

# FEDERAL COURT OF AUSTRALIA

## Lampton on behalf of the Juru People v State of Queensland

[2014] FCA 736

- Citation: Lampton on behalf of the Juru People v State of Queensland [2014] FCA 736
- Parties: **RAYMOND LAMPTON, RAYMOND GASTON, COLLEEN POWER, RAYLENE OUI, TANYA CHATFIELD, IRIS GLENBAR, LENORA ALDRIDGE AND VINCENT MUNDRABY ON BEHALF OF THE JURU PEOPLE v STATE OF QUEENSLAND & ORS (ACCORDING TO THE SCHEDULE)**
- File number: QUD 554 of 2010
- Judge: **RARES J**
- Date of judgment: 11 July 2014
- Catchwords: **NATIVE TITLE – Aboriginals And Torres Strait Islanders** – determination by consent under s 87A of *Native Title Act 1993* (Cth)
- Legislation: *Native Title Act 1993* (Cth)
- Cases cited: *Long v Northern Territory of Australia* [2011] FCA 571 applied  
*Mabo v State of Queensland [No 2]* (1992) 175 CLR 1 referred to  
*Munn (for and on behalf of the Gunggari People) v Queensland* (2001) 115 FCR 109 applied  
*Northern Territory of Australia v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442 applied  
*Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2)* [2011] FCA 819 referred to  
*Smallwood v State of Queensland* [2014] FCA 331 referred to  
*Prior on behalf of the Juru People v State of Queensland* [2014] FCA 332 referred to
- Reference:**  
The Hon R.S. French AC, *Native Title – A Constitutional Shift?*, published in: H.P. Lee and P. Gerangelos (ed), *Constitutional Advancement in a Frozen Continent:*

*Essays in Honour of George Winterton*, The Federation Press, 2009, pp 126-154)

Date of hearing:	11 July 2014
Date of last submissions:	16 June 2014
Place:	Bowen
Division:	GENERAL DIVISION
Category:	Catchwords
Number of paragraphs:	37
Counsel for the Applicant:	Ms Susan Philips
Solicitor for the Applicant:	Mr Ricardo Martinez of North Queensland Land Council Aboriginal Corporation
Solicitor for the First Respondent:	Crown Law

**IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY  
GENERAL DIVISION**

**QUD 554 of 2010**

**BETWEEN:                   RAYMOND LAMPTON, RAYMOND GASTON, COLLEEN  
POWER, RAYLENE OUI, TANYA CHATFIELD, IRIS  
GLENBAR, LENORA ALDRIDGE AND VINCENT  
MUNDRABY ON BEHALF OF THE JURU PEOPLE  
Applicant**

**AND:                         STATE OF QUEENSLAND & ORS (ACCORDING TO THE  
SCHEDULE)  
Respondent**

**JUDGE:                     RARES J**

**DATE OF ORDER:        11 JULY 2014**

**WHERE MADE:           BOWEN**

**THE COURT ORDERS THAT:**

**BEING SATISFIED** that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87A of the *Native Title Act 1993* (Cth).

**BY CONSENT THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms set out below (the "determination").
2. Each party to the proceedings is to bear its own costs.

**BY CONSENT THE COURT DETERMINES THAT:**

3. The Determination Area is the land and waters described in Schedule 1, and depicted in the map attached to Schedule 1. To the extent of any inconsistency between the written description and the map, the written description prevails.
4. Native title exists in relation to those parts of the Determination Area described in Parts 1 and 2 of Schedule 1.
5. Native title does not exist in relation to that part of the Determination Area described in Part 3 of Schedule 1.
6. The native title is held by the Juru People described in Schedule 3 (the "native title holders").
7. Subject to paragraphs 9, 10 and 11 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1 are the non-exclusive rights to:
  - (a) access, be present on, move about on and travel over the area;

- (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
  - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
  - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
  - (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
  - (f) conduct ceremonies on the area;
  - (g) be buried and bury native title holders within the area;
  - (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
  - (i) teach on the area the physical and spiritual attributes of the area;
  - (j) hold meetings on the area; and
  - (k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
8. Subject to paragraphs 9, 10 and 11 below the nature and extent of the native title rights and interests in relation to the waters described in Part 2 of Schedule 1 are the non-exclusive rights to:
- (a) access, be present on, move about on and travel over the area;
  - (b) hunt, fish and gather on the area for personal, domestic and non-commercial communal purposes; and
  - (c) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm.
9. The native title rights and interests are subject to and exercisable in accordance with:
- (a) the Laws of the State and the Commonwealth;
  - (b) the traditional laws acknowledged and traditional customs observed by the native title holders; and
  - (c) the terms and conditions of the agreements referred to in paragraph 1 of Schedule 4.
10. The native title rights and interests referred to in paragraphs 7 and 8 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
11. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).
12. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.
13. The relationship between the native title rights and interests described in paragraphs 7 and 8 and the other interests described in Schedule 4 (the "other interests") is that:

- (a) the other interests continue to have effect, and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title rights and interests;
- (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and
- (c) the other interests and any activity that is required or permitted by or under, and done in accordance with, the other interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.

## **DEFINITIONS AND INTERPRETATION**

14. In this determination, unless the contrary intention appears:

"High Water Mark" means the ordinary high-water mark at spring tides;

"land" and "waters", respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

"Laws of the State and the Commonwealth" means the common law and the laws of the State of Queensland and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

"Natural Resources" means:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and
- (b) any clays, soil, sand, gravel or rock found on or below the surface of the Determination Area,

that have traditionally been taken and used by the native title holders, but does not include:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another; and
- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

"Water" means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream;

- (b) any natural collection of water, whether permanent or intermittent;
- (c) water from an underground water source; and
- (d) tidal water.

Other words and expressions used in this determination have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth).

**THE COURT DETERMINES THAT:**

- 15. The native title is held in trust.
- 16. The Kyburra Munda Yalga Aboriginal Corporation ICN 7581, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
  - (a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
  - (b) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

**LIST OF SCHEDULES**

- Schedule 1 DETERMINATION AREA
- Schedule 2 AREAS NOT FORMING PART OF THE DETERMINATION AREA
- Schedule 3 NATIVE TITLE HOLDERS
- Schedule 4 OTHER INTERESTS IN THE DETERMINATION AREA

**Schedule 1 — DETERMINATION AREA**

**A Description of Determination Area**

The Determination Area comprises all of the land and waters described in Parts 1, 2, and 3 below, to the extent that they are within the external boundary described in Part 4 below, and depicted on the determination map, but does not include the areas described in Schedule 2.

**Part 1 – Non-exclusive areas (above the High Water Mark)**

All of the land and waters described in the following table and depicted in light blue on the determination map:

<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>
That part of Lot 52 on Plan HR1732 that is above the High Water Mark #	Sheet 8 (Insets 7.2 and 7.4)
That part of Lot 22 on Plan SP106414 excluding the area formerly described as Portion 25 on Plan HR1005	Sheet 13
Lot 134 on Plan AP15656	Sheet 4
Lot 1 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 2 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 3 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 4 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 5 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 7 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 8 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 9 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 10 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 11 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 12 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 13 on Plan AP2103	Sheet 5 (Inset 4.1)



<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>
Lot 14 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 15 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 16 on Plan AP2103	Sheet 5 (Inset 4.1)
Lot 1 on Plan AP2107	Sheet 4
Lot 1 on Plan AP2792	Sheets 1 and 4
Lot 7 on Plan AP2858	Sheet 5 (Inset 4.2)
Lot 9 on Plan AP2858	Sheet 5 (Inset 4.2)
Lot 1 on Plan AP6601	Sheet 4
Lot 28 on Plan B6611	Sheet 9
That part of Lot 64 on Plan CP860288 that is above the High Water Mark, excluding the area formerly described as Lot 64 on Plan SB420	Sheet 4
Lot 48 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 49 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 50 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 52 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 53 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 54 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 55 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 56 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 57 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 58 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 59 on Plan G4191	Sheet 8 (Inset 7.1)
Lot 31 on Plan GS13	Sheet 4
Lot 150 on Plan GS26	Sheet 4

<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>
Lot 142 on Plan GS280	Sheet 4
Lot 149 on Plan GS443	Sheet 4
Lot 143 on Plan GS8	Sheet 4
That part of Lot 141 on Plan GS808420 that is within the external boundary	Sheets 1 and 4
Lot 38 on Plan HR1253	Sheet 13
Lot 108 on Plan HR1343	Sheets 9 and 10 (Inset 9.1)
Lot 12 on Plan HR1429	Sheet 13
Lot 44 on Plan HR1599 #	Sheets 7 and 8 (Inset 7.2)
Lot 79 on Plan HR1819	Sheet 13
Lot 31 on Plan HR1970	Sheet 13
Lot 120 on Plan HR1989	Sheet 10 (Inset 9.1)
Lot 1 on Plan SP248492	Sheets 7 and 8 (Inset 7.2)
Lot 2 on Plan SP248492	Sheets 7 and 8 (Inset 7.2)
Lot 3 on Plan SP248492	Sheets 7 and 8 (Inset 7.2)
Lot 4 on Plan SP248492	Sheets 7 and 8 (Inset 7.2)
Lot 56 on Plan HR319	Sheet 13
Lot 35 on Plan HR389	Sheet 13
Lot 7 on Plan HR415	Sheet 13
Lot 101 on Plan HR825	Sheets 7, 9, 10 (Inset 9.1) and 13
Lot 84 on Plan HR88	Sheets 9 and 10 (Inset 9.1)
Lot 29 on Plan K103744	Sheet 13
Lot 53 on Plan K124476	Sheet 13
Lot 1 on Plan M4888	Sheet 10 (Inset 9.1)

<p style="text-align: center;"><b>Area description (as at date of determination)</b></p>	<p style="text-align: center;"><b>Determination map reference</b></p>
Lot 513 on Plan OL401	Sheets 4 and 5 (Inset 4.1)
That part of Lot 4192 on Plan PH1188 that is within the external boundary	Sheet 13
Lot 2727 on Plan PH1250	Sheet 4
That part of Lot 2985 on Plan PH1436 that is within the external boundary	Sheet 13
Lot 4625 on Plan PH1757	Sheet 13
Lot 4266 on Plan PH34	Sheets 4 and 7
Lot 17 on Plan SB321	Sheet 1
Lot 48 on Plan SB325	Sheet 4
Lot 49 on Plan SB325	Sheet 4
Lot 34 on Plan SB339	Sheet 8 (Inset 7.1)
Lot 23 on Plan SB352	Sheet 7
Lot 72 on Plan SB391	Sheet 12
Lot 410 on Plan SB461	Sheet 3 (Inset 1.4 and 1.5)
Lot 364 on Plan SB486	Sheet 4
Lot 365 on Plan SB487	Sheet 1
Lot 408 on Plan SB487	Sheet 1
Lot 21 on Plan SB489	Sheets 1 and 2 (Inset 1.1)
Lot 254 on Plan SB501	Sheet 6 (Inset 4.4)
Lot 255 on Plan SB502	Sheets 4 and 6 (Inset 4.4)
Lot 373 on Plan SB528	Sheet 3 (Inset 1.3)
Lot 61 on Plan SB534	Sheet 8 (Inset 7.1)
Lot 376 on Plan SB551	Sheet 3 (Inset 1.4)
Lot 355 on Plan SB555	Sheet 3 (Inset 1.4)

<p style="text-align: center;"><b>Area description (as at date of determination)</b></p>	<p style="text-align: center;"><b>Determination map reference</b></p>
Lot 35 on Plan SB559	Sheet 8 (Inset 7.1)
Lot 86 on Plan SB559	Sheet 8 (Inset 7.1)
Lot 653 on Plan SB582	Sheets 1 and 2 (Inset 1.2)
Lot 89 on Plan SB586	Sheet 4
Lot 372 on Plan SB590	Sheet 3 (Inset 1.3)
Lot 380 on Plan SB590	Sheet 3 (Inset 1.3)
Lot 381 on Plan SB590	Sheet 3 (Inset 1.3)
Lot 38 on Plan SB600	Sheet 4
Lot 655 on Plan SB603	Sheets 1 and 4
Lot 389 on Plan SB643	Sheet 3 (Inset 1.4 and 1.5)
That part of Lot 405 on Plan SB678 excluding the area described in Schedule 2	Sheets 1 and 2 (Inset 1.2)
Lot 85 on Plan SB682	Sheet 1
Lot 257 on Plan SB698	Sheets 4 and 6 (Inset 4.5)
Lot 50 on Plan SB704	Sheet 4
Lot 407 on Plan SB708	Sheet 3 (Inset 1.4 and 1.5)
Lot 359 on Plan SB709	Sheet 3 (Inset 1.4 and 1.5)
Lot 55 on Plan SB723	Sheet 4
Lot 22 on Plan SB733	Sheet 7
Lot 30 on Plan SB733	Sheet 7
Lot 384 on Plan SB738	Sheet 1 and 2 (Inset 1.2)
Lot 37 on Plan SB739	Sheets 4 and 6 (Inset 4.6)
Lot 91 on Plan SB749	Sheet 4
That part of Lot 12 on Plan SB768 that is within the external boundary	Sheet 11

<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>
Lot 74 on Plan SB87	Sheet 4
Lot 13 on Plan SP115943	Sheet 13
Lot 43 on Plan SP122349	Sheet 4
Lot 44 on Plan SP122349	Sheet 4
Lot 256 on Plan SP123351	Sheets 4 and 5 (Inset 4.3)
That part of Lot 3468 on Plan SP142540 that is within the external boundary	Sheet 13
Lot 1 on Plan SP156160 #	Sheet 8 (Inset 7.3)
Lot 51 on Plan SP163399	Sheets 4 and 5 (Inset 4.2)
Lot 79 on Plan SP167800	Sheet 9
Lot 155 on Plan SP224847	Sheet 10 (Inset 9.1)
Lot 205 on Plan SP224847	Sheet 10 (Inset 9.1)
Lot 335 on Plan SP227560 #	Sheets 7 and 8 (Inset 7.2)
Lot 57 on Plan SP243726 #	Sheet 8 (Inset 7.3)
Lot 58 on Plan SP243726 #	Sheets 7 and 8 (Inset 7.2 and 7.3)
That part of Lot 141 on NPW1152 that is within the external boundary	Sheet 13
Lot 3 on Plan SB208	Sheet 1
Save for any waters forming part of a lot on plan, all waterways, natural lakes, creeks and rivers within the external boundary including but not limited to: the Burdekin River, Euri Creek, the Don River, and the Elliot River	

# denotes areas to which the non-extinguishment principle applies in accordance with ss 24KA or 24HA of the *Native Title Act 1993* (Cth)

**Part 2 – Non-exclusive areas (below the High Water Mark)**

All of the waters described in the following table and depicted in light blue hatching on the determination map:

Area description (as at date of determination)	Determination map reference																																										
<p>All waters below the High Water Mark within the following boundary description: Commencing at Longitude 147.690000° East, Latitude 19.580000° South and extending generally south easterly and westerly passing through the following coordinate points:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Longitude (East)</th> <th>Latitude (South)</th> </tr> </thead> <tbody> <tr> <td>147.820000</td> <td>19.680000</td> </tr> <tr> <td>148.134685</td> <td>19.793130</td> </tr> <tr> <td>148.350000</td> <td>19.880000</td> </tr> <tr> <td>148.350000</td> <td>20.046626</td> </tr> <tr> <td>148.230513</td> <td>20.046626</td> </tr> </tbody> </table> <p>then south westerly along a line toward a point at Longitude 148.183443° East, Latitude 20.108314° South to the intersection of that line and the eastern boundary of Lot 313 on Plan HR2020 (being a point on the High Water Mark of the mainland); then generally northerly, generally north easterly and generally north westerly along that High Water Mark, crossing the mouths of any waterways between the seaward extremities of each of the opposite banks of each such waterway, to its intersection with the southern bank of the north arm of the Burdekin River at Longitude 147.572199° East; then north easterly back to the commencement point including but not limited to the following areas:</p>		Longitude (East)	Latitude (South)	147.820000	19.680000	148.134685	19.793130	148.350000	19.880000	148.350000	20.046626	148.230513	20.046626																														
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<p>That part of Lot 101 on Plan SP256311 # within the following coordinate points:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Point</th> <th>Longitude (East)</th> <th>Latitude (South)</th> </tr> </thead> <tbody> <tr><td>1</td><td>148.042451</td><td>19.891502</td></tr> <tr><td>2</td><td>148.035991</td><td>19.891952</td></tr> <tr><td>3</td><td>148.035996</td><td>19.884293</td></tr> <tr><td>4</td><td>148.044333</td><td>19.890132</td></tr> <tr><td>5</td><td>148.044339</td><td>19.890946</td></tr> <tr><td>1</td><td>148.107693</td><td>19.865411</td></tr> <tr><td>2</td><td>148.096301</td><td>19.861771</td></tr> <tr><td>3</td><td>148.096408</td><td>19.861472</td></tr> <tr><td>4</td><td>148.096675</td><td>19.860723</td></tr> <tr><td>5</td><td>148.096798</td><td>19.860380</td></tr> <tr><td>6</td><td>148.086596</td><td>19.857091</td></tr> <tr><td>7</td><td>148.090787</td><td>19.845162</td></tr> <tr><td>8</td><td>148.107706</td><td>19.845172</td></tr> </tbody> </table>	Point	Longitude (East)	Latitude (South)	1	148.042451	19.891502	2	148.035991	19.891952	3	148.035996	19.884293	4	148.044333	19.890132	5	148.044339	19.890946	1	148.107693	19.865411	2	148.096301	19.861771	3	148.096408	19.861472	4	148.096675	19.860723	5	148.096798	19.860380	6	148.086596	19.857091	7	148.090787	19.845162	8	148.107706	19.845172	<p>Sheet 8 (Inset 7.2 and 7.3)</p>
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<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>
Lot 52 on Plan SP243721 #	Sheet 8 (Inset 7.2)
That part of Lot 49 on Plan SP185904 excluding the area formerly described as Portion 49 on Plan HR1647 #	Sheet 8 (Inset 7.2)
That part of Lot 64 on Plan CP860288 that is below the High Water Mark	Sheet 4
That part of Lot 52 on Plan HR1732 that is below the High Water Mark #	Sheet 8 (Insets 7.2 and 7.4)

# denotes areas to which the non-extinguishment principle applies in accordance with ss 24HA, 24MB or 24NA of the *Native Title Act 1993* (Cth)

### Part 3 – Areas where native title does not exist

All of the land and waters described in the following table and depicted in red on the determination map:

<b>Area description (as at date of determination)</b>	<b>Determination map reference</b>																																										
Lot 336 on Plan SP227560	Sheets 7 and 8 (Inset 7.2)																																										
Lot 47 on Plan SP227557	Sheets 7 and 8 (Inset 7.2)																																										
That part of Lot 101 on Plan SP256311 excluding the area within the following coordinate points:	Sheet 8 (Inset 7.2)																																										
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2	148.096301	19.861771																																									
3	148.096408	19.861472																																									
4	148.096675	19.860723																																									
5	148.096798	19.860380																																									
6	148.086596	19.857091																																									
7	148.090787	19.845162																																									
8	148.107706	19.845172																																									

**Part 4 – External boundary**

Commencing at the north eastern corner of native title determination application QUD544/2010 Juru People (QC2010/005), as accepted for registration on 27 May 2011, at Latitude 19.793130° South and Longitude 148.134685° East and extending south easterly, south, west and generally southerly passing though the following coordinate points:

<b>Longitude (East)</b>	<b>Latitude (South)</b>
148.350000	19.880000
148.350000	20.046626
148.230513	20.046626
148.183443	20.108314
148.146910	20.186861
148.135954	20.215472
148.129272	20.245890
148.125391	20.272221
148.123187	20.287284
148.116492	20.296415
148.115274	20.311025
148.119535	20.326245
148.119522	20.337220
148.123795	20.349985
148.120143	20.364595
148.123187	20.370682
148.131099	20.377987

then north westerly to the eastern boundary of the northern severance of Lot 36 on Plan HR1868 at Latitude 20.305445° South; being a point on the eastern boundary of native title determination application QUD6244/1998 Birriah People (QC1998/012), as accepted for registration 14 August 2007; then generally northerly and again generally westerly along boundaries of that native title determination application to the centreline of the Burdekin River; further described as: then generally northerly along the eastern boundaries of the northern severance of Lot 36 on Plan HR1868 to its north eastern most corner; then northerly to the intersection of the eastern boundary of Lot 161 on Plan SP122361 and the northern boundary of an unnamed road reserve at Latitude 20.301993° South; then generally northerly along the eastern boundary of Lot 161 on SP122361 to the southern boundary of Lot 13 on Plan HR1842; then easterly along the southern boundary of that lot and the prolongation easterly of that southern boundary to its intersection with the eastern bank of Euri Creek; then generally northerly along eastern banks of that creek to the southern boundary of Mt Aberdeen Road reserve; then north easterly and generally westerly passing through the following coordinate points:

<b>Longitude (East)</b>	<b>Latitude (South)</b>
147.973352	20.190211
147.953092	20.187919



147.929141	20.180326
147.904038	20.175614
147.874685	20.171545
147.850806	20.166802
147.821432	20.161576
147.798701	20.153365
147.772380	20.148076
147.746609	20.139907
147.713519	20.131280
147.681103	20.125499
147.646114	20.112874
147.612466	20.105950
147.584900	20.098352
147.555432	20.086765
147.534574	20.079055
147.510607	20.067950
147.493994	20.059026
147.477961	20.048372
147.461952	20.038863
147.443563	20.032250
147.422122	20.025104
147.397631	20.016852
147.373154	20.010315
147.351133	20.004312
147.327918	19.999467
147.302938	19.998079
147.284633	19.995453
147.270637	19.995634

then again westerly along the northern boundary of native determination application QUD6244/1998 Birriah People (QC1998/012); being a line extending to Longitude 147.252990° East and Latitude 19.995860° South to its intersection with the eastern bank of the Burdekin River; then generally northerly and generally easterly along the eastern banks of that river to the easternmost corner of Lot 21 on RP903179; then north easterly to a point on the southern bank of the north arm of the Burdekin River at Longitude 147.493574° East; then generally north easterly along the southern banks of that northern arm of that river to the Coral Sea at Longitude 147.572199° East; then north easterly and generally south easterly passing through the following coordinate points:

<b>Longitude (East)</b>	<b>Latitude (South)</b>
147.690000	19.580000
147.820000	19.680000

then south easterly back to the commencement point.

**Reference datum**

Geographical coordinates are in decimal degrees referenced to the Geocentric Datum of Australia (GDA94).

#### **Data reference and source**

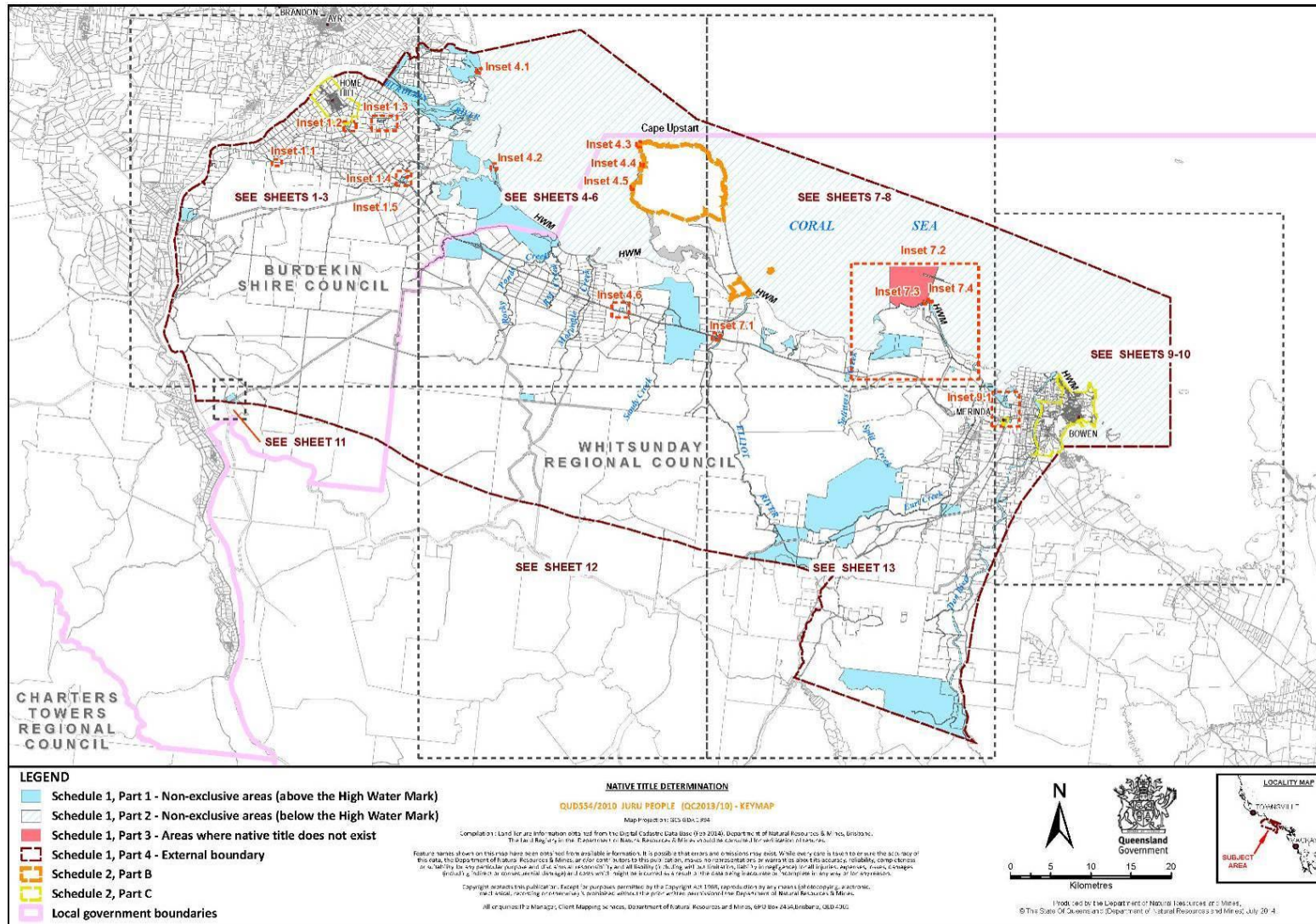
- Land tenure information obtained from the Digital Cadastral Database, Department of Natural Resources and Mines (Queensland) (June 2014).
- Watercourse boundaries and road boundaries are based where possible on cadastral boundaries obtained from the Digital Cadastral Database, Department of Natural Resources and Mines (Queensland) (June 2014) otherwise digitised from 100K Topographic Map sheets © Commonwealth of Australia and supplied by Geoimage Pty Ltd under licence from Geoscience Australia.
- Native title determination application boundary data sourced from the Department of Natural Resources and Mines (Queensland) or sourced from the National Native Title Tribunal.

#### **Use of coordinates**

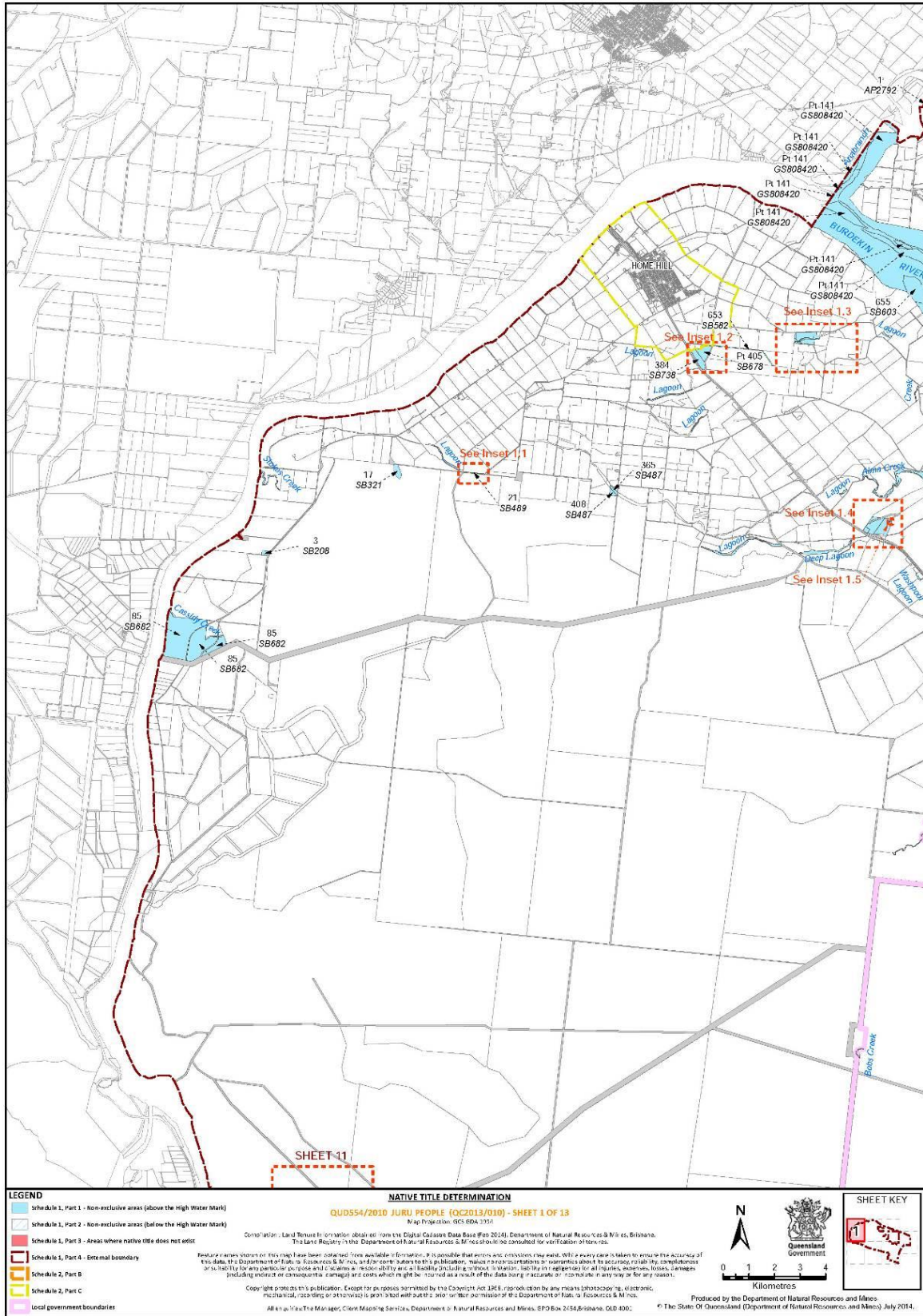
Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

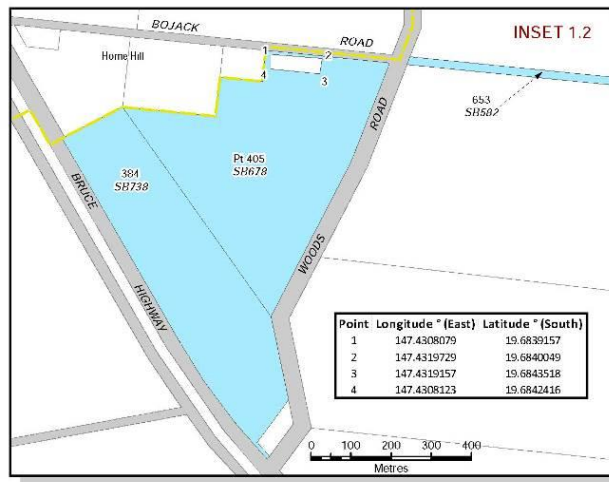
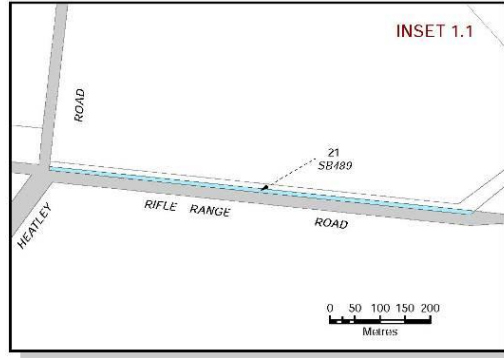
Prepared by Client Mapping Services, Spatial Data & Mapping, Land and Spatial Information, Department of Natural Resources and Mines (Queensland) (June 2014).

## B. Map of Determination



Document Path: K:\CLAIMMAP\2013\QUD554\_010 Juru Combined\QUD554\_010 Juru People\_2\_A31\_Determination\_KEYMAP.mxd





**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part A
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**  
**QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 2 OF 13**  
 Map Projection: GCS GDA 1954

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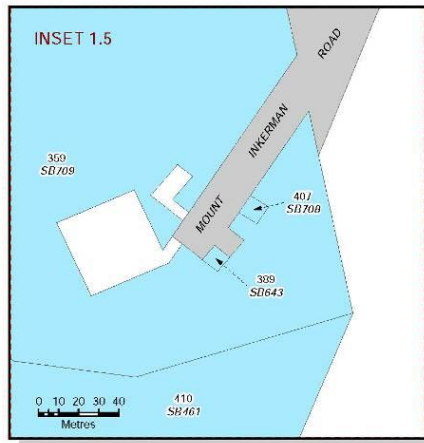
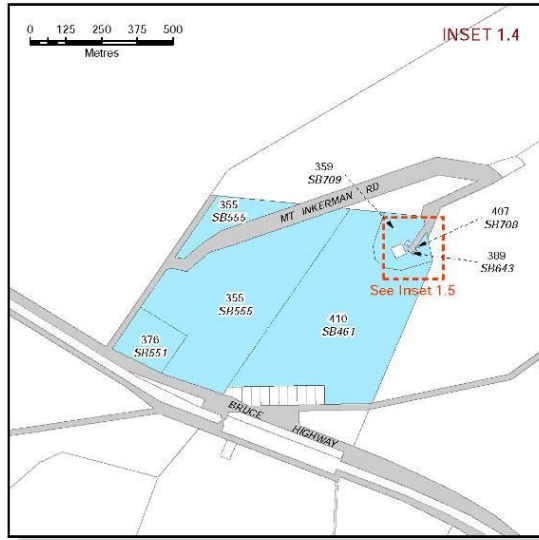
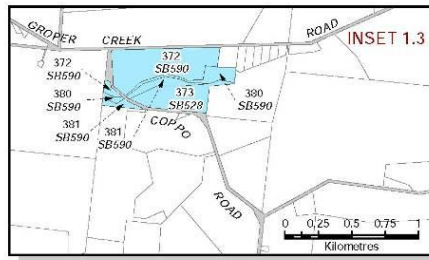
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N  
Queensland Government

INSET REV 1.1  
1.2  
SHEET 1



**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**

QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 3 OF 13  
Map Projection: SAD64

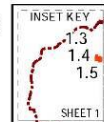
Compilation standard for information obtained from the Digital cadastral data base (Sub 2014), Department of Natural Resources & Mines, Brisbane. The land is registered in the Department of Natural Resources & Mines, Brisbane.

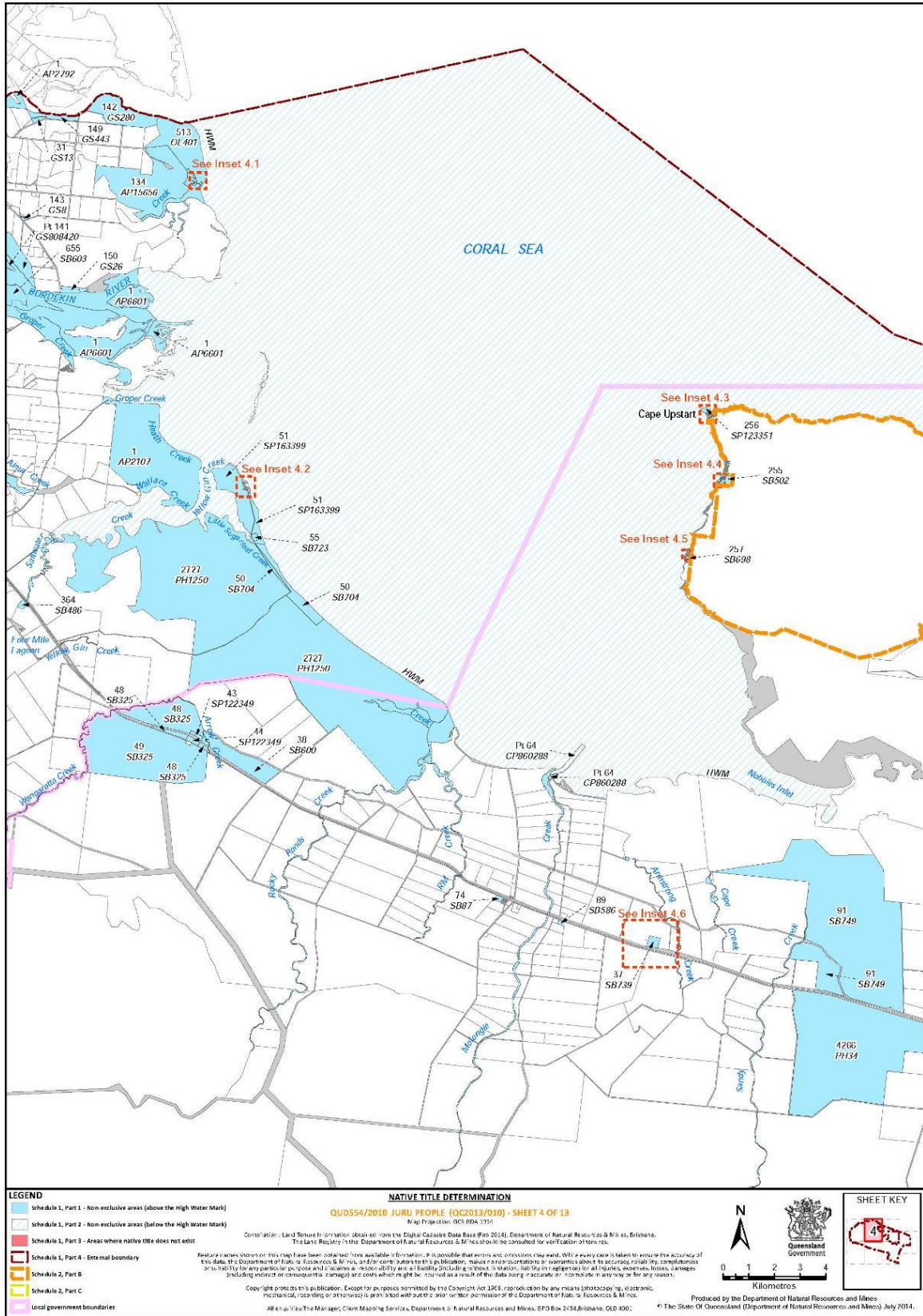
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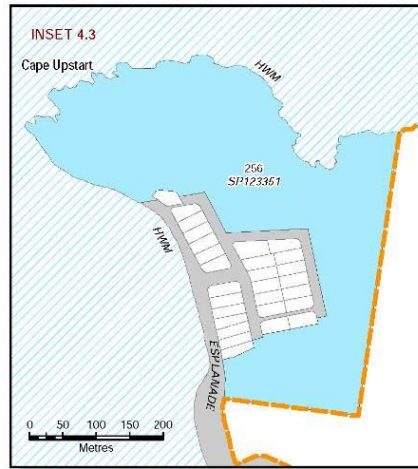
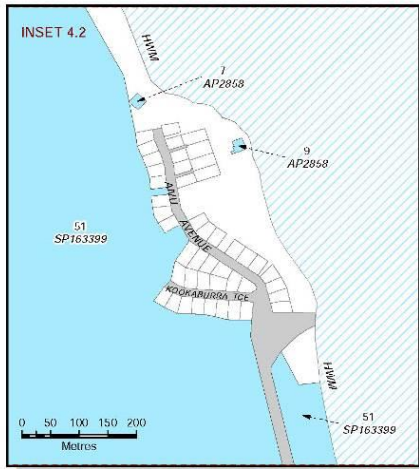
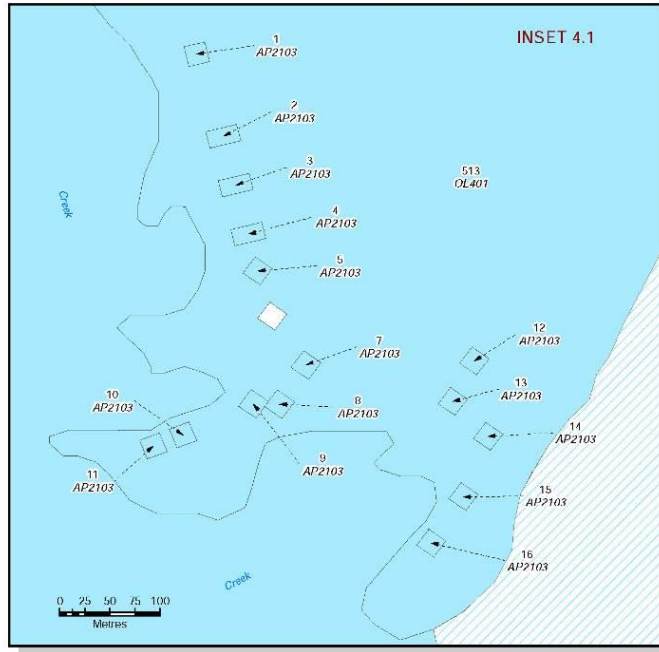
**NATIVE TITLE DETERMINATION**  
**QUID554/2010 JURU PEOPLE (QC2013/010) - SHEET 4 OF 13**  
 Map Projection: GCS 89A 1954

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**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**  
**QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 5 OF 13**  
 Map Projection:

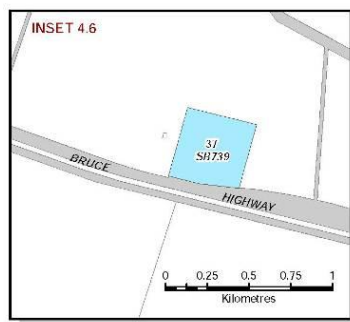
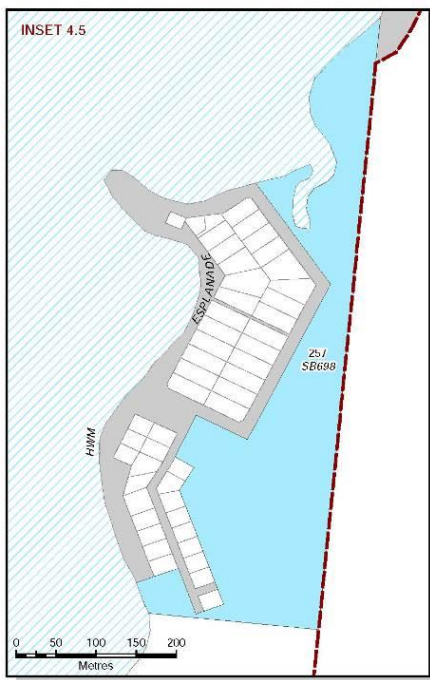
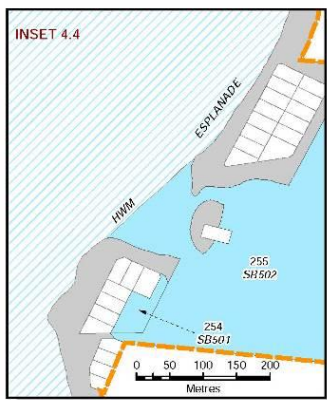
Compilation: Land for use information obtained from the digital cadastral data base (Sub 2014), Department of Natural Resources & Mines, Brisbane. The Land Register in the Department of Natural Resources & Mines should be consulted for verification of services.

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**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**

QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 6 OF 13  
Map Projection: EDWARDS

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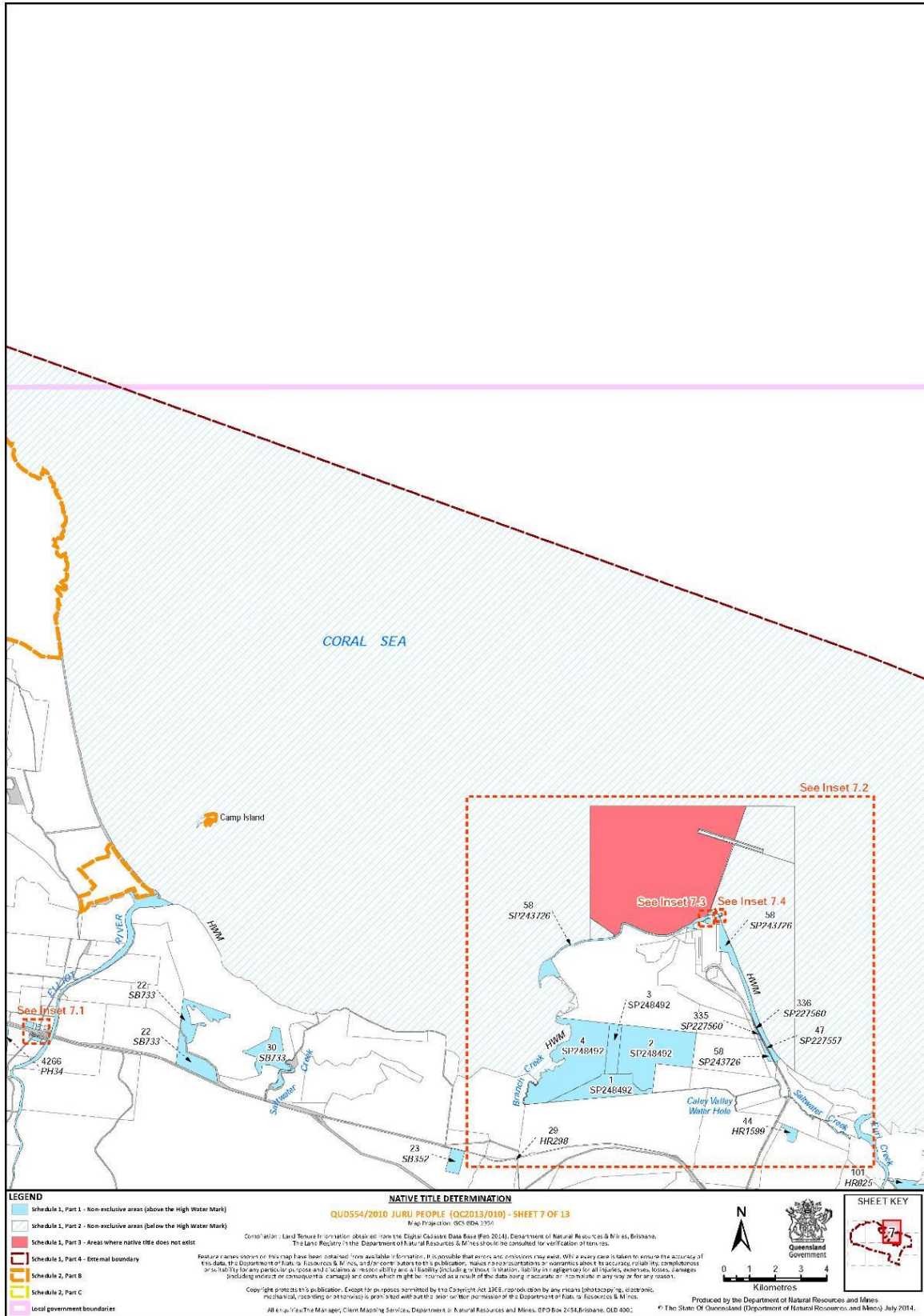
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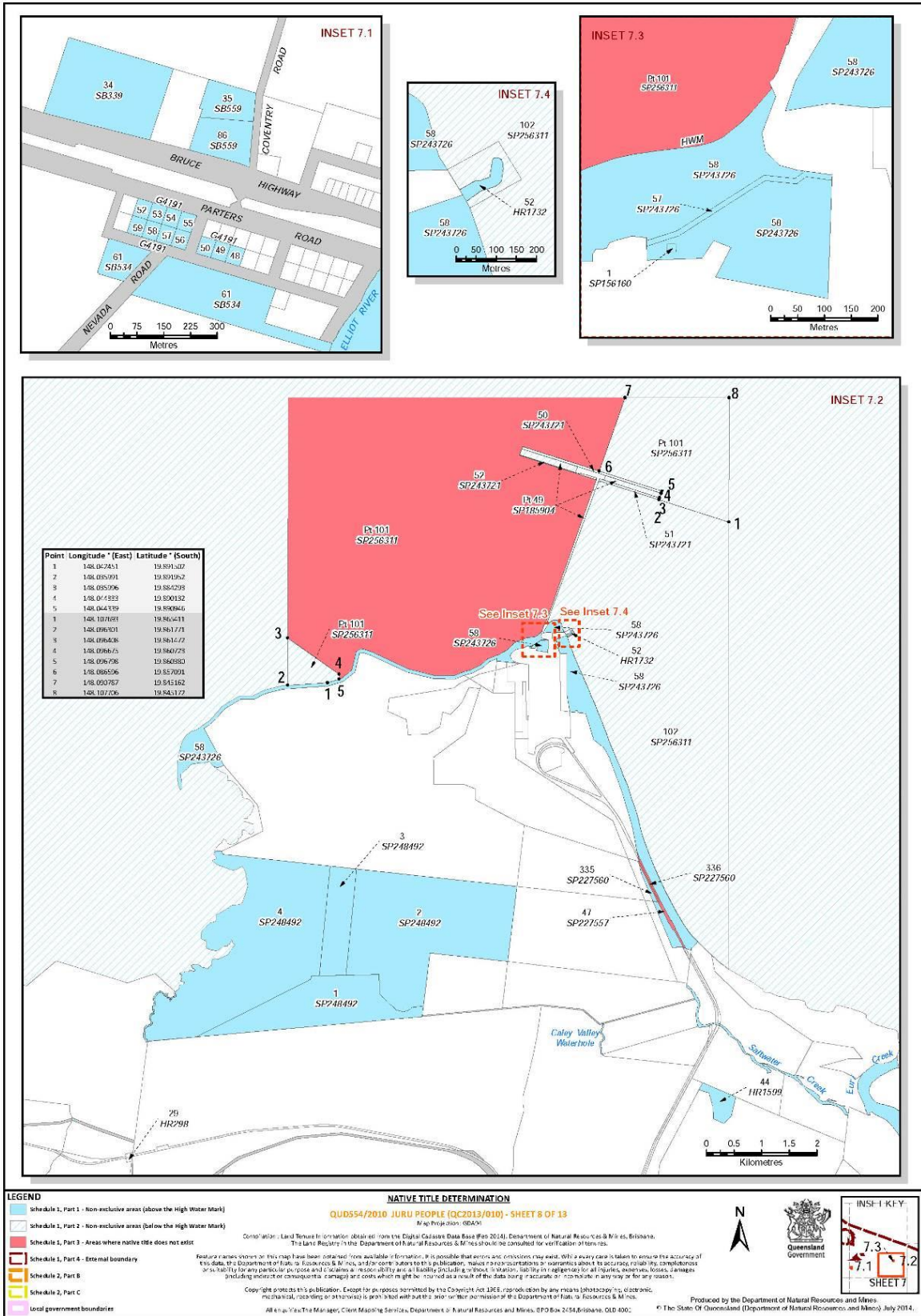
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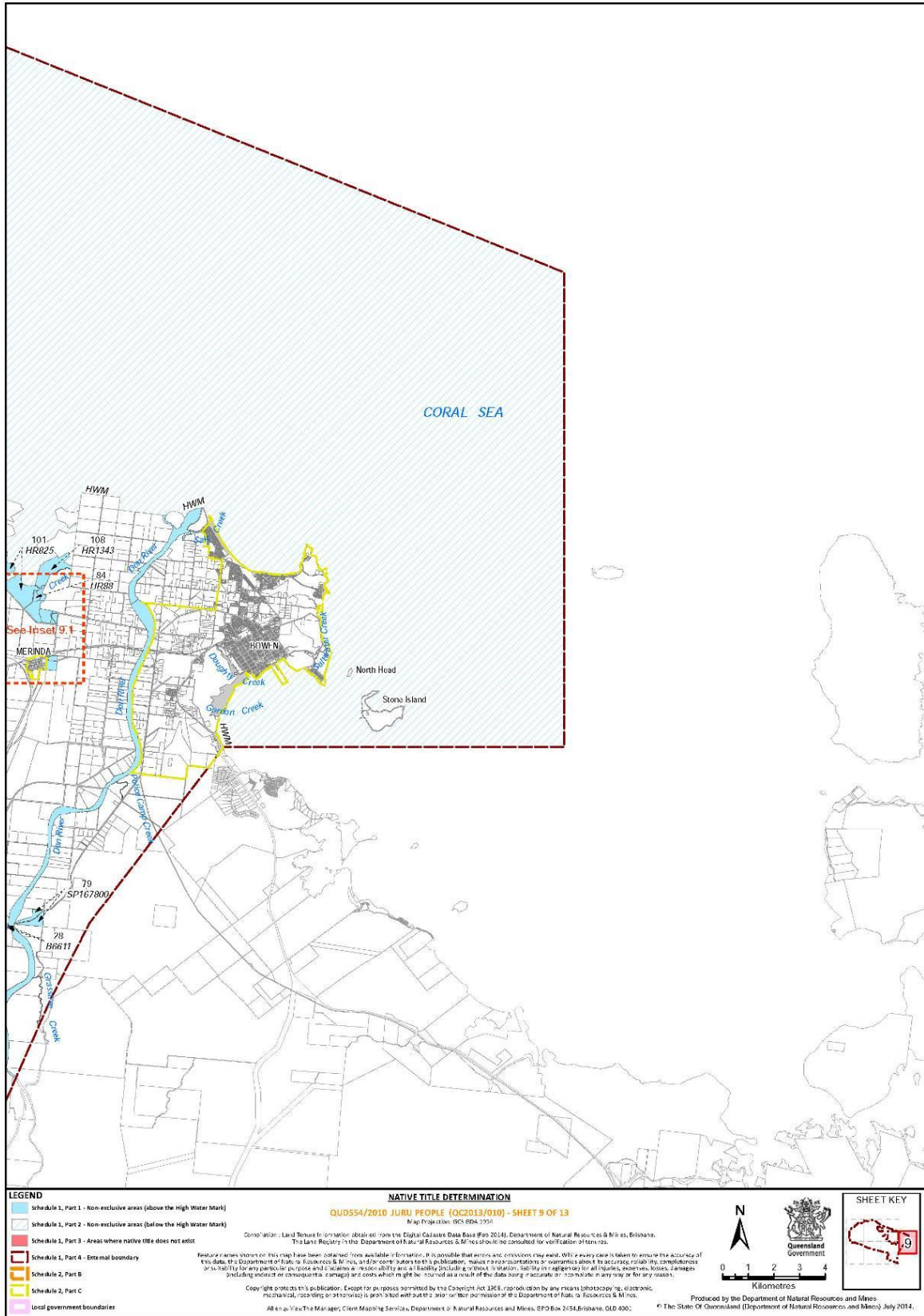
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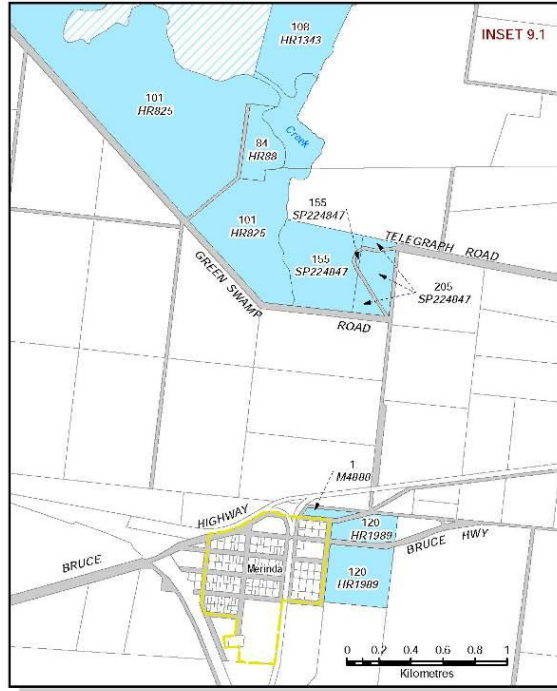
**NATIVE TITLE DETERMINATION**  
**QU0554/2010 JURU PEOPLE (QC2013/010) - SHEET 9 OF 13**  
 Map Projection: GCS\_1994\_12551

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**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**

**QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 10 OF 13**

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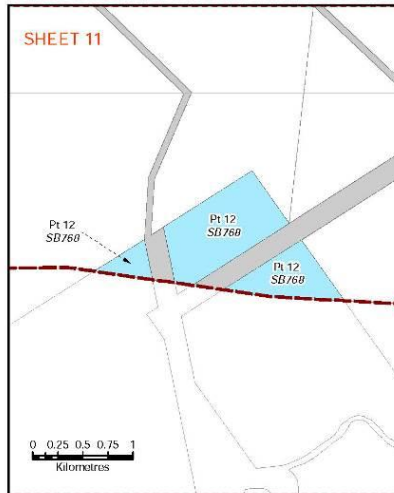
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**LEGEND**

- Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)
- Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)
- Schedule 1, Part 3 - Areas where native title does not exist
- Schedule 1, Part 4 - External boundary
- Schedule 2, Part B
- Schedule 2, Part C
- Local government boundaries

**NATIVE TITLE DETERMINATION**

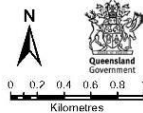
**QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 11 OF 13**  
Map Projection: EDWGS

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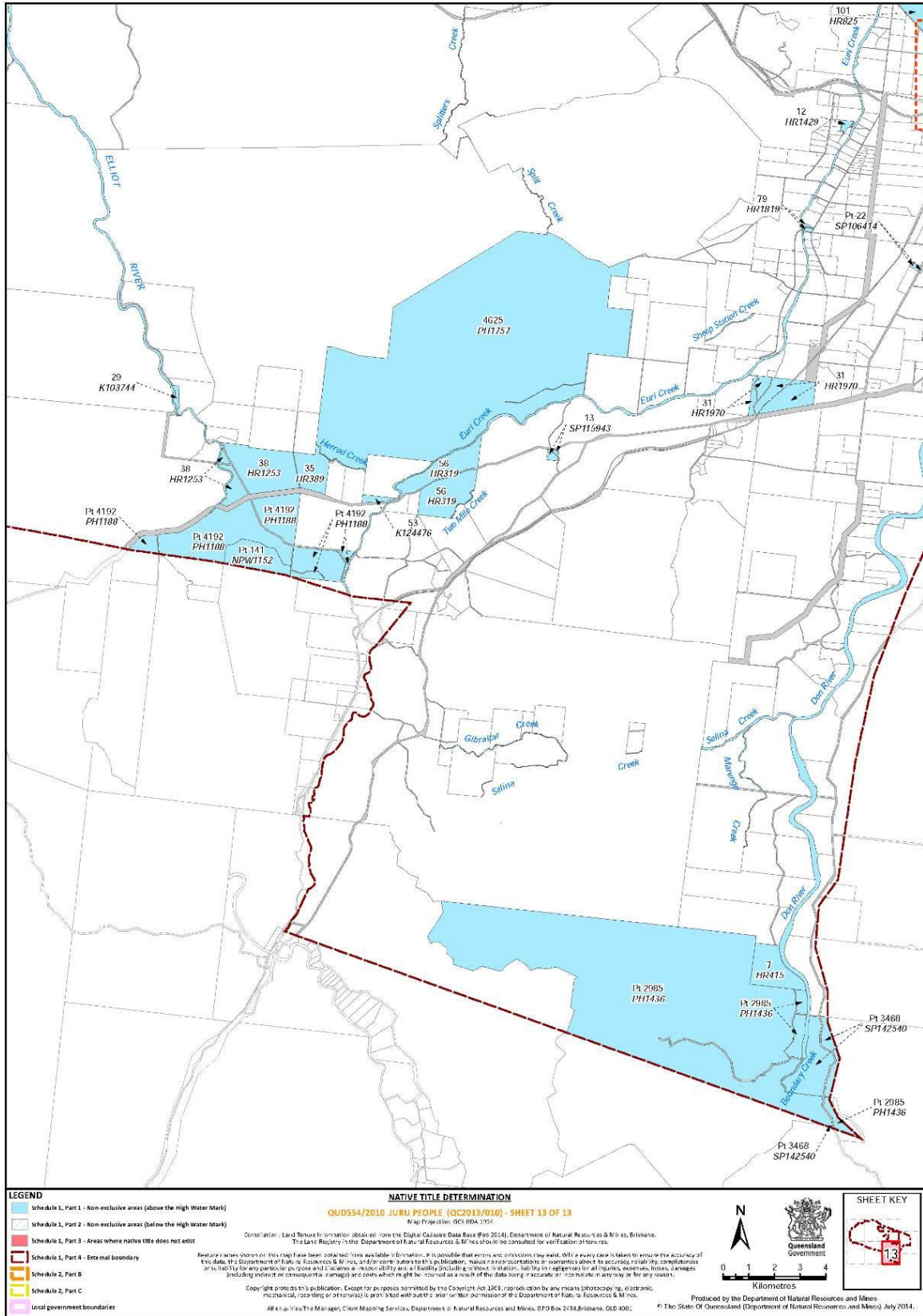
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<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: #ADD8E6; border: 1px solid black; margin-right: 5px;"></span> Schedule 1, Part 1 - Non-exclusive areas (above the High Water Mark)</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: #ADD8E6; border: 1px dashed black; margin-right: 5px;"></span> Schedule 1, Part 2 - Non-exclusive areas (below the High Water Mark)</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: #ADD8E6; border: 1px solid black; margin-right: 5px;"></span> Schedule 1, Part 3 - Areas where native title does not exist</li> <li><span style="display: inline-block; width: 15px; height: 10px; border-bottom: 2px dashed red; margin-right: 5px;"></span> Schedule 1, Part 4 - External boundary</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: #FFFF00; border: 1px solid black; margin-right: 5px;"></span> Schedule 2, Part B</li> <li><span style="display: inline-block; width: 15px; height: 10px; background-color: #FFFF00; border: 1px solid black; margin-right: 5px;"></span> Schedule 2, Part C</li> <li><span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black; margin-right: 5px;"></span> Local government boundaries</li> </ul>	<p><b>NATIVE TITLE DETERMINATION</b></p> <p><b>QUD554/2010 JURU PEOPLE (QC2013/010) - SHEET 12 OF 13</b></p> <p>Map Projection: GCS:GDA1954</p> <p><small>Compilation: Land Tenure Information obtained from the Digital Cadastre Data Base (Feb 2014). Department of Natural Resources &amp; Mines, Brisbane. The Land Registry in the Department of Natural Resources &amp; Mines should be consulted for verification of tenures.</small></p> <p><small>Feature names shown on this map have been obtained from available information. It is possible that errors and omissions may exist. While every care is taken to ensure the accuracy of this data, the Department of Natural Resources &amp; Mines, and/or contributors to this publication, makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and it is made on 'as is' basis. In addition, the Department of Natural Resources &amp; Mines, and/or contributors to this publication, disclaims any liability (including indirect or consequential damage) and costs which might be incurred as a result of the data being inaccurate or incomplete in any way or for any reason.</small></p> <p><small>Copyright prohibits this publication. Except for purposes permitted by the Copyright Act 1968, it is prohibited by any means (photocopying, electronic, mechanical, recording or otherwise) to reproduce, store, retrieve, disseminate, or otherwise use this work without the prior written permission of the Department of Natural Resources &amp; Mines.</small></p> <p><small>All rights reserved. Copyright © 2014, Department of Natural Resources and Mines, PO Box 2154, Brisbane, QLD 4002.</small></p>	<div style="text-align: center;"> <p>N</p> </div> <div style="text-align: center;"> <p>Queensland Government</p> </div> <div style="text-align: center;"> <p>Kilometres</p> </div> <div style="text-align: center;"> <p><b>SHEET KEY</b></p> </div>
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## **Schedule 2 — AREAS NOT FORMING PART OF THE DETERMINATION AREA**

The areas described below do not form part of the Determination Area.

### **Part A**

1. Land and waters within the external boundary described in Part 4 of Schedule 1, that at the time at which the native title determination application was made:

(a) were the subject of one or more previous exclusive possession acts, as defined in s 23B of the *Native Title Act 1993* (Cth) (despite the fact that the areas, or parts of them, may have been subject to earlier acts that extinguished native title); and

(b) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied,

do not form part of the Determination Area on the basis that they could not be claimed, in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. Specifically, and to avoid any doubt, the land and waters referred to in paragraph 1 above include the acts described in ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies and include, but are not limited to, the following areas:

- (a) Lot 203 on Plan SB627;
- (b) Lot 1 on Plan SP108590;
- (c) Lot 24 on Plan RP805036;
- (d) Lot 111 on Plan HR1821;
- (e) Lot 13 on Plan SP129650;
- (f) Lot 16 on Plan SP129649;
- (g) Lot 2 on Plan RP742546;
- (h) Lot 2 on Plan RP742547;
- (i) Lot 32 on Plan SP220001;
- (j) Lot 101 on Plan SP122357;
- (k) Lot 105 on Plan HR1509;
- (l) Lot 10 on Plan SP234072;

- (m) Lot 10 on Plan SP237689;
- (n) Lot 111 on Plan SP241774;
- (o) Lot 112 on Plan SP241774;
- (p) Lot 11 on Plan SP234072;
- (q) Lot 121 on Plan SP225046;
- (r) Lot 151 on Plan SP234999;
- (s) Lot 161 on Plan SP122361;
- (t) Lot 17 on Plan SP234073;
- (u) Lot 1 on Plan HR1450;
- (v) Lot 1 on Plan RP729680;
- (w) Lot 21 on Plan SP129652;
- (x) Lot 2 on Plan HR382;
- (y) Lot 2 on Plan K103501;
- (z) Lot 2 on Plan K103505;
- (aa) Lot 30 on Plan SP220002;
- (bb) Lot 31 on Plan SP237688;
- (cc) Lot 33 on Plan SP225043;
- (dd) Lot 36 on Plan HR1949;
- (ee) Lot 41 on Plan SP237688;
- (ff) Lot 4 on Plan SP220420;
- (gg) Lot 52 on Plan SP122355;
- (hh) Lot 5 on Plan SP220420;
- (ii) Lot 62 on Plan SP122355;
- (jj) Lot 6 on Plan RP737363;
- (kk) Lot 71 on Plan SP122356;

- (ll) Lot 7 on Plan SP220411;
- (mm) Lot 81 on Plan SP122356;
- (nn) Lot 82 on Plan SP122356;
- (oo) Lot 9 on Plan SP220380;
- (pp) Lot 9 on Plan SP220411;
- (qq) Lot 11 on Plan SP237690;
- (rr) Lot 1 on Plan RP748511;
- (ss) Lot 1 on Plan RP748512;
- (tt) Lot 1 on Plan RP748625;
- (uu) Lot 1 on Plan RP748626;
- (vv) Lot 1 on Plan RP748627;
- (ww) Lot 4 on Plan SP194889;
- (xx) Lot 50 on Plan HR1931;
- (yy) Lot 56 on Plan SP243724;
- (zz) Lot 5 on Plan SP194888;
- (aaa) Lot 6 on Plan SP225044;
- (bbb) Lot 8 on Plan SP225045; and
- (ccc) that part of Lot 64 on Plan CP860288 that was formerly described as Lot 64 on Plan SB420.

3. Specifically, and to avoid any doubt, the land and waters described in paragraph 1 above include the land or waters upon which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established, or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and / or s 21 of the *Native Title (Queensland) Act 1993* (Qld) applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth), and include but are not limited to that part of Lot 49 on SP185904 that was formerly described as portion 49 on HR1647 (Abbot Point facility) and that part of Lot 405 on Plan SB678 described by the following coordinates (Home Hill sewerage ponds and bypass):

Point	Longitude (East)	Latitude (South)
1	147.4308079	19.6839157
2	147.4319729	19.6840049

Point	Longitude (East)	Latitude (South)
3	147.4319157	19.6843518
4	147.4308123	19.6842416

### Part B

Land and waters specifically excluded from QUD554/2010 Juru People native title determination application (QC2013/010) filed on 7 March 2014, being land and waters subject to:

- native title determination application QUD6244/1998 Birriah People (QC1998/012), as accepted for registration by the National Native Title Tribunal on 14 August 2007; and
- the determination made by the Federal Court of Australia on 26 July 2011 in QUD6249/1998 Juru (Cape Upstart) People.

### Part C

Land and waters within the following boundary description (the Bowen urban area):

Commencing at the western most corner of Lot 233 on RP705709 being a point on the right bank of Salt Creek, then generally north easterly along the right bank of that creek downstream to the intersection with the Coral Sea being a point on the High Water Mark, then generally north-easterly, south easterly, easterly, northerly, southerly, north westerly and south-westerly along the High Water Mark, crossing the mouths of any waterways between the seaward extremities of each of the opposite banks of each such waterways to the north easternmost corner of Lot 308 on SP118066, then generally south easterly, south westerly and north westerly along the boundaries of that lot and western boundary of Lot 309 on SP118066 to again intersect the High Water Mark, then generally south westerly and generally southerly to a point on the eastern boundary of Lot 313 on HR2020 intersected by a line passing through the following coordinate points:

Longitude (East)	Latitude (South)
148.230513	20.046626
148.183443	20.108314

then south westerly along that line to a point on the southern boundary of Lot 73 on HR180 intersected by that aforementioned line, then westerly along the southern boundaries of that lot, Lot 58 on HR180 and Lot 329 on SP151025 to the eastern most corner of Lot 557 on SP240434; then southerly and westerly along the boundaries of that lot, the southern boundary of Woodhouse Road, then by a line to the south-eastern corner of Lot 1 on RP703857, then westerly along the southern boundary of that lot to its western most corner being the right bank of the Don River, then generally northerly along the right bank of that river downstream to the intersection with the prolongation westerly of the centreline of Richmond Road, then easterly along that prolongation to the centreline of

Richmond Road, then generally easterly along that centreline to the intersection with the centreline of Mount Nutt Road, then generally northerly along that centreline to a prolongation easterly of the northern most boundary of Lot 3 on SP212250, then generally westerly along that prolongation and the northern boundary of that lot, the northern boundaries of Lot 12 on RP896364 and Lot 31 on RP896355 to the north western most corner of that lot, then generally northerly along the eastern and northern boundaries of Lot 85 on H826, Lot 157 on HR380, the centreline of Murray Avenue, the eastern boundary of Lot 6 on RP715422 and the western boundary of Lot 233 on RP705709 back to point of commencement.

- Land and waters within the following boundary description (the Home Hill urban area):

Commencing at the northernmost corner of Lot 13 on RP702844 being the intersection with the right bank of the Burdekin River, then generally south-easterly along the north eastern boundary of that lot and Lots 26 on SP185660, 24 on SP100968, 2 on SP146703, 11 on SP164915, 4 on RP865845, 159 on SB104, 2 on RP733026 and 4 on SP123353, then generally south westerly along the eastern boundaries of that lot, Lot 2 on RP706463 and Lot 168 on SP151038 and onwards to the centreline of Darvenzia Road, then generally westerly, southerly and westerly along the centrelines of Darvenzia Road, Woods Road and Bojack Road to the intersection with the northern prolongation of the eastern boundary of Lot 385 on SB599, then southerly along that prolongation and generally south westerly along the northern boundaries of Lot 405 on SB678 and Lot 384 on SB738 to its western most corner, then by a prolongation of that northern boundary to an eastern boundary of Lot 71 on SP116364, then generally north westerly along the eastern boundary of that lot to intersect with a prolongation north easterly of the southern boundary of Lot 2 on RP729208, then south westerly along that prolongation, the southern boundaries of Lot 2 on RP729208 and Lot 1 on RP729208, then generally north westerly along the eastern boundary of Lot 3 on RP723689 and southern boundary of Lot 2 on RP731926, then by a line to the intersection of the centreline of Iona Road, then generally north westerly along the centrelines of that road, Hurney Road and Marshall Road, to its intersection with Kirknie Road, then by a line to the easternmost corner of Lot 189 on SB100, then north westerly along its eastern boundary to the right bank of the Burdekin River, then generally north easterly by that right bank downstream to the point of commencement.

- Land and waters within the following boundary description (the Merinda urban area):

Commencing at the intersection of the centreline of Houlder Street and the southern boundary of the Bruce Highway, then northerly along a prolongation of the centreline of Houlder Street to its intersection with the northern boundary the Bruce Highway, then generally north easterly along that northern boundary and the northern boundary of Linley Street to the westerly prolongation of the centreline of Linley Street (being a line extending westerly from the intersection of Linley Street and Champion Street); then along that prolongation and that centreline to the centreline of Champion Street, then generally southerly along

the centreline of that street to the intersection with the centreline of Lascelles Street, then westerly along the centreline of that street and onward to the western boundary of Lot 16 on SP235073 (the Collinsville Newlands branch railway), then generally southerly along the western boundary of that lot to the south eastern corner of Lot 107 on SP178747, then westerly along the southern boundary of that lot to the south-eastern corner of Lot 3 on AP15663, then generally northerly along the eastern boundaries of that lot to its north eastern most corner, then onward to the centreline of the eastern end of Jackson Street, then westerly along that centreline to its intersection with Houlder Street; then generally northerly along the centreline of Houlder Street back to the point of commencement.

**Schedule 3 — NATIVE TITLE HOLDERS**

1. The native title holders are the Juru People. The Juru People are the descendants of one or more of the following people:
  - (a) Emily Pickard;
  - (b) Con Lymburner
  - (c) Nellie Steel / Stell;
  - (d) Lena Taylor;
  - (e) William Morrell and his wife Bessie Rook;
  - (f) Jinnie Ross;
  - (g) Eliza Lampton (mother of Arthur Lampton); or
  - (h) Rosie Wake (mother of William and Emma Nicol).

#### **Schedule 4 — OTHER INTERESTS IN THE DETERMINATION AREA**

The nature and extent of the other interests in relation to the Determination Area are the following as they exist as at the date of the determination:

1. The rights and interests of the parties under the following agreements:
  - (a) Carol Prior, Raymond Lampton, Colleen Power, Raylene Oui, Tanya Chatfield, Iris Glenbar, Raymond Gaston, and Lenora Aldridge on their own behalf and on behalf of the Juru People, the Kyburra Munda Yalga Aboriginal Corporation RNTBC ICN 7581 (in its capacity as the prescribed body corporate), the State of Queensland, and the Kyburra Munda Yalga Aboriginal Corporation RNTBC ICN 7581 (in its capacity as the registered native title body corporate for the ILUA Area) as parties to the Juru protected area indigenous land use agreement (body corporate agreement), which was authorised by the native title claim group on 19 October 2013 and executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation RNTBC ICN 7581 (in its capacity as the prescribed body corporate) on 24 June 2014, and the State of Queensland on 18 June 2014 and 24 June 2014, and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the registered native title body corporate;
  - (b) the Juru People and Ergon Energy indigenous land use agreement QI2014/010 dated 10 February 2014;
  - (c) the Juru People and Local Government indigenous land use agreement QI2014/011 dated 10 February 2014;
  - (d) the Juru People and Kookaburra Terrace indigenous land use agreement QI2014/013 dated 13 February 2014;
  - (e) the Hancock Alpha Coal Project (Port Area Native Title Group) indigenous land use agreement QI2011/019 registered on the Register of Indigenous Land Use Agreements on 23 March 2012;
  - (f) the Port of Abbot Point and Abbot Point State Development Area indigenous land use agreement QI2011/063 registered on the Register of Indigenous Land Use Agreements on 10 May 2012;
  - (g) the Juru People and Adani Abbot Point Terminal indigenous land use agreement QI2013/036 registered on the Register of Indigenous Land Use Agreements on 20 January 2014;
  - (h) Juru People/Mt Aberdeen indigenous land use agreement executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation ICN 7581 on 24 June 2014, and Stephen John Norman on 25 June 2014, and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the registered native title body corporate;
  - (i) Juru People/Boundary Creek indigenous land use agreement executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation ICN 7581 on 24 June 2014, and Scott Joseph Jones and Sonia Anne Jones on 1 July 2014, and that agreement once it becomes registered



as a body corporate ILUA following execution of the agreement by the registered native title body corporate;

- (j) Juru People/Greentop indigenous land use agreement executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation ICN 7581 on 24 June 2014, and John Alexander Williams and Merrilyn Jean Williams on 4 July 2014, and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the registered native title body corporate;
  - (k) Juru People/Pretty Bend indigenous land use agreement executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation ICN 7581 on 24 June 2014, and Peter Leonard Dahl and Londa Cameron Dahl on 8 July 2014, and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the registered native title body corporate; and
  - (l) Juru People/Weston Vale indigenous land use agreement executed by Raylene Oui, a member of the Applicant, on 24 June 2014, the Kyburra Munda Yalga Aboriginal Corporation ICN 7581 on 24 June 2014, and Neville John Philipson, Leonie Gale Philipson, Dale Kelvin Sibson, Kelvin Roy Sibson, Lynette Estelle Sibson, Craig Lynton Wight, Mark Lynton Wight, Rachel Gay Wight and Robert Lynton Wight on 8 July 2014, and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the registered native title body corporate.
2. The rights and interests of Telstra Corporation Limited ACN 051 775 556:
- (a) as the owner or operator of telecommunications facilities installed within the Determination Area;
  - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
    - (i) to inspect land;
    - (ii) to install and operate telecommunication facilities; and
    - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
  - (c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties; and
  - (d) under any licences, access agreements or easements relating to its telecommunications facilities in the Determination Area.
3. The rights and interests of Ergon Energy Corporation ACN 087 646 062:
- (a) as the owner and operator of any "Works" as that term is defined in the *Electricity Act 1994* (Qld) within the Determination Area;

- (b) as a distribution entity and the holder of a distribution authority under the *Electricity Act 1994* (Qld);
  - (c) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld) including:
    - (i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date on which these orders are made;
    - (ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph; and
    - (iii) to inspect, maintain and manage any Works in the Determination Area.
4. The rights and interests of Aurizon Network Pty Ltd ACN 132 181 116 in relation to rail transport infrastructure on Lot 58 on Plan SP243726 under the *Transport Infrastructure Act 1994* (Qld) and under the Permit to Occupy entered into between Aurizon Network Pty Ltd and North Queensland Bulk Ports Corporation Limited ACN 136 880 218 dated 6 May 2014.
  5. The rights and interests of Hancock Coal Infrastructure Pty Ltd ACN 132 394 122 as preferred developer of Terminal 3 at the Port of Abbot Point, under the T3 Project Framework Agreement dated 2012 between North Queensland Bulk Ports Corporation Limited ACN 136 880 218 and Hancock Coal Infrastructure Pty Ltd.
  6. The rights and interests of Energy Minerals Pty Ltd ACN 010 031 464 as the holder of Exploration Permit for Minerals 15485 granted under the *Minerals Resources Act 1989* (Qld).
  7. The rights, interests, functions and powers of North Queensland Bulk Ports Corporation Limited ACN 136 880 218:
    - (a) as the holder of leases in perpetuity in relation to Lot 49 on Plan SP185904, Lot 50 on Plan SP243721, Lot 51 on Plan SP243721, Lot 52 on Plan SP243721, Lot 52 on Plan HR1732, Lot 58 on Plan SP243726, Lot 335 on Plan SP227560, and Lot 101 on Plan SP256311, and the rights and interests of any of its sub-lessees in relation to any of those areas; and
    - (b) as the holder of a permit to occupy in relation to Lot 102 on Plan SP256311; and
    - (c) as a port authority under the *Transport Infrastructure Act 1994* (Qld).
  8. The rights and interests of the State of Queensland, the Commonwealth of Australia, the Great Barrier Reef Marine Park Authority, or any other person, existing by reason of the force and operation of the Laws of the State and the Commonwealth, including but not limited to those existing by reason of the following legislation or any regulation, statutory instrument, declaration, plan, authority, permit, lease or licence made, granted, issued or entered into under that legislation:
    - (a) the *Fisheries Act 1994* (Qld)
    - (b) the *Great Barrier Reef (Declaration of Amalgamated Marine Park Area) Proclamation 2004* (Cth);
    - (c) the *Great Barrier Reef Marine Park Act 1975* (Cth);
    - (d) the *Great Barrier Reef Marine Park Regulations 1983* (Cth);
    - (e) the *Great Barrier Reef Marine Park Zoning Plan 2003* (Cth);

- (f) the *Land Act 1994* (Qld);
  - (g) the *Mineral Resources Act 1989* (Qld); and
  - (h) the *Transport Infrastructure Act 1994* (Qld).
9. The rights and interests of the State of Queensland, Burdekin Shire Council and Whitsunday Regional Council to access, use, operate, maintain and control the dedicated roads in the Determination Area and the rights and interests of the public to use and access the roads.
10. The rights and interests of Burdekin Shire Council and Whitsunday Regional Council:
- (a) under their local government jurisdiction and functions under the *Local Government Act 2009* (Qld), under the *Land Protection (Pest and Stock Route Management Act 2002* (Qld) and under any other legislation, for that part of the Determination Area within the area declared to be their respective local government area;
  - (b) as the:
    - (i) lessor under any leases which were validly entered into before the date on which these orders are made and whether separately particularised in these orders or not;
    - (ii) grantor of any licences or other rights and interests which were validly granted before the date on which these Orders were made and whether separately particularised in these orders or not;
    - (iii) holder of any estate or interest in land, as trustee of any reserves, that exist in the Determination Area;
  - (c) as the owner and operator of infrastructure, and those facilities and other improvements located in the Determination Area validly constructed or established on or before the date on which these orders are made, including but not limited to:
    - (i) undedicated but constructed roads except for those not operated by Council;
    - (ii) water pipelines and water supply infrastructure;
    - (iii) drainage facilities;
    - (iv) watering point facilities;
  - (d) to enter the land for the purposes described in paragraphs (a), (b) and (c) above by their employees, agents or contractors to:
    - (i) exercise any of the rights and interests referred to in paragraph 10 above;
    - (ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in paragraph (c) above;
    - (iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.
11. The rights and interests of members of the public arising under the common law, including but not limited to the following:
- (a) any subsisting public right to fish; and

- (b) the public right to navigate.
12. The rights under the international right of innocent passage.
  13. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (Queensland) Act 1993* (Qld) as at the date of this determination, any existing public access to, and enjoyment of, the following places in the Determination Area:
    - (a) waterways;
    - (b) beds and banks or foreshores of waterways;
    - (c) coastal waters;
    - (d) beaches;
    - (e) stock routes; and
    - (f) areas that were public places at the end of 31 December 1993.
  14. Any other rights and interests:
    - (a) held by the State of Queensland or Commonwealth of Australia; or
    - (b) existing by reason of the force and operation of the Laws of the State and the Commonwealth.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY  
GENERAL DIVISION**

**QUD 554 of 2010**

**BETWEEN:           RAYMOND LAMPTON, RAYMOND GASTON, COLLEEN  
POWER, RAYLENE OUI, TANYA CHATFIELD, IRIS  
GLENBAR, LENORA ALDRIDGE AND VINCENT  
MUNDRABY ON BEHALF OF THE JURU PEOPLE  
Applicant**

**AND:                 STATE OF QUEENSLAND & ORS (ACCORDING TO THE  
SCHEDULE)  
Respondent**

**JUDGE:             RARES J**

**DATE:              11 JULY 2014**

**PLACE:             BOWEN**

**REASONS FOR JUDGMENT**

1           The Court is sitting today in Juru country to recognise and acknowledge that the Juru people are the traditional owners of lands and waters extending from the coast near Home Hill, along the Burdekin River in the north-west, south to the head of the Don River, east towards Bowen, and approximately 20 kilometres seaward of the coastline in the Coral Sea. These lands and waters include those around **Guthalungra**. That is the language name for the area that Captain James Cook called Cape Upstart when he sailed *HMS Endeavour* along the East Coast of our nation in 1770. On 26 July 2011, I made a consent determination that recognised the Juru People's native title rights and interests over Cape Upstart and its environs: *Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2)* [2011] FCA 819. I will repeat below some of those reasons that are also relevant for today's reasons.

2           All of the parties to these proceedings signed the agreement for today's consent determination that was filed on 27 June 2014. That is the basis for the orders that I will make today under the s 87A of the *Native Title Act 1993* (Cth) that will recognise the Juru people's native title rights and interests over a significant, but not the entire, area of the lands and waters claimed in the present application.

### **The nature of a consent determination**

3           A consent determination of native title is a very important means of the Court establishing authoritatively, for the whole Australian community, that an indigenous people has particular, legally enforceable, rights and interests in identified lands and waters. I will repeat what I said in the *Cape Upstart* case [2011] FCA 819 at [3]-[5] to explain the nature of what the Court is doing today.

4           The recognition and protection of native title by our nation's common law in the landmark decision of *Mabo v State of Queensland [No 2]* (1992) 175 CLR 1 and by the Parliament of the Commonwealth when it passed the Act enabled indigenous Australians and their descendants to satisfy the very human desire to identify with, enjoy and feel a part of their cultural heritage on land and waters with which they have, and feel, a spiritual and emotional connection. When the Court makes an order for a determination of native title, it exercises the judicial power of the Commonwealth, on behalf of the whole of the Australian community, to recognise the indigenous claimants' rights and interests as having the force of law in both social systems: cf *Long v Northern Territory of Australia* [2011] FCA 571 at [6] per Mansfield J.

5           A determination by the Court that native title exists serves many important purposes, as the preamble to the Act acknowledges. These include the recognition of the entitlement of indigenous Australians to enjoy rights and interests in their land and waters, in accordance with their peoples' traditional laws and customs. Those rights and interests were not previously recognised, following European settlement and the displacement and frequent dispossession of indigenous Australians. However, from today, the rights and interests of the Juru people will be protected by the force of law so that the current and future descendants of the original indigenous inhabitants before 1861 will enjoy rights and interests that their ancestors had.

6           The Court has not had a hearing of the applicant's claim on its merits. Even so, the Court has an important power to make a determination that native title over land and waters exists under s 87A of the Act once all of the parties have signed a written agreement, and provided that certain other conditions are met. In these proceedings, the State of Queensland has consented to the making of the determination of native title. Before the Court can make the orders recognising native title, it must be satisfied that the consent determination has been reached after proper consideration by the parties, particularly the State, of all of the matters

that the Act requires be established. This consensual process depends upon the executive government of each State and Territory in whose jurisdiction the claim is made taking an active role in the litigation. The government must scrutinise carefully any claim for native title in order to seek to protect the interests of the whole community that it represents: *Munn (for and on behalf of the Gunggari People) v Queensland* (2001) 115 FCR 109 at 115 [29] per Emmett J. I will now deal with the legal and factual issues that I must decide in order to make the consent determination.

7           The Court has a special power in proceedings under the Act to make an order in, or consistent with, the terms of the parties' agreement to recognise native title rights and interests in land and waters. Here, I have ordered that there will be a hearing at a future time of separate questions concerning some lands in township areas and some other rural areas over which the applicant seeks a determination of native title. Section 87A of the Act gives the Court power to make a consent determination in relation to the remaining part of the proceedings so as to give effect to the agreement that all the parties have now reached (s 87A(1), (4), (5) and (6)). I am satisfied that this is what should be done for the following reasons.

8           The discretionary limitations ordinarily placed on the Court's exercise of its power to make a declaration are not necessarily apposite to the issue raised by s 87A(4)(b) and 5(b), namely, whether "it would be appropriate" to make a consent determination. The power must be exercised having regard to the beneficial purpose of the Act and its moral foundation that is declared in the words of its preamble: *Northern Territory of Australia v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442 at 461 [63] per Wilcox, French and Weinberg JJ.

9           In making a determination that native title exists, even by consent and without a hearing, the Court must set out details of the matters mentioned in s 225 (s 94A). Accordingly, if the Court is asked to make a consent determination, it must be satisfied that there is sufficient evidence before it that would make it appropriate to do so (s 87A(4) and (5)). However, it is not necessary to tender evidence as if the consent proceedings were still contested. That is not the purpose for which such evidence is required. Rather, as the Chief Justice of Australia explained, it may be necessary to reassure the Court that a proper basis exists for the determination because "... the agreement is rooted in reality" (The Hon R.S. French AC, *Native Title – A Constitutional Shift?*, published in: H.P. Lee and P. Gerangelos

(ed), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, The Federation Press, 2009, pp 126-154).

10           What evidence will be sufficient will vary from case to case, but it must show that the orders have a substantive and real foundation. Anthropological evidence is often tendered so as to assist the Court in arriving at this degree of satisfaction. The evidence is relevant for the Court to satisfy itself that the parties had a real basis to arrive at their consent. Indeed, in the first place, because of its cogency, the same evidence is likely to have induced the respondents to consent to the making of the determination of native title.

### **Background**

11           The Juru people authorised Carol Prior, Raymond Lampton, Colleen Power, Raylene Oui, Tanya Chatfield, Iris Glenbar, Raymond Gaston and Lenora Aldridge to be the applicant to seek this consent determination under the Act. In the *Cape Upstart* consent determination the apical ancestors of the Juru people were Emily Pickard, Con Lymburner, Nellie Steel/Stell, Lena Taylor, William Morrell and his wife, Bessie Rook, Jinnie Ross, and Eliza Lampton (the mother of Arthur Lampton). At meetings on 19 and 20 October 2013, the Juru people authorised, under s 251B of the Act, the addition of a further apical ancestor, Rosie Wake, to the persons whom I have just mentioned. As a result of those meetings, an amended form 1 application was filed. That changed the description of the apical ancestors and substituted the current members of the application: *Smallwood v State of Queensland* [2014] FCA 331.

12           Recently, on 27 June 2014, Ms Prior applied to be joined as a respondent. Like Dowsett J, I accept that Ms Prior was seeking to act in accordance with what she considered were the best interests of the Juru people. Ms Prior claimed that she wished to investigate, and possibly challenge, the appropriateness of including Lena Taylor as an apical ancestor in the description of the claim group. Lena Taylor has been included as an apical ancestor in the *Cape Upstart* matter and in this one. Dowsett J decided that Ms Prior had accepted her authorisation to act as a member of the applicant on the basis that Lena Taylor was properly included as an apical ancestor. Because Ms Prior was not prepared to act on that basis, his Honour found that she was acting inconsistently with the express terms of her authorisation to act as a member of the applicant. Dowsett J considered that this meant that she was unwilling to act as a member of the applicant in accordance with the terms of the authorisation resolution passed at those claim group meetings. On 7 July 2014, his Honour removed



Ms Prior as an applicant and substituted Mr Vincent Mundraby under s 66B of the Act and the terms of that authorisation resolution.

13 This turn of events was very unfortunate. One reason for Ms Prior's sense of grievance was that, although she was a member of the applicant, the Land Council or the solicitors for the applicant had refused to give her a copy of the connection reports. I agree with what Dowsett J said in his oral reasons given on 7 July 2014 about this aspect. In ordinary circumstances, as a member of the applicant, Ms Prior was entitled to receive a copy as of right. She was one of the persons comprising the applicant, being the party to the litigation, who had to make decisions about its conduct. Like Dowsett J, I accept that there may be circumstances where some confidential information might need to be redacted or withheld from a connection report. However, in the usual circumstances of native title proceedings, it is difficult to conceive of any legitimate justification for a representative body or the applicant's solicitor to refuse to give each member of an applicant his or her own copy of material as fundamental to the conduct of native title proceedings as a draft or final version of a connection report that is proposed to be used for the purpose of the conduct of the proceedings.

14 The Juru are **gudjuda**, being their language name for saltwater people. The **gubulla munda**, or carpet snake, is their totem, based on their dreaming story. One of the elders, Renarta Prior, explained in her evidence that the Juru people believe that the gubulla munda came from the ocean and moved through the waters out to the Great Barrier Reef. They believe that the gubulla munda left his droppings, and that these created the islands in the determination area. They also believe that the snake rested on dry land where he sweated, which led to the formation of rivers and creeks. Next, the dreaming story continues with the snake returning to the sea where he shed his skin, thus creating the reefs with their many colours. Ms Prior said that the Juru take care of the reefs because they are part of their spiritual dreaming.

15 As I described in the *Cape Upstart* judgment [2011] FCA 819 at [8]-[10], [15]-[18] and [23], Dr Sandra Pannell compiled a detailed draft anthropological connection report. Later, in 2011, she made some minor amendments to, and prepared an executive summary of, her report. Dr Pannell opined that the expression 'Juru' broadly denoted three elements of social and cultural identity, *first*, a traditional way of speaking, *secondly*, a bloodline connection to Juru country through descent from an Aboriginal apical ancestor, and, *thirdly*, a

defined area of land and waters. She opined that the bloodline law was "...foundational law ... acknowledged and observed" by both the Juru people and the wider Birri Gubba society of which they were a part: *Prior* [2011] FCA 819 at [8]-[10]. Dr Pannell opined that Juru people regarded bloodlines as being based on biological kinship connections in contrast to 'adoptive' or 'step' relations.

16           Subsequently, North Queensland **Land Council** commissioned Dr Kevin **Mayo**, another anthropologist, to provide a report as to whether four particular family groups were Juru according to descent or, if relevant, adoption under the claim group's laws and customs. Relevantly, he considered whether the Nicol/Power family group's claims, as descendants of **Rosie Wake**, were also capable of being included as part of the claim group. I discussed other aspects of his report, and Dr Pannell's review of part of it, in *Prior on behalf of the Juru People v State of Queensland* [2014] FCA 332.

17           Dr Mayo suggested that the claim group ought to consider including Rosie Wake as an apical ancestor of its membership. He said that he based this suggestion on available archival records that indicated an association of Rosie Wake's descendants with the claim area dating from at least the end of the 19<sup>th</sup> century, together with statements by her descendants and acknowledgement by some members of Aboriginal families also associated with the claim area. However, Dr Mayo's report did not express a final opinion about the anthropological position of Rosie Wake as an apical ancestor of the persons entitled to comprise the claim group for the Juru people's land and waters. The evidence is not very clear, let alone conclusive, as to whether Rosie Wake herself was Juru within the bloodline law. Nonetheless, after considering Dr Mayo's qualified report, the authorisation meeting held in October 2013 resolved to accept that Rosie Wake should be added as an apical ancestor.

18           The State and all the parties have also agreed to the consent determination proceeding on the basis that the descendants of Rosie Wake are part of the Juru people claim group entitled to the native title rights and interests that will be recognised today. I am satisfied that this is an appropriate foundation for the Court to give effect to the parties' agreement that Rosie Wake ought to be included as an apical ancestor of the Juru people.

19           I have also considered the evidence of members of the claim group, Renarta Prior, Carol Prior, Cecilia Prior, Diana Ross, Raylene Oui, Jeanette Pryor, William Morrell and James Gaston, together with the reports of Dr Pannell and Dr Mayo. This evidence included

material identifying interactions between the indigenous peoples and Europeans that began with Captain Cook's voyage and have continued since. There are substantial recorded accounts that, in 1861, white settlers began displacing the Aboriginal inhabitants in this part of North Queensland. But, there had been earlier, more peaceful, contacts between the indigenous inhabitants and white sailors near Cape Upstart in 1839 and 1843.

20           Interestingly, Dr Pannell set out what happened to a shipwrecked sailor, James Morrill, whose ship was lost near Cape Upstart in 1846. He was taken in by, and lived with, a number of tribes until 1863. He learnt eight of their different dialects as he moved among the tribes. He attended gatherings of tribes, including one occasion when he estimated over 1,000 people were at a corroboree. Morrill recorded the 'native name' of the Burdekin River as 'Mall Mall'. He said that, for a time, he had lived with a tribe in the area of Port Denison. That was the previous name of the town of Bowen, where the Court sits today.

21           Dr Pannell opined, on the basis of her and others' research, that the rights and interests in the land and waters that are claimed by the Juru people are possessed by them under their traditional laws that they acknowledge and the traditional customs that they observe. She concluded that the Juru people have continued, from before the time of European settlement in 1861 to the present, to acknowledge and observe traditional laws and customs and that, by those laws and customs, the Juru people have a connection with the land and waters the subject of the proposed determination.

### **Jurisdictional findings**

22           A determination of native title affects the status of the land and waters to which it relates because it creates rights and interests in them that, subject to the Act and the terms of the determination itself, the holders can exercise forever after against any other person, including the Commonwealth and the State: cf *Alyawarr* 145 FCR at 463 [70]. Because a consent determination, just as a determination after a fully contested hearing, creates this status, the Court must be careful to ensure that the State, as representative of the community generally, has itself played an active role in carefully evaluating the material and evidence on which its consent is based.

23           The State's evidence demonstrated that it has undertaken that responsibility appropriately. It caused Dr Pannell's report to be reviewed by both a senior anthropologist employed by the Aboriginal and Torres Strait Islander Land Services branch of the Department of Natural Resources and Mines and a principal lawyer employed by Crown

Law. That review had the purpose of enabling the State to determine whether it considered that there was a credible basis for the claims made by the applicant in those proceedings and whether the requirements of s 223(1) of the Act had been met. The principal lawyer also had regard to the affidavits of William Morrell that were part of the form 1 application, Dr Pannell's executive summary of her report, another report and my reasons in the *Cape Upstart* case [2011] FCA 819. The anthropologist and principal lawyer then conferred with other officers of the Department. Next, the State and the Land Council exchanged requests and information, which the State considered in detail.

24           The State considered Dr Mayo's report and other material concerning the addition of Rosie Wake as an apical ancestor of the claim group. Junior counsel reviewed that material. On 14 May 2014, the State indicated that it agreed to her inclusion as an apical ancestor. The State also undertook a truncated tenure analysis of readily available materials relating to parcels of land within the areas claimed. The applicant and the State agreed that it was not necessary to investigate the tenure details of parcels of freehold land within the claimed areas because of the operation of s 61A(2) of the Act.

25           As a result of its considerations and the information it obtained, the State decided to enter into the agreement for this consent determination on the basis that it would resolve the Juru people's claims to all of the land and waters that they claimed, except for the claims over the discrete portions of township and rural land that will be considered later in respect of questions that I will decide separately.

26           There are 12 indigenous land use agreements that affect rights and interests in relation to the determination area (s 225(c)) that form part of the proposed consent determination. Those are between the Juru people, Kyburra Munda Yalga Aboriginal Corporation and or the applicant on the one hand and, on the other hand, various land owners and others, including the State, Burdekin Shire Council, Whitsunday Regional Council, Ergon Energy Corporation Limited, the operators of the Hancock Alpha Coal Project, the Port of Abbot Point and Adani Abbot Point Terminal. The Juru people stand to benefit in a number of ways, including, in some cases, financially, from these indigenous land use agreements.

27           The solicitors for the applicant have been diligent in negotiating the terms of the consent determination. The rights and interests in the land and waters covered by the proposed orders cover a wide area and affect many interests. A number of pastoralists and commercial fishermen have been legally represented and have also agreed to what has been

proposed. Each of the parties has been legally represented in the proceedings, mediation by the Registrar and negotiations for the agreement for the consent determination. The applicant has prepared detailed written submissions in support of the proposed orders.

28 On the basis of the evidence to which I have referred, I am satisfied that a real basis existed for the parties to enter into the agreement for the consent determination and that there is a factual and legal foundation for it to be made under s 87A of the Act, including in respect of the matters mentioned in s 225.

29 In addition, the Court must be satisfied that an order in, or consistent with, the terms of the parties' signed agreement would be within its power to make if the proceedings had been contested (s 87A(4)(a) and (5)(a)). As I have noted, the parties filed the signed agreement on 27 June 2014 that the Court be asked to make a consent determination in the terms that I will pronounce today (s 87A(1)(d)). I am satisfied that an order in, or consistent with, those terms is within the power of the Court for the purposes of s 87A(4)(a) and (5)(a) because:

- each of the original applications, and the current amended application, is valid and each was made in accordance with the Act (ss 61, 64, 81);
- the amended application relates to an area in relation to which there is no approved determination of native title (ss 13(1)(a) and 61A(1)); and
- the proposed orders comply with the requirements of ss 94A and 225 because they set out, in relation to the land and waters specified, the group of persons holding the common or group rights comprising the native title, the nature and extent of each of the native title and other rights and interests, the relationship between those native title and other rights and interests and because they acknowledge that the Juru people's native title rights and interests to possession, occupation, use and enjoyment of the land and waters will not be to the exclusion of others.

30 Negotiations that lead to consent orders, such as the ones I am making today, resolve significant parts of litigation and have a very important place in our court system. They enable the parties to achieve results that are acceptable to all of them but that may not have been available if the Court had to decide the dispute. And, of course, such agreements also enable the Court to deal more quickly with other people's cases.

**Determination that native title is to be held on trust**

31           The native title rights and interests in the land and waters and the Juru people's other rights and interests in relation to the determination area under the 12 indigenous land use agreements identified in the consent determination are intended to be held on trust by Kyburra Munda Yalga Aboriginal Corporation. That corporation already holds their native title rights and interests in the Cape Upstart land and waters on trust. The corporation is a prescribed body corporate for the purposes of s 56(2) of the Act.

32           The Juru people should understand that some very significant native title rights and interests to which the claim group is entitled are not presently to be held on trust for it by Kyburra Munda Yalga Aboriginal Corporation. Those rights and interests are covered by two indigenous land use agreements. One of those agreements was entered into by the original applicant in these proceedings and Adani Abbot Point Terminal Pty Ltd, Adani Abbot Point Terminal Holdings Pty Ltd, Mundra Port Holdings Pty Ltd and Mundra Port Pty Ltd, which are developing a large coal mine and the Abbot Point facilities. The second of those agreements was entered into by some of the members of the original applicant and others with Hancock Alpha Coal Pty Ltd, which is also developing a large coal mine.

33           Presently, the potentially very valuable native title rights and interests covered by the Adani agreement are held by Juru Enterprises Limited, which is not owned or controlled by Kyburra Munda Yalga Aboriginal Corporation. Of more concern, the potentially very valuable native title rights and interests covered by the Hancock agreement are held or controlled by 14 persons, including Joe Henaway and Cecilia Upkett. On 3 March 2014, based on the evidence of Dr Pannell and Dr Mayo, I found that both of those persons were not members of the native title claim group and ordered that they be removed from these proceedings: *Prior* [2014] FCA 332. Both the Adani and Hancock indigenous land use agreements provide that one or more other agreements will be, or have been, made, but I have not seen any of those other agreements. Under those side agreements, substantial commercial payments will be made by the Adani and Hancock companies to persons other than the Juru people or Kyburra Munda Yalga Aboriginal Corporation. This will result in a situation where those other persons can exploit what will be from today the Juru people's legally held native title rights and interests. However, the Act and the agreement for the consent determination intended, instead, that Kyburra Munda Yalga Aboriginal Corporation, or a company owned and controlled by it in its capacity as the prescribed body corporate, would own and hold those rights and interests on trust for the Juru people.

34 The Act contemplates that such arrangements can be made before the Court has made any determination of native title rights and interests. However, the native title parties entering into such arrangements ultimately do so for and on behalf of only the true owners of any native title rights and interests that exist: *Weribone v Queensland (No 2)* (2013) 217 FCR 189 at 205-206 [44]-[46]. The Juru people claim group should have these rights protected, as the Act intended, by having Kyburra Munda Yalga Aboriginal Corporation take complete control of them.

35 I am satisfied by the affidavit of Ricardo Martinez, a solicitor for the applicant, that all of the members of the corporation are of Juru descent. Its rules have been amended so that they now include, in rule 3.9, Rosie Wake as an apical ancestor of the Juru people. On 29 April 2014, Mr Martinez signed, as representative of the Juru people, a notice of nomination and consent of the corporation, as a prescribed body corporate, to hold on trust the native title rights and interests to be recognised by the Court's orders today. Two members of the claim group, Angelina Akee and Raylene Oui, signed the notice as directors of the corporation to acknowledge its acceptance of its nomination. That notice was filed in the Court on 9 May 2014.

36 I am satisfied by this evidence that the corporation is properly constituted as a prescribed body corporate, and an appropriate person to hold native title on trust for the purposes of s 56 of the Act.

### **Conclusion**

37 For these reasons, I am satisfied that it is appropriate to make the consent determination in the terms proposed. The Court congratulates the parties on achieving a resolution that gives the Juru people rights and interests that will henceforward be protected by both their own system of law and the orders of this Court made today pursuant to the judicial power of the Commonwealth under the Constitution of Australia.

I certify that the preceding thirty-seven (37) numbered paragraph is a true copy of the Reasons for Judgment herein of the Honourable Justice Rares.

Associate:

Dated: 11 July 2014

## SCHEDULE

**QUD 554 OF 2010**

**BETWEEN:**

**RAYMOND LAMPTON, RAYMOND GASTON, COLLEEN POWER, RAYLENE OUI, TANYA CHATFIELD, IRIS GLENBAR, LENORA ALDRIDGE AND VINCENT MUNDRABY**

Applicant

**AND:**

<b>STATE OF QUEENSLAND</b>	First Respondent
<b>COMMONWEALTH OF AUSTRALIA</b>	Second Respondent
<b>WHITSUNDAY REGIONAL COUNCIL</b>	Third Respondent
<b>BURDEKIN SHIRE COUNCIL</b>	Fourth Respondent
<b>ERGON ENERGY CORPORATION</b>	Fifth Respondent
<b>PAUL CURTEIS, MELLASANNE GRAY, NOEL GRAY, KAREN QUADRELL, MATT QUADRELL, NATHAN RYNN, TRAVIS RYNN, GFB DEVELOPMENTS PTY LTD</b>	Sixth Respondent
<b>ENERGY MINERALS PTY LTD</b>	Seventh Respondent
<b>AURIZON NETWORK PTY LTD, AURIZON PROPERTY PTY LTD</b>	Eighth Respondent
<b>HANCOCK COAL INFRASTRUCTURE PTY LTD</b>	Ninth Respondent
<b>TELSTRA CORPORATION LIMITED</b>	Tenth Respondent
<b>VARIOUS PASTORALISTS</b>	Eleventh Respondent
<b>PAUL AND CHRISTINE BENVENUTI</b>	Twelfth Respondent