

Bandjalang Native Title and Fishing

August 2017 Primefact 1589 First edition
Recreational & Indigenous Fisheries

Introduction

On 2 December 2013, the Bandjalang People's native title rights were formally recognised through orders of the Federal Court.

The range of native title rights now formally recognised for the Bandjalang People includes the right to fish and gather traditional natural resources in the determination area in accordance with traditional laws and customs for personal, domestic and non-commercial communal use. These native title rights are non-exclusive, meaning others are able to continue to undertake and enjoy fishing activities in accordance with the rules applicable to their activities from time to time.

DPI Fisheries manages the State's fisheries resources on behalf of, and for the benefit of, all the people of NSW. The management of this resource observes the objects and provisions of the *Fisheries Management Act 1994* and has 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 Bandjalang People apply?

The land and waters over which the Bandjalang People hold native title are fully described in the Consent Determination of the Federal Court made on 2 December 2013. The determination area is depicted in the maps shown on pages 3 and 4 of this document.

Within the overall boundary of the determination area, native title is recognised over certain waterways. These include part of the Richmond River, the waters of the Evans River and its tributaries, and the waters of Jerusalem Creek. It also includes the intertidal zones (from the mean low water mark landwards) from Sandy Beach in the north to Black Rocks in the south.

Who are the native title holders?

Native title is held by the Bandjalang People, who are the Aboriginal persons who are:

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

The Bandjalang People are members of the broader Bundjalung Nation.

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

The Bandjalang People have the right to hunt, fish, and gather traditional natural resources of the determination area for their personal, domestic and non-commercial communal use. 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 fishing activities will fall within what is prescribed by the *Fisheries Management Act 1994*, the Bandjalang People are not bound by all of these laws when exercising their native title right to fish and gather traditional natural resources for personal, domestic and non-commercial communal use. 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 Bandjalang 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 fish resource by the Bandjalang People in 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. A determination of native title rights over water is not exclusive and allows the waters and natural resources to be shared with other rights and interests in the same area.

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/Home-Page.aspx>

Bandjalang Court Order | Trade & Investment

http://www.lpma.nsw.gov.au/__data/assets/pdf_file/0004/193378/banjalang-court-order.pdf.

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

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

Contact

Fisheries NSW

Ph: 1300 550 474

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.

© State of New South Wales through the Department of Industry, Skills and Regional Development 2015. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Primary Industries as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (September 2017). 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.

PUB15/29

Annexure B to SCHEDULE ONE
MAP OF CONSENT DETERMINATION AREA

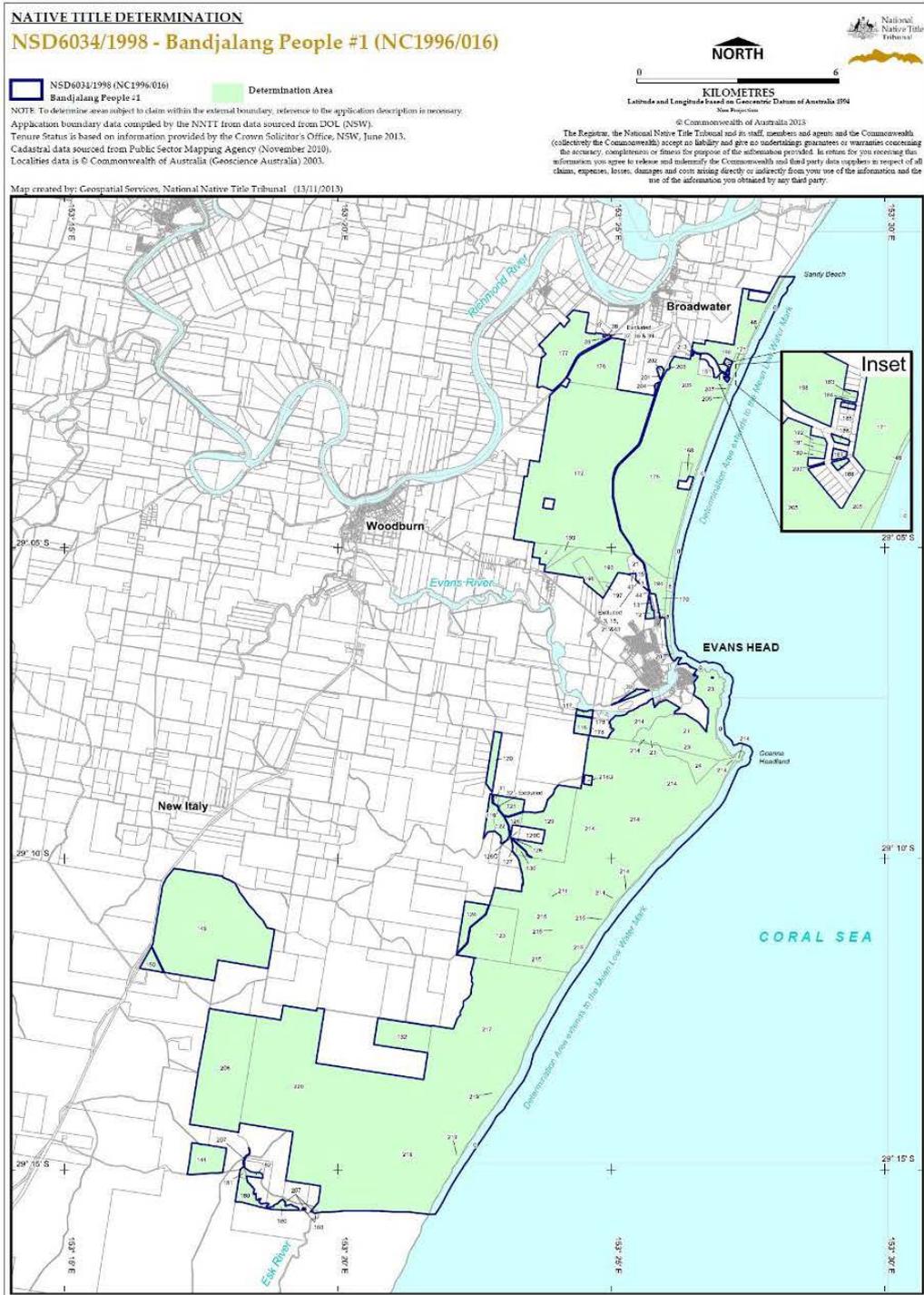


Figure 1. Plan of Determination Area – Bandjalang People #1 (NSD6034/1998) (Source: National Native Title Tribunal)

Annexure B to SCHEDULE ONE
 MAP OF THE CONSENT DETERMINATION AREA

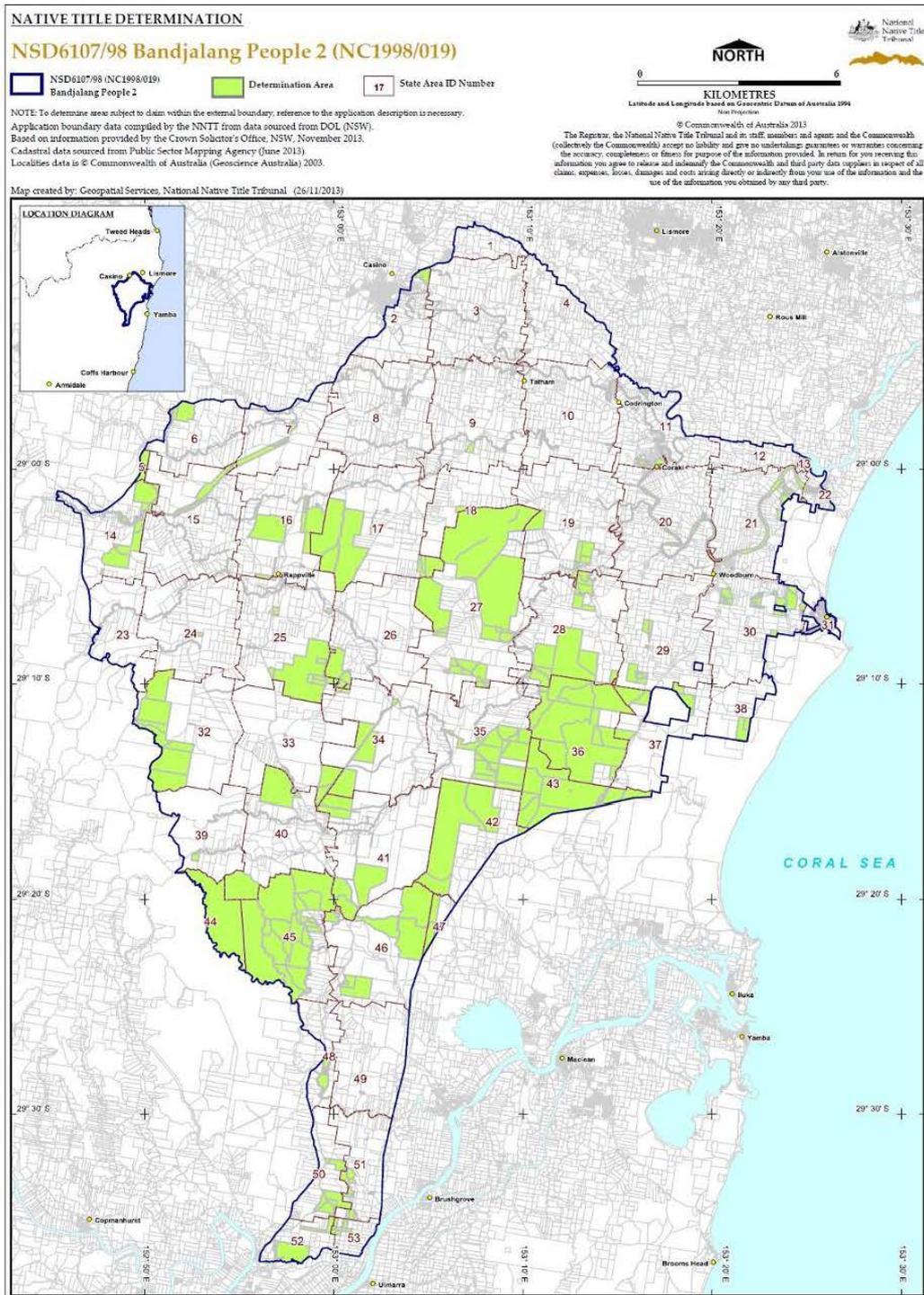


Figure 2. Plan of Determination Area – Bandjalang People #2 (NSD 6107/1998) (Source: National Native Title Tribunal)