Thurantajinha and Nijawarla, had rights and interests in those parts of the YG Claim area north of the Ashburton River.

How is the description of the Yinhawangka People in the Proposed Determination different to the Yinhawangka CLHs in the 2017 Determination?

In the judgments of the YG and Jurruru Claims, the Federal Court describes an additional fourth apical ancestor in the Yinhawangka apical lineage that was not recognised in the 2017 Determination. This fourth apical ancestor is *Nijawarla*. Other than this, and the fact that they concern different determination areas, the description of the Yinhawangka People in both the 2017 Determination and the Proposed Determination are the same.

What is the area that will be determined to be Yinhawangka in the Proposed Determination?

The map of the Proposed Determination area is below. The Yinhawangka Area is situated to the north of the Ashburton River. The Yinhawangka Area is adjacent to the western boundary of the 2017 Determination area. The Yinhawangka People (as they are described in the Proposed Determination) will be determined to hold native title in the Yinhawangka Area. The Jurruru Area is situated to the south of the Ashburton River. The Jurruru People will be determined to hold native title in the Jurruru Area. There is also an Overlap Area (shaded in blue on the map) that follows the Ashburton River, where the Court found that both Jurruru People and Yinhawangka People hold native title. Both the Jurruru People and the Yinhawangka People will be determined to hold native title in the Overlap Area.

How did the Court decide that the Proposed Determination could be made in the YG Claim even though that claim was not authorised by the Yinhawangka CLHs to the 2017 Determination?

After holding a further hearing, the Court decided in September 2021 that it had the power to make the determination in favour of the Yinhawangka People for the Proposed Determination, even though the Yinhawangka CLHs did not authorise the YG Claim. This is because the Native Title Act gives the Court power to do so despite a defect in the authorisation of the YG Claim.

Why is YAC being considered to be a potential PBC for the Proposed Determination to be made in the YG Claim?

The YG Applicant wishes to nominate YAC to be the PBC for the Yinhawangka People in the Proposed Determination. This nomination is subject to YAC amending its rule book to enable it to be the PBC for the Yinhawangka People in the Proposed Determination.

When will the YG Claim and the Proposed Determination be finalised?

Before the Proposed Determination can be made, the Court requires the YG Applicant to nominate a PBC to hold the determined native title on trust for the Yinhawangka People in the Proposed Determination and for that PBC to accept that nomination in writing. Once the Proposed Determination is made by the Court, the YG Claim will be finalised.

Can YAC act as the trustee PBC for the Yinhawangka People in the Proposed Determination, if it is already the trustee PBC for the Yinhawangka CLHs in the 2017 Determination?

Yes, but there is a process that needs to be followed. As YAC is already the PBC for the 2017 Determination, the Native Title Act says that the consent of the Yinhawangka CLHs to the 2017 Determination must be obtained before the Court can make a determination that YAC is to be the PBC for the Yinhawangka CLHs in the Proposed Determination.

YAC has consulted with the Yinhawangka CLHs to the 2017 Determination to provide an update on the YG Claim and the Proposed Determination and understand the views of the Yinhawangka CLHs about whether they would like YAC to be the PBC for the Yinhawangka People in the Proposed Determination.

It is important that the Yinhawangka CLHs to the 2017 Determination have every opportunity to understand the process, clarify concerns they might have, and be able to attend a meeting of the Yinhawangka CLHs in **Karratha** on **Thursday, 9 June 2022** and participate in any decision-making process.

What will happen if the Yinhawangka CLHs agree to YAC being the trustee PBC for the Yinhawangka People in the Proposed Determination?

If the Yinhawangka CLHs to the 2017 Determination agree to YAC being the PBC for the Yinhawangka People in the Proposed Determination, the YAC Board will take steps to put this into action.

YAC will need to consider how the YAC Rule Book might need to be amended to achieve this. Proposed changes to the YAC Rulebook will need to come back to the YAC membership and be passed via Special Resolution. It is likely that further consultation sessions with YAC's members will be required if it gets to this stage.

What will happen if the Yinhawangka CLHs do not agree to YAC being the trustee PBC for the Yinhawangka People to the Proposed Determination?

If the Yinhawangka CLHs to the 2017 Determination do not agree to YAC being the PBC for the Yinhawangka People in the Proposed Determination, the YAC Board will take steps to inform the YG Applicant and the Court.

It would then be up to the YG Applicant to decide whether to establish and nominate a new entity to be the Yinhawangka People's PBC for the Proposed Determination or engage with the Indigenous Land & Sea Corporation (**ILSC**) to see whether the ILSC would accept a nomination to be the Yinhawangka People's PBC for the Proposed Determination.

**Map of the Proposed
Determination Area**

