

# Barkandji Native Title and Fishing

May 2018 Primefact 1590 First edition  
DPI Fisheries, Recreational & Aboriginal Fisheries

## Introduction

On 16 June 2015 and 22 August 2017, the Barkandji Traditional Owners' (Barkandji and Malyangapa People) native title rights were formally recognised through orders of the Federal Court.

The range of native title rights now formally recognised for the Barkandji and Malyangapa People includes the right to fish in the determination area. Generally the native title right to fish is a non-exclusive right ensuring others are able to continue to undertake and enjoy fishing activities in accordance with the rules applicable to their activities from time to time.

Several exclusive areas have been recognised by the Federal Court, including areas on, or near, the bank of the Darling River in the Menindee area, and over part of Little Amphitheatre Lake. In areas where exclusive native title rights are exercised, the native title holders have the right to possess, occupy and control access to the area. However, exclusive native title rights do not affect the public's right to fish on or in the waters of the consent determination areas.

DPI Fisheries manages the State's fisheries resources on behalf of, and for the benefit of, all of the people of NSW in accordance with the objects and provisions of the *Fisheries Management Act 1994* and with regard to the native title rights held in an area. Ensuring sustainability of the resource is the primary objective of DPI Fisheries. Lawful rights and appropriately shared access to the resource are also ensured through management arrangements that promote quality recreational fishing opportunities, viable commercial fisheries and aquaculture, and continuation of Aboriginal cultural fishing (in its broader context beyond specific native title rights and interests in the area).

## Where do the native title rights of the Barkandji People apply?

The land and waters over which the Barkandji and Malyangapa People hold native title is fully described in the Consent Determinations of the Federal Court made on 16 June 2015 and 22 August 2017. The determination areas are depicted in the maps shown on pages 3 to 5 of this document.

For clarity, the following waters are not included in the determination area: Lake Victoria, Rufus River, Frenchman's Creek, the Murray River, the Darling River from its junction with the Great Darling Anabranch downstream to its junction with the Murray River, the Great Darling Anabranch, or Tucker's Creek from its junction with the Murray River downstream to its junction with the Darling River.

## Who are the native title holders?

Native title is held by the Barkandji and Malyangapa People, who are the Aboriginal persons who are:

- the biological descendants of persons named in the consent determination who inhabited the area since European settlement; and
- persons adopted into the families of these descendants and who identify as and are accepted as Barkandji and Malyangapa People in accordance with Barkandji and Malyangapa traditional laws and customs.

The Barkandji and Malyangapa People are comprised of the Malyangapa People and the following Barkandji sub-groups: Thankali, Barkandji, Parintji, Maraura, Wilyakali, Pantjikali/Wanyiwalku, Paruntji and Kurnu/Naulco.

## What kind of fishing activities can the Barkandji native title holders undertake?

The Barkandji and Malyangapa People have the right to fish and gather traditional natural resources, in areas where their native title has not been extinguished or is not otherwise excluded, in accordance with their traditional laws and customs. This means that they can fish according to their traditional laws and customs, with recognition that traditional ways of fishing evolve over time and use of modern materials and methods exists.

Although much of the native title fishing activities undertaken will fall within what is prescribed by the *Fisheries Management Act 1994*, the Barkandji and Malyangapa People are not bound by all of these laws when exercising their right to fish and gather traditional natural resources. For example, when non-prescribed fishing gear is used for a traditional purpose or prescribed catch limits are exceeded in address of cultural needs.

## Will the activities of native title holders place increased pressure on fish stocks in the area?

The fishing activities of the Barkandji and Malyangapa People have been taking place for generations. Although it is recognised that present day fisheries resources are exposed to broader harvest and other pressures, there is nothing to suggest that the harvest of the Barkandji and Malyangapa People fulfilling their fishing rights is inconsistent with what has historically taken place in conjunction with the harvest by other stakeholders. It is expected that harvest will continue in ways and at levels that are already being undertaken alongside that of other stakeholders.

## Can people who do not hold native title visit and fish in these areas?

Yes, in most circumstances. Native title rights are generally recognised as non-exclusive rights within the claim area, meaning areas can be freely accessed and fished. Rights however can also be recognised as exclusive and there may also be other reasons why areas are not accessible, such as settled land claims. In the identified exclusive land areas, along with any lands held by title, the Barkandji and Malyangapa People hold the right to possess occupy and control access. Permission is required before entering/crossing these areas. Exclusive native title right however, does not affect the public's right to fish on or in the waters of the consent determination areas

With recognition and respect of the fishing activities of all groups within the area, access to, and enjoyment of, the State's fisheries resources can be harmoniously undertaken and everyone's needs can be met.

### More information

National Native Title Tribunal

<http://www.nntt.gov.au/Pages/default.aspx>

Native Title and Indigenous Land Use Agreements | NSW Department of Primary Industries

<http://www.dpi.nsw.gov.au/fisheries/aboriginal-fishing/native-title>

### Contact

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**Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.**

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2018). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

Published by the NSW Department of Primary Industries. **PUB18/283**

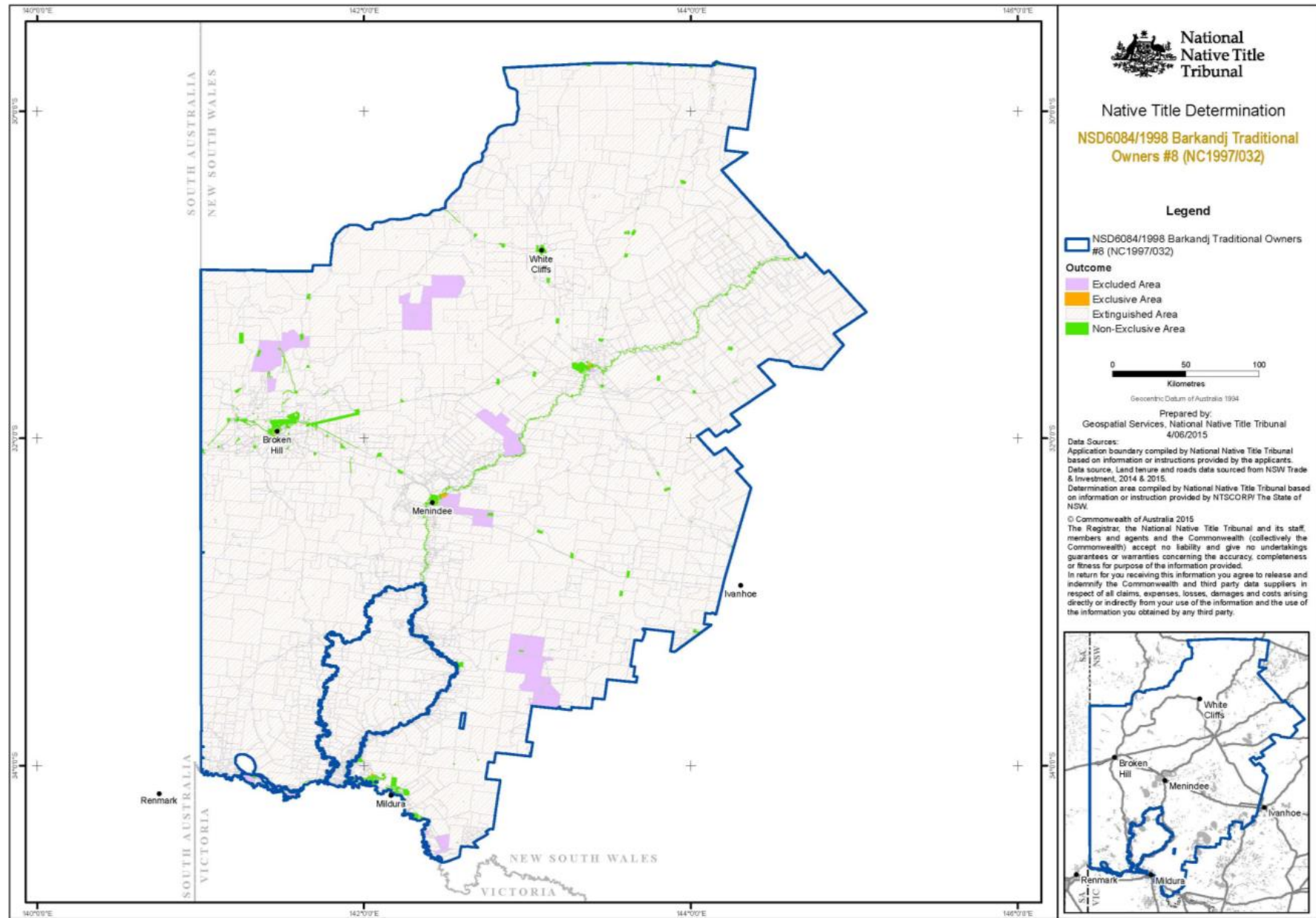


Figure 1. Plan of Determination Area - Barkandji Traditional Owners (NSD6084/1998) (Source: National Native Title Tribunal)

B. Maps of the Native Title Area

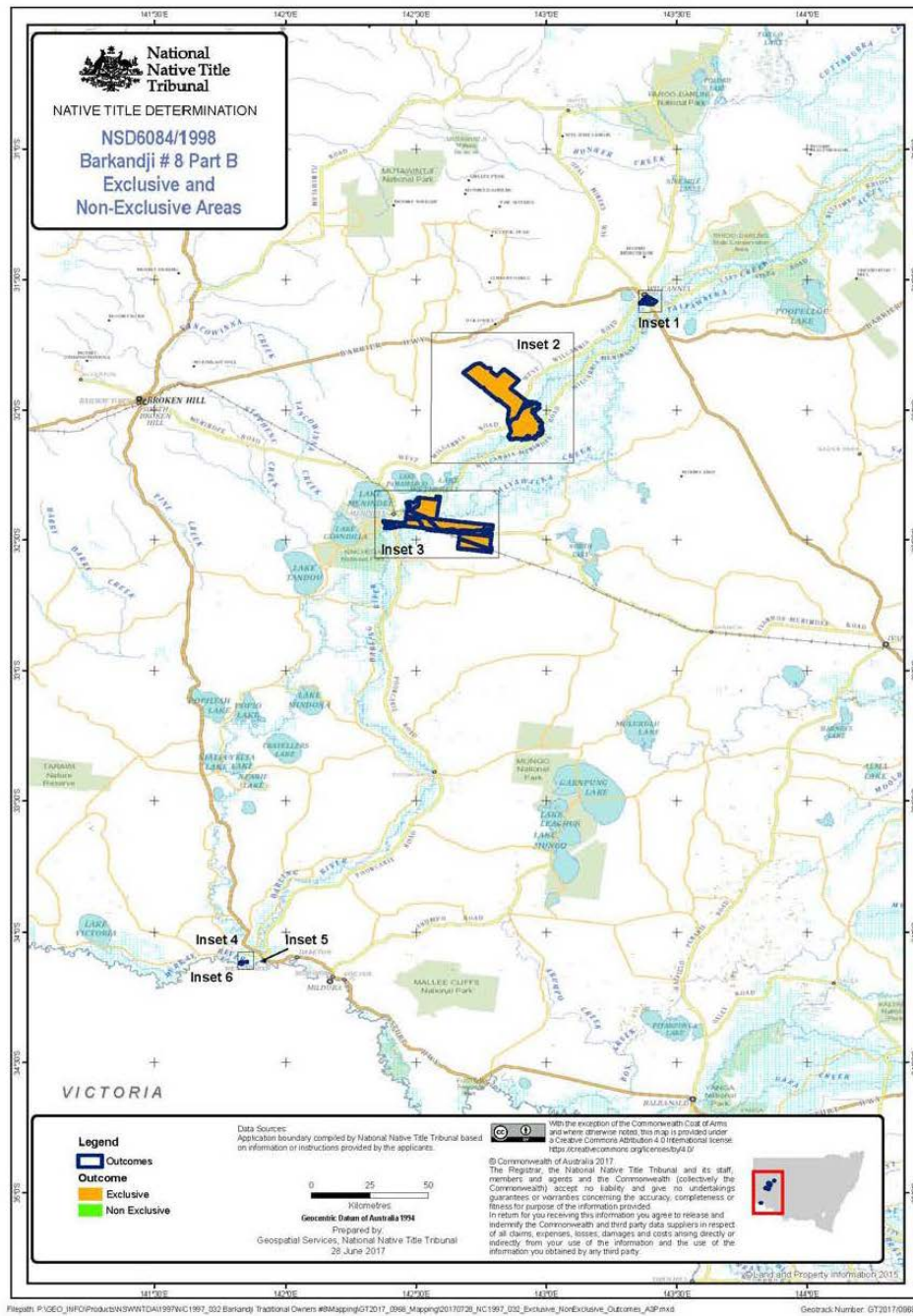


Figure 2. Plan of Determination Area - Barkandji Traditional Owners #8 (Part B) (NSD6084/1998) (Source: National Native Title Tribunal)

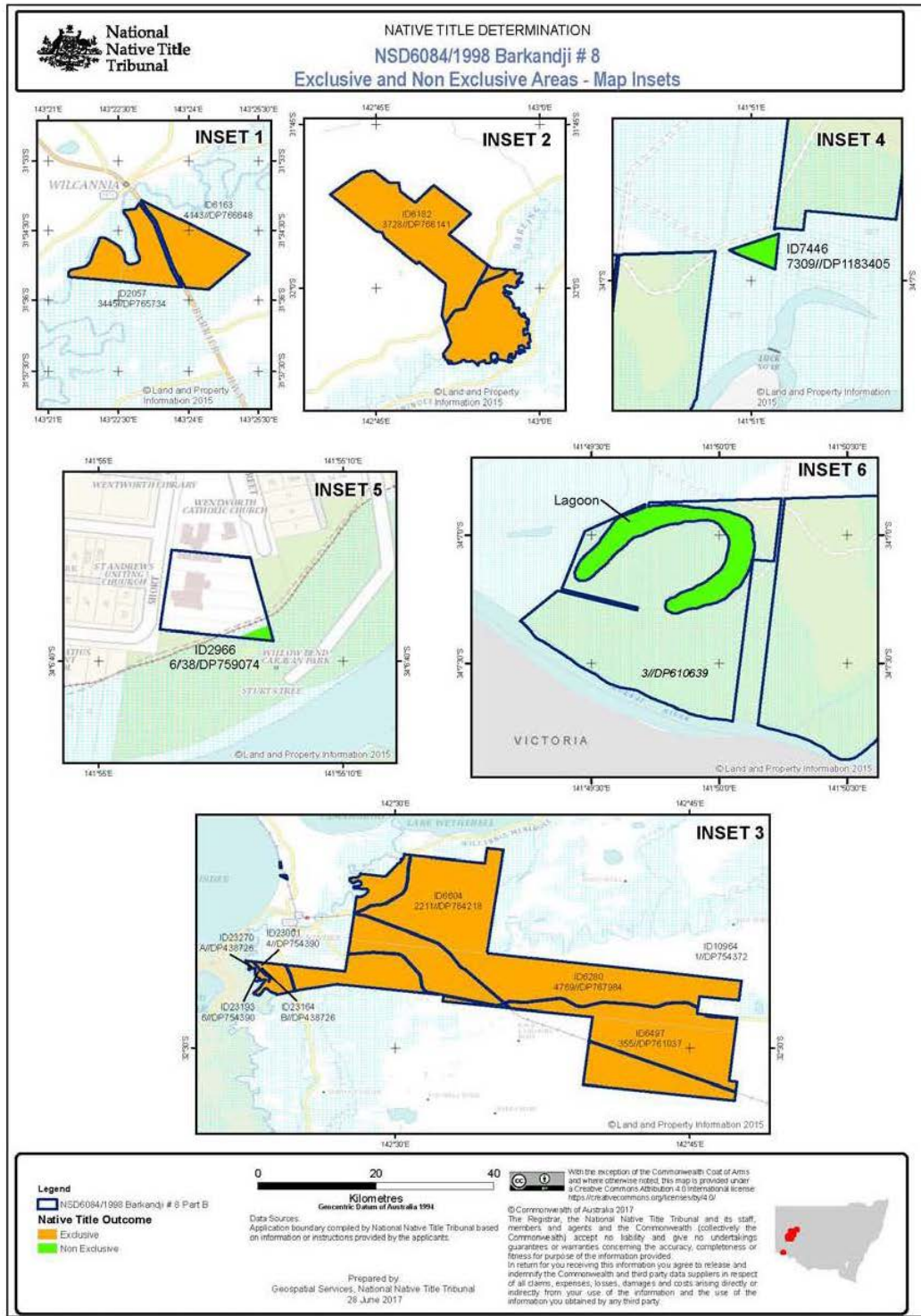


Figure 3. Exclusive and Non Exclusive Areas – Map Insets – Barkandji Traditional Owners #8 (Part B) (NSD6084/1998) (Source: National Native Title Tribunal)