

Yaegl Native Title and Fishing

September 2017 Primefact 1592 First edition
Recreational & Indigenous Fisheries

Introduction

On 25 June 2015 and 31 August 2017, the Yaegl People's native title rights were formally recognised through orders of the Federal Court.

In 2015, Consent Determinations were made in respect of two native title claims (Yaegl #1 NSD6052/1998 and Yaegl #2 NSD168/2011 (Part A)), which covered land and waters on the north coast of NSW including the estuarine waters of the Clarence River in and around Yamba and Iluka and in areas between Woody Head in the north and Woolli in the south, and extending westward to (but not including) Ulmarra.

Native title rights over the seaward extent of the original Yaegl #2 claim, which was excluded from the determination made in 2015, were later recognised through a Consent Determination made on 31 August 2017 (Yaegl #2 NSD168/2011 (Part B)). This is the first time that native title rights over sea country have been recognised in NSW.

The range of native title rights now formally recognised for the Yaegl People includes the right to fish and gather resources in the determination areas (Figures 1 to 4) (excluding the outer extent native title area where a more limited set of native title rights are recognised (Figure 5)) in accordance with traditional laws and customs for non-commercial 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 of the people of NSW. The Management of this resource observes the objects and provisions of the *Fisheries Management Act 1994*, the *Marine Estate Management Act 2014* 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 Yaegl People apply?

The land and waters over which the Yaegl People hold native title rights are fully described in the Consent Determinations of the Federal Court made 25 June 2015 and 31 August 2017. The determination areas are depicted in the maps shown on pages 3 to 7 of this document.

In addition to the recognition of rights in certain parcels of land, native title is recognised over certain waterways within the boundaries of the Consent Determination areas of Yaegl #1 and Yaegl #2 (Part A) (from the mean high water mark landwards), including parts of the Clarence River and its northern tributaries, Wooloweyah Lagoon, the whole of the Sandon River, and part of the Woolli River.

In the Yaegl #2 (Part B) sea claim, native title is recognised in the inner extent native title area (Figures 3 & 4) which includes the land and waters between the mean high water mark to a point 200m east of the mean low water mark, including the intertidal zone, from Woody Head in the north to Woolli in the south.

In the outer extent native title area (Figure 5), in the vicinity of the *Dirrangun* (a reef with particular cultural significance to the Yaegl People), the same native title rights have been recognised other than the right to fish and gather resources for non-commercial purposes.

Who are the native title holders?

Native title is held by the Yaegl 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 Yaegl People in accordance with Yaegl traditional laws and customs.

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

Where the Yaegl People's right to fish and gather resources have been recognised, this means that they can do so for non-commercial use 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 be in accordance with NSW fishing laws, as prescribed by the *Fisheries Management Act 1994* and the *Marine Estate Management Act 2014*, the Yaegl People are not bound by all of these laws when exercising their native title right to fish and gather resources for non-commercial use. For example, where non-prescribed fishing gear is used for a traditional purpose or extensions to catch limits are necessary to fulfil cultural needs.

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

The fishing activities of the Yaegl 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 Yaegl People's 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. Non-exclusive native title areas are accessible to all unless closed due to other restrictions not related to native title. 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>

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 (November 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. **PUB15/292**

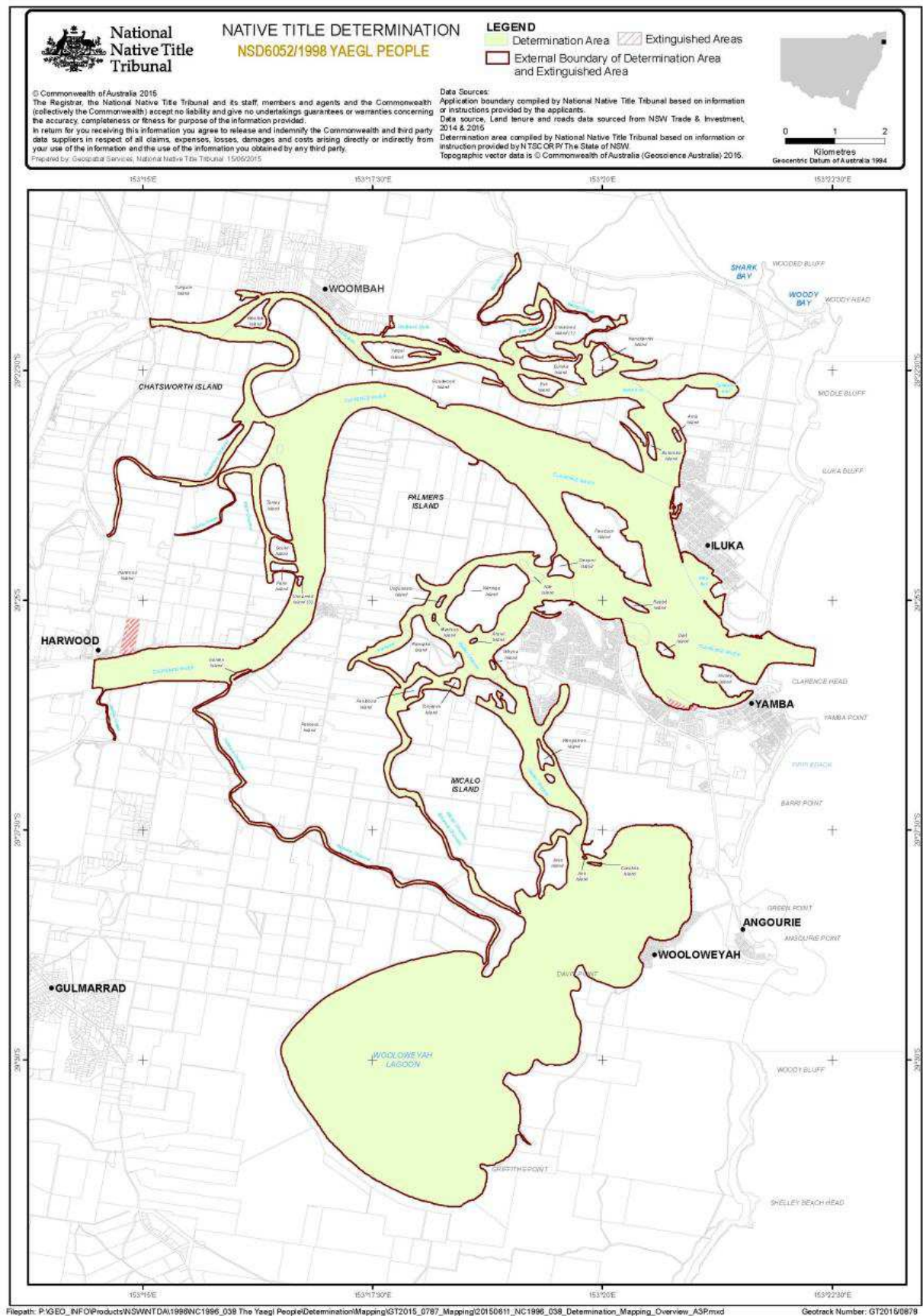


Figure 1: Plan of Determination Area – Yaegl People #1 (NSD6052/1998) (Source: National Native Title Tribunal)

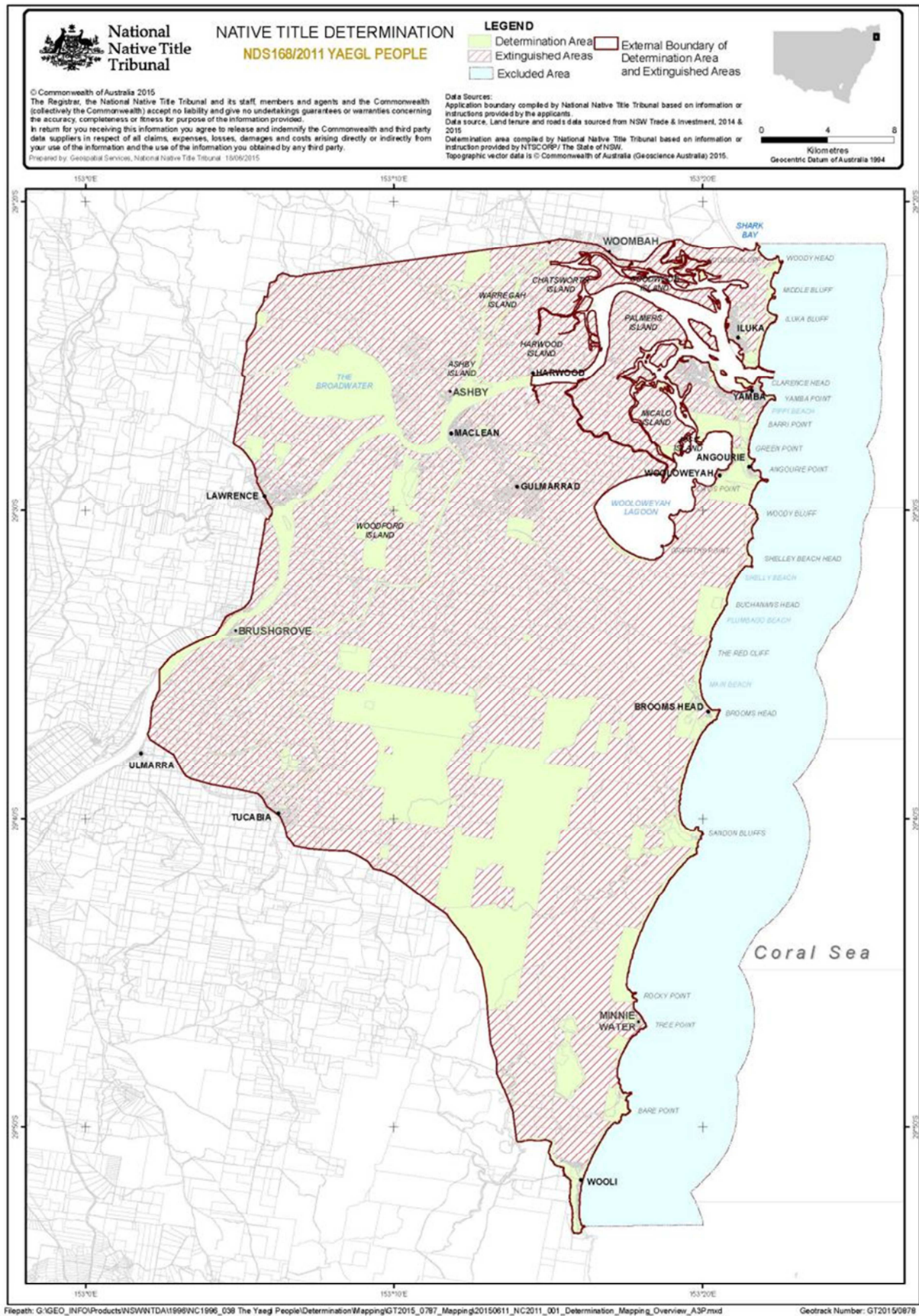


Figure 2: Plan of Determination Area – Yaegl People #2 (Part A) (NSD168/2011) (Source: National Native Title Tribunal)

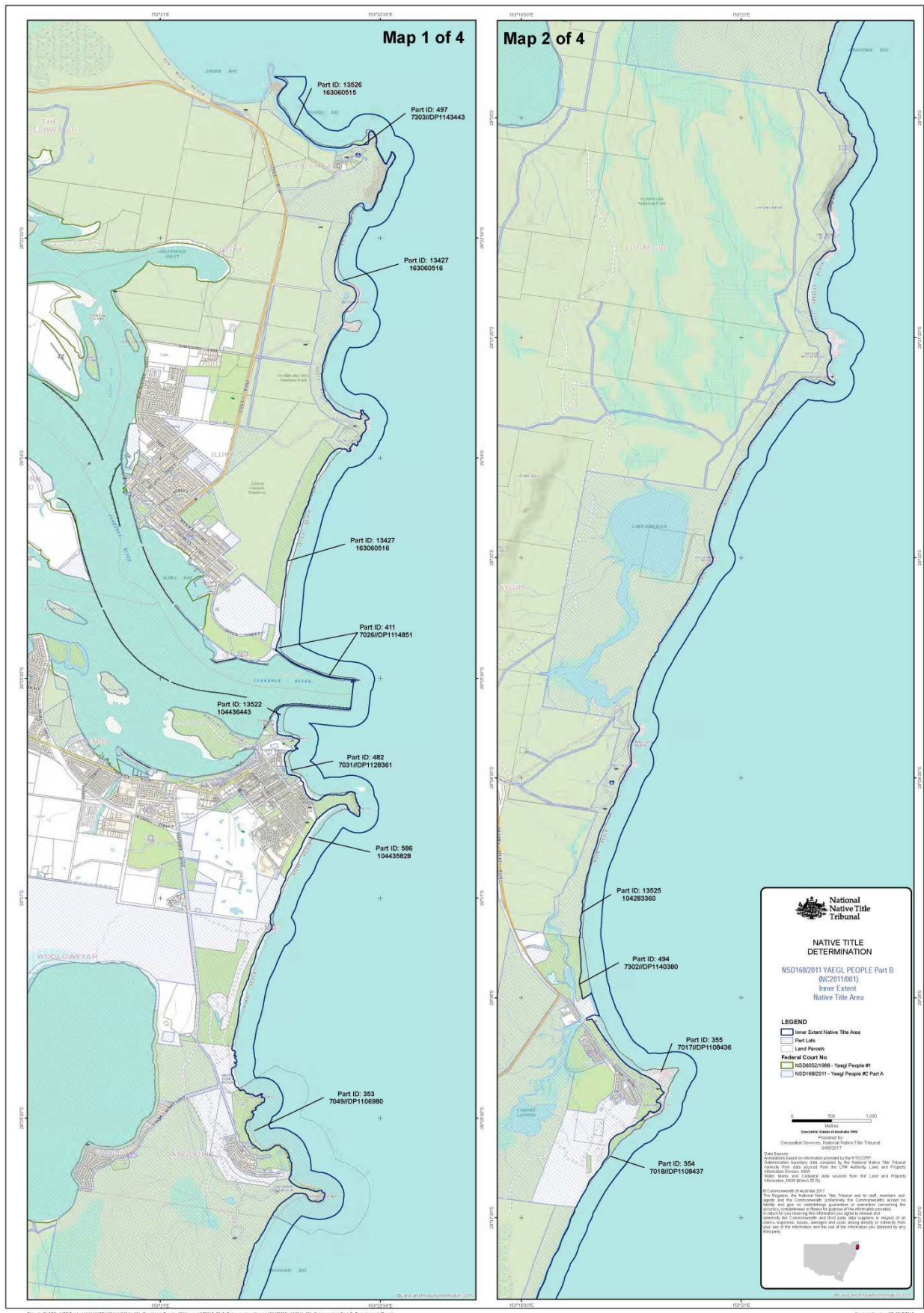


Figure 3. Plan of determination area – Yaegl People #2 (Part B) – Inner extent (NSD 168/2011) Maps 1 & 2 of 4 (Source: National Native Title Tribunal)



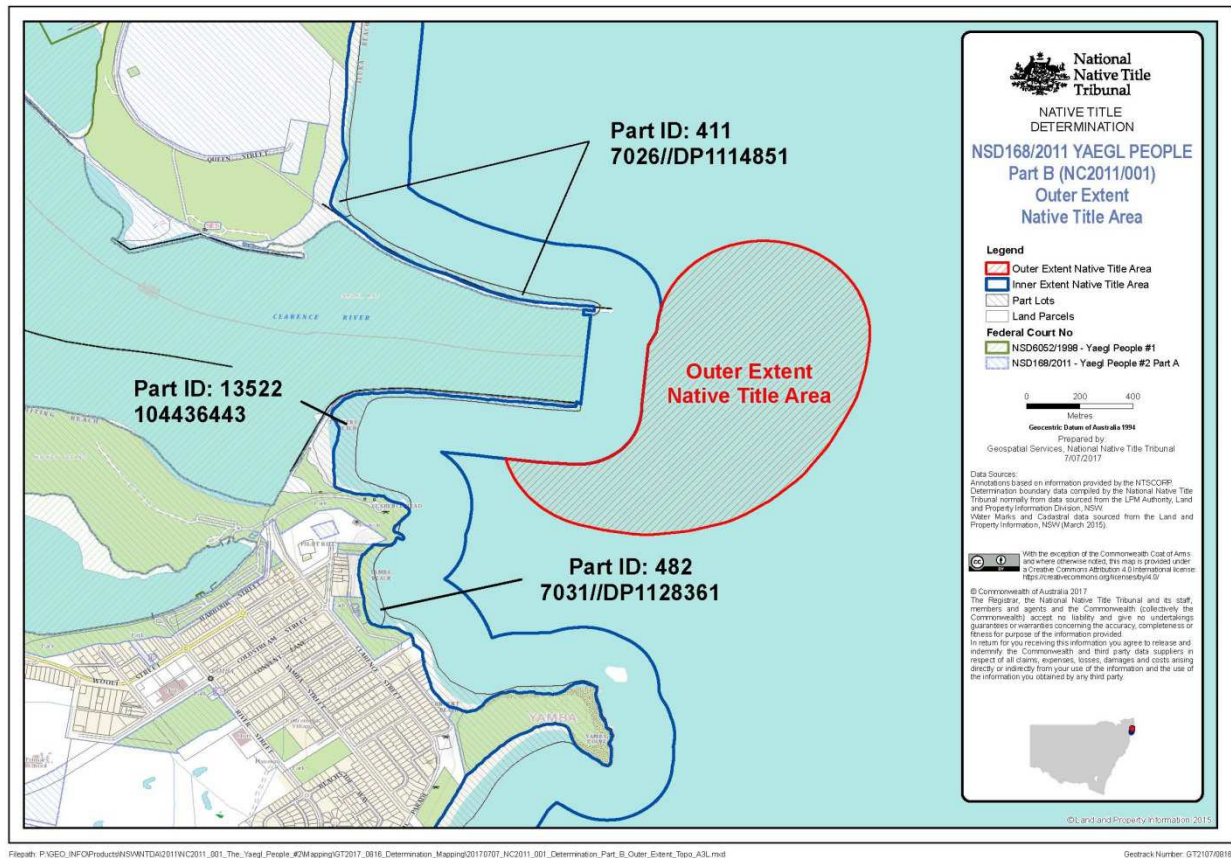


Figure 5. Plan of determination area – Yaegl People #2 (Part B) (NSD 168/2011) Outer extent (Durrungan)
(Source: National Native Title Tribunal)