

- LEGEND**
- Non-exclusive areas
 - External boundary
 - Roads
 - DCDB
 - Local Government Area boundaries

NATIVE TITLE DETERMINATION
QUD20/2019 Kabi Kabi First Nation Traditional Owners
Native Title Claim Group (Part A) (QC2018/007) Sheet 106 of 218

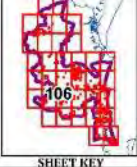
This document is a schedule to the Determination made under section 238 of the Native Title Act 1993 (NTA) in relation to the Native Title Claim Group (Part A) (QC2018/007) Sheet 106 of 218. It is a schedule to the Determination made under section 238 of the NTA in relation to the Native Title Claim Group (Part A) (QC2018/007) Sheet 106 of 218. It is a schedule to the Determination made under section 238 of the NTA in relation to the Native Title Claim Group (Part A) (QC2018/007) Sheet 106 of 218.

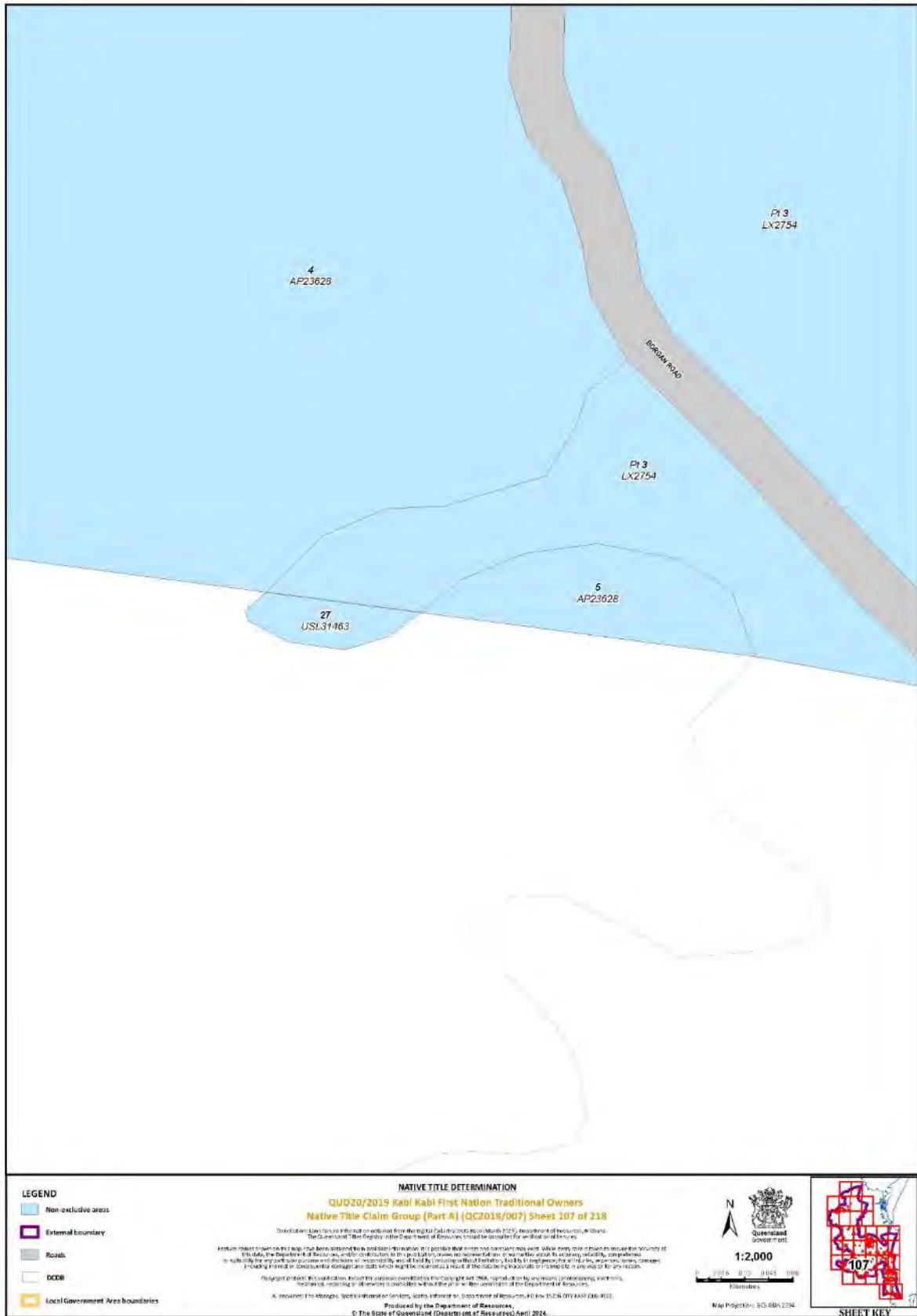
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 Metres

Map Position: 63° 58' 13.94"









NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheet 109 of 218**

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- LGA
- Local Government Area boundaries

N

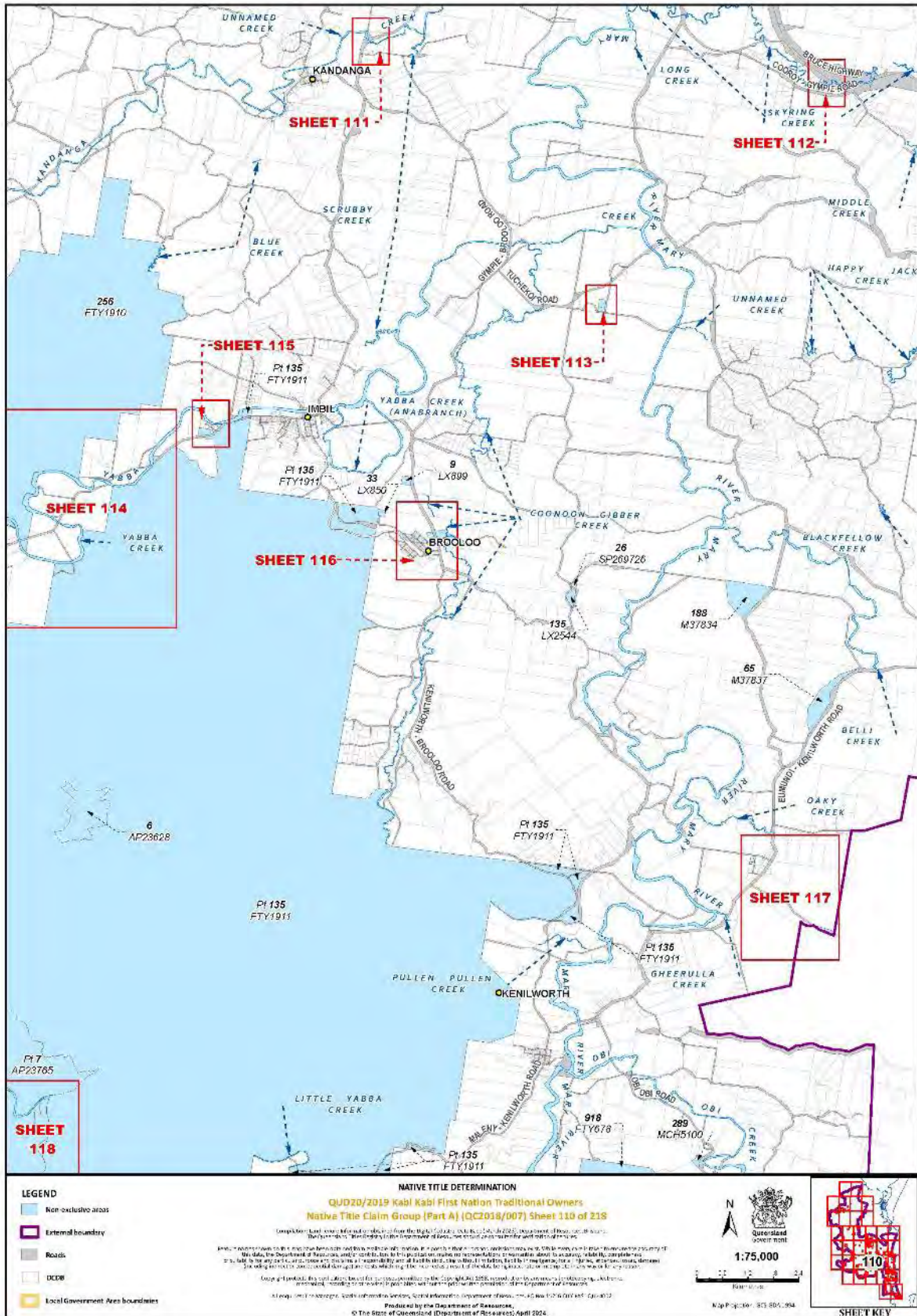
Queensland
Government

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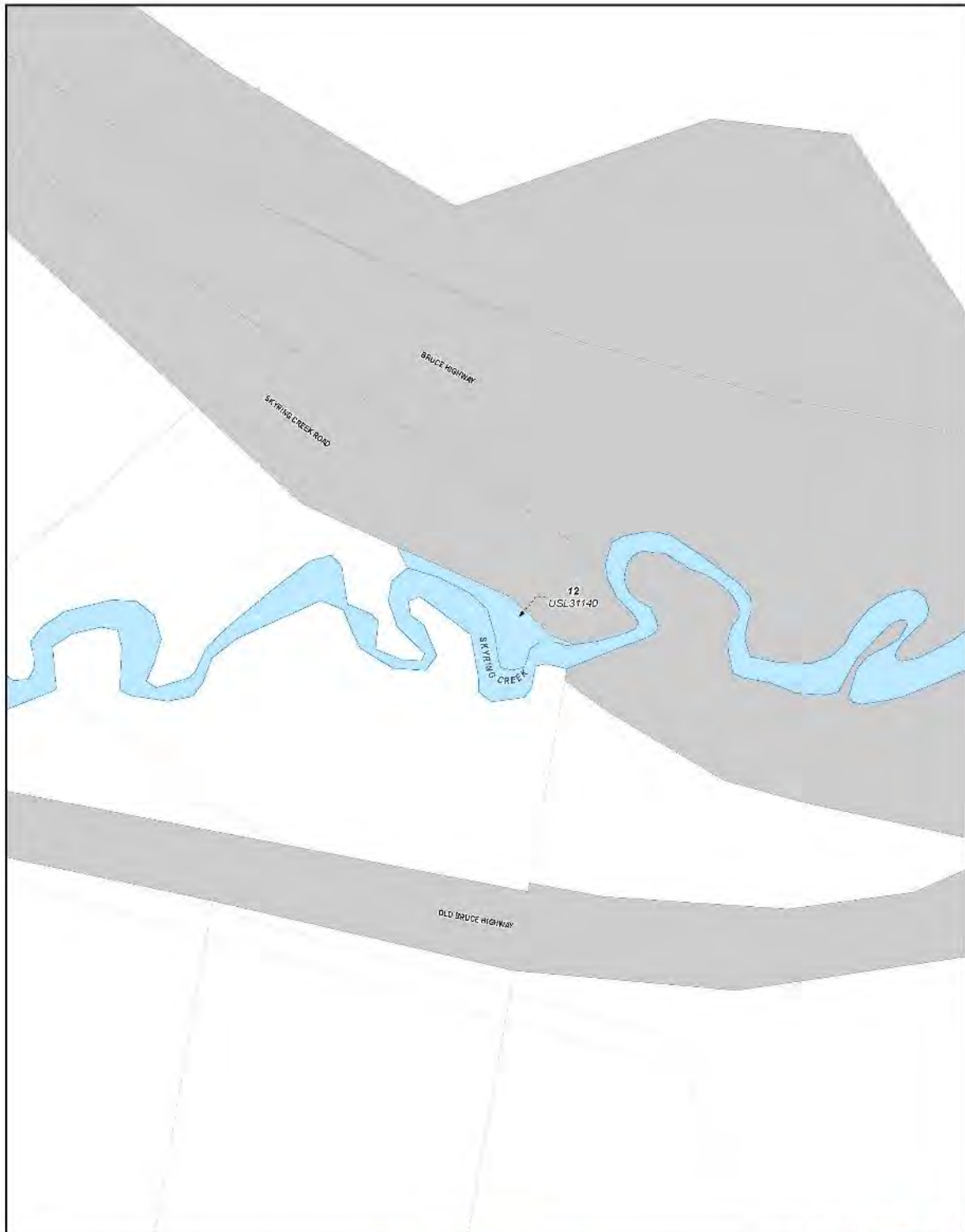
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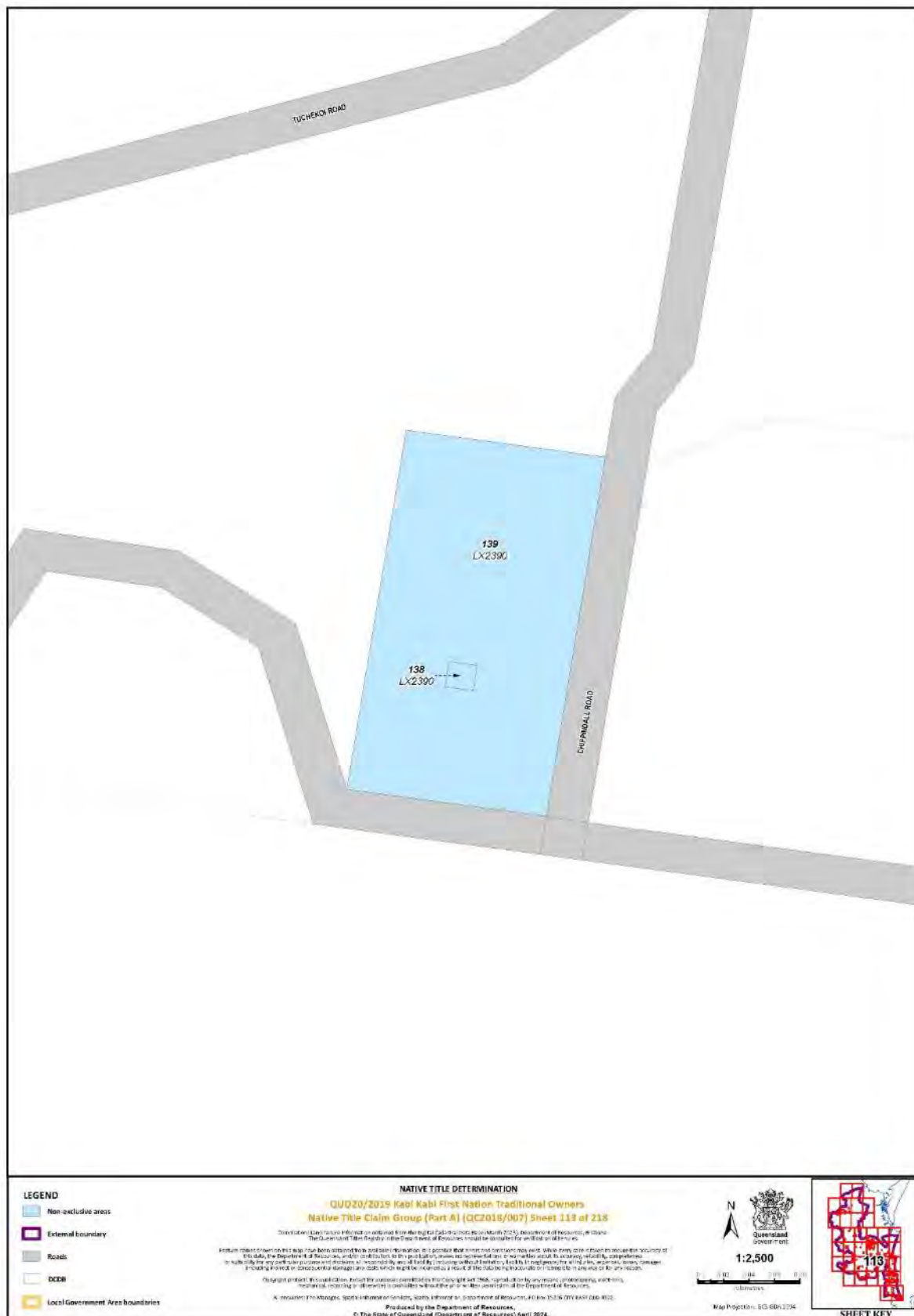
SHEET KEY







<p>LEGEND</p> <ul style="list-style-type: none"> Non-exclusive areas External boundary Roads DCDM Local Government Area boundaries 	<p>NATIVE TITLE DETERMINATION</p> <p>QUD20/2019 Kabi Kabi First Nation Traditional Owners Native Title Claim Group (Part A) (QC2018/007) Sheet 112 of 218</p> <p><small>Copyright reserved and published by the Department of Resources, Energy and Tourism (DET) Queensland Government, 2024. This document is the property of the State of Queensland. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the State of Queensland. This document is provided for informational purposes only. It does not constitute an offer of any financial product or service. The State of Queensland is not liable for any loss or damage arising from the use of this document.</small></p> <p><small>Produced by the Department of Resources, Energy and Tourism, Queensland Government, 2024.</small></p> <p><small>© The State of Queensland (Department of Resources), April 2024</small></p>	<p>1:3,000</p> <p>Scale bar showing 0, 0.025, 0.05, 0.075, 0.1 Kilometres.</p> <p>North arrow pointing up.</p> <p>Queensland Government logo.</p>	<p>SHEET KEY</p>
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NATIVE TITLE DETERMINATION
QUD20/2019 Kabi Kabi First Nation Traditional Owners
Native Title Claim Group (Part A) (QC2018/007) Sheet 114 of 218

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCEB
- Local Government Area boundaries

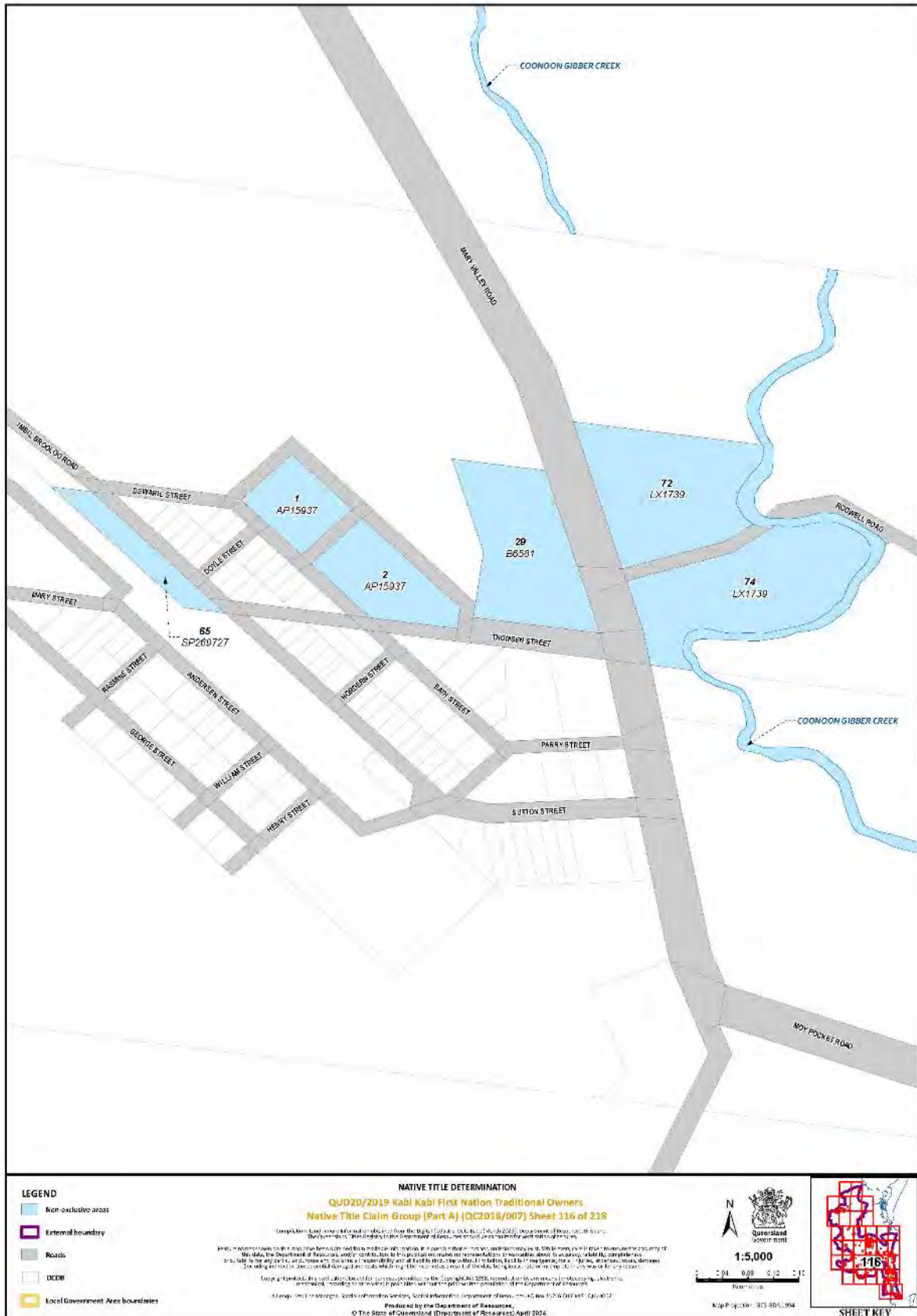
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Age Population: 833 864 994

SHEET KEY









NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheet 118 of 218**

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LEGEND

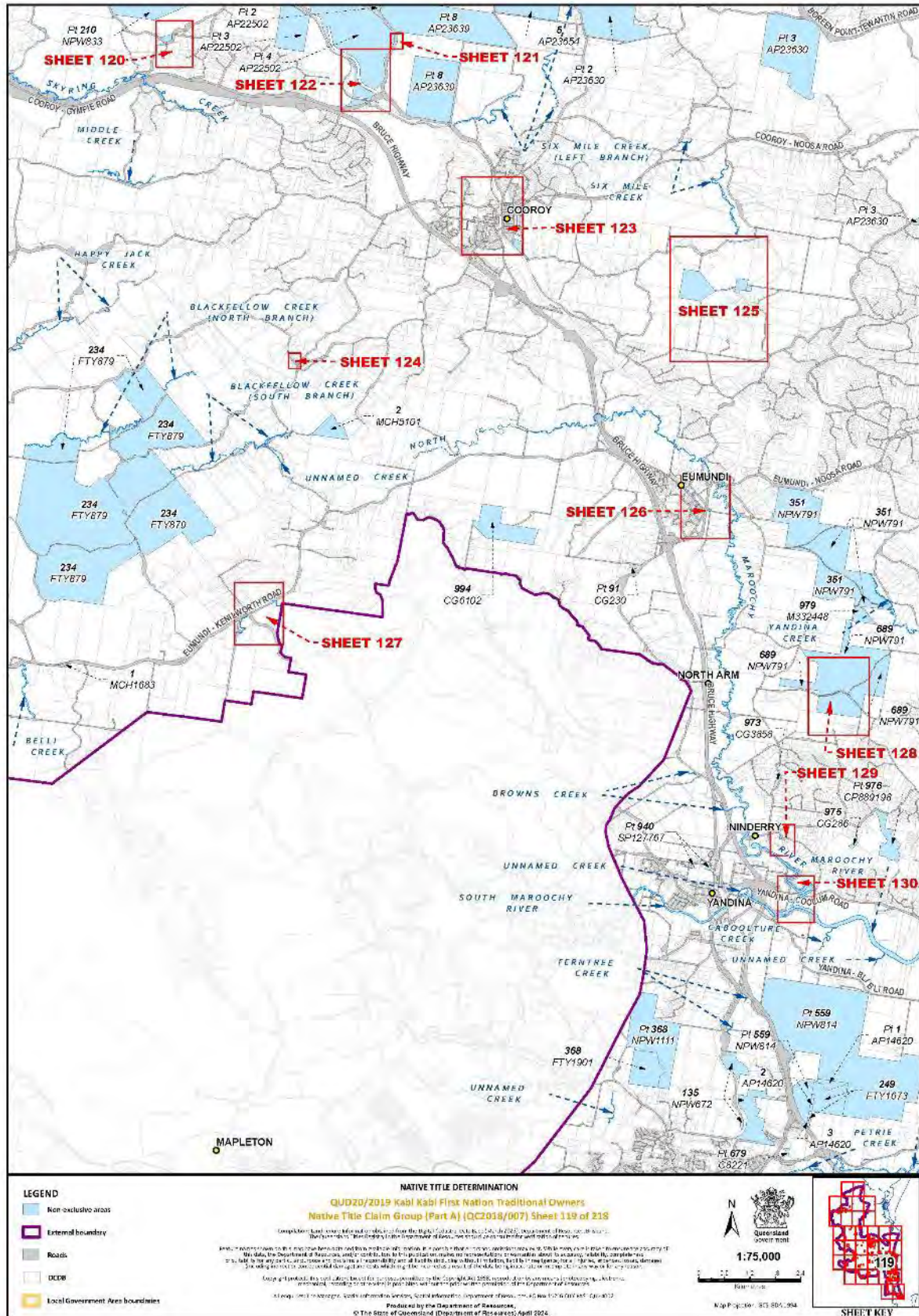
- Non-exclusive areas
- External boundary
- Roads
- DCDM
- Local Government Area boundaries

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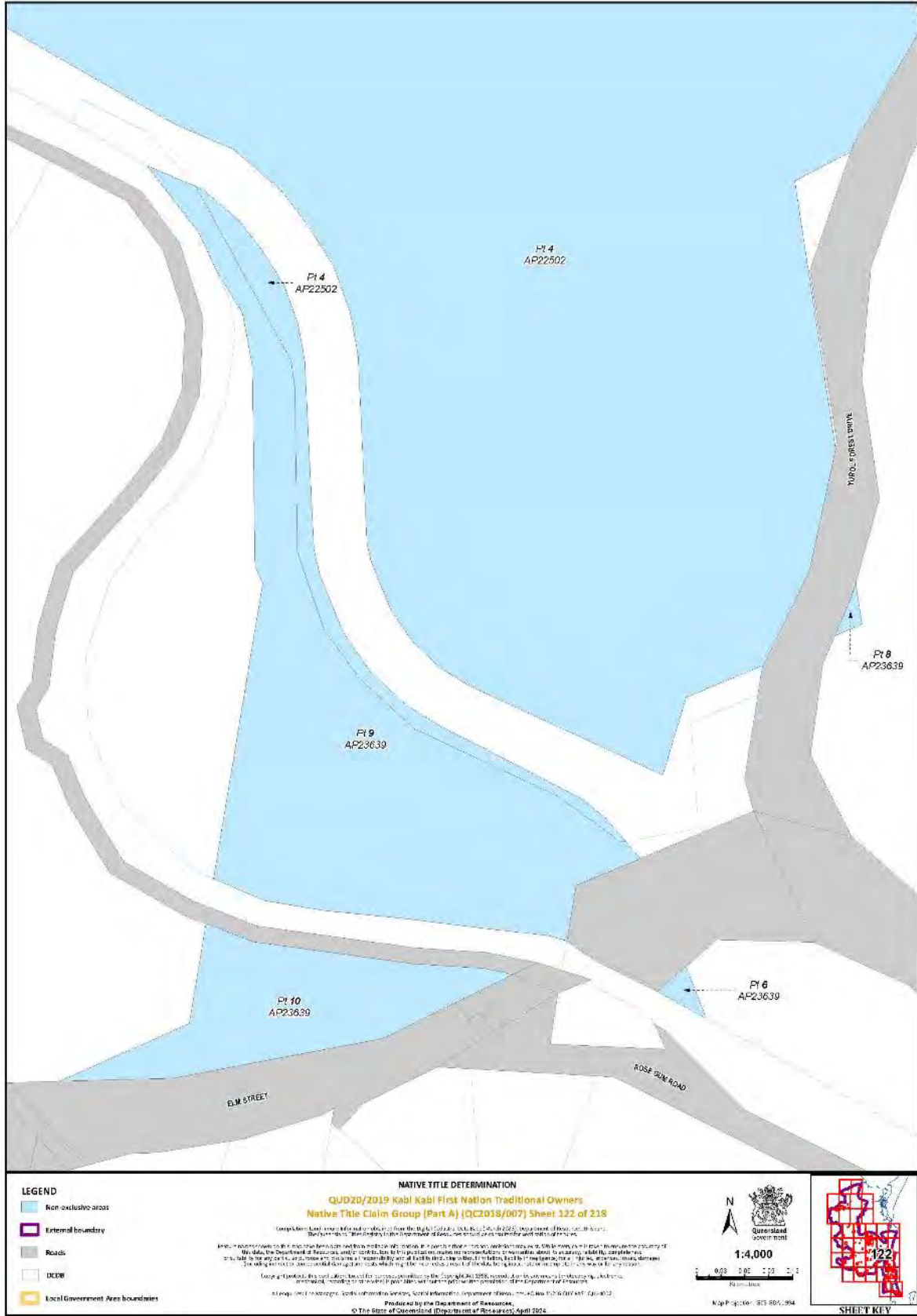
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118

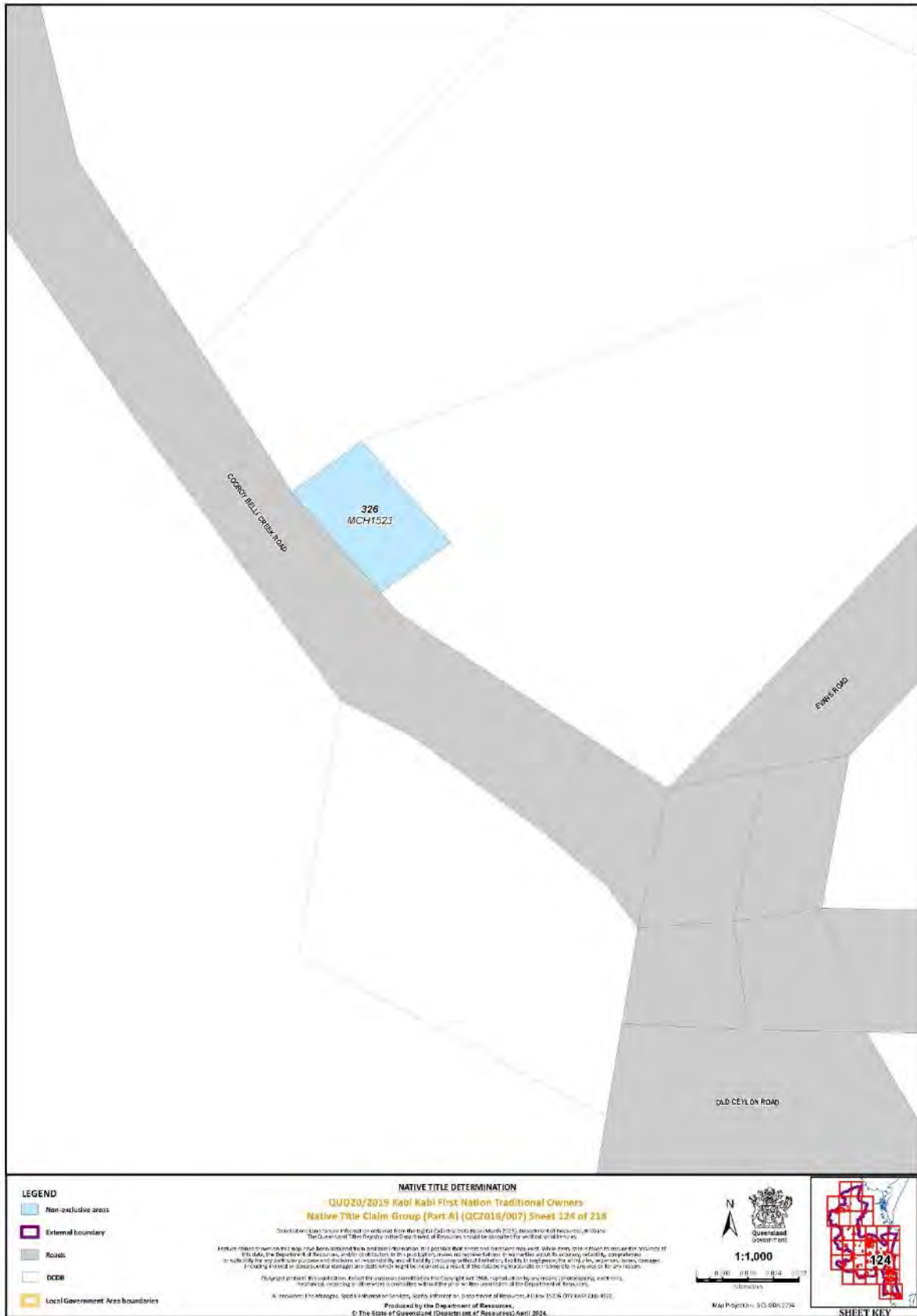
SHEET KEY













NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheet 126 of 218**

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCEW
- Local Government Area boundaries

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Metres

Map Page: 126 of 218

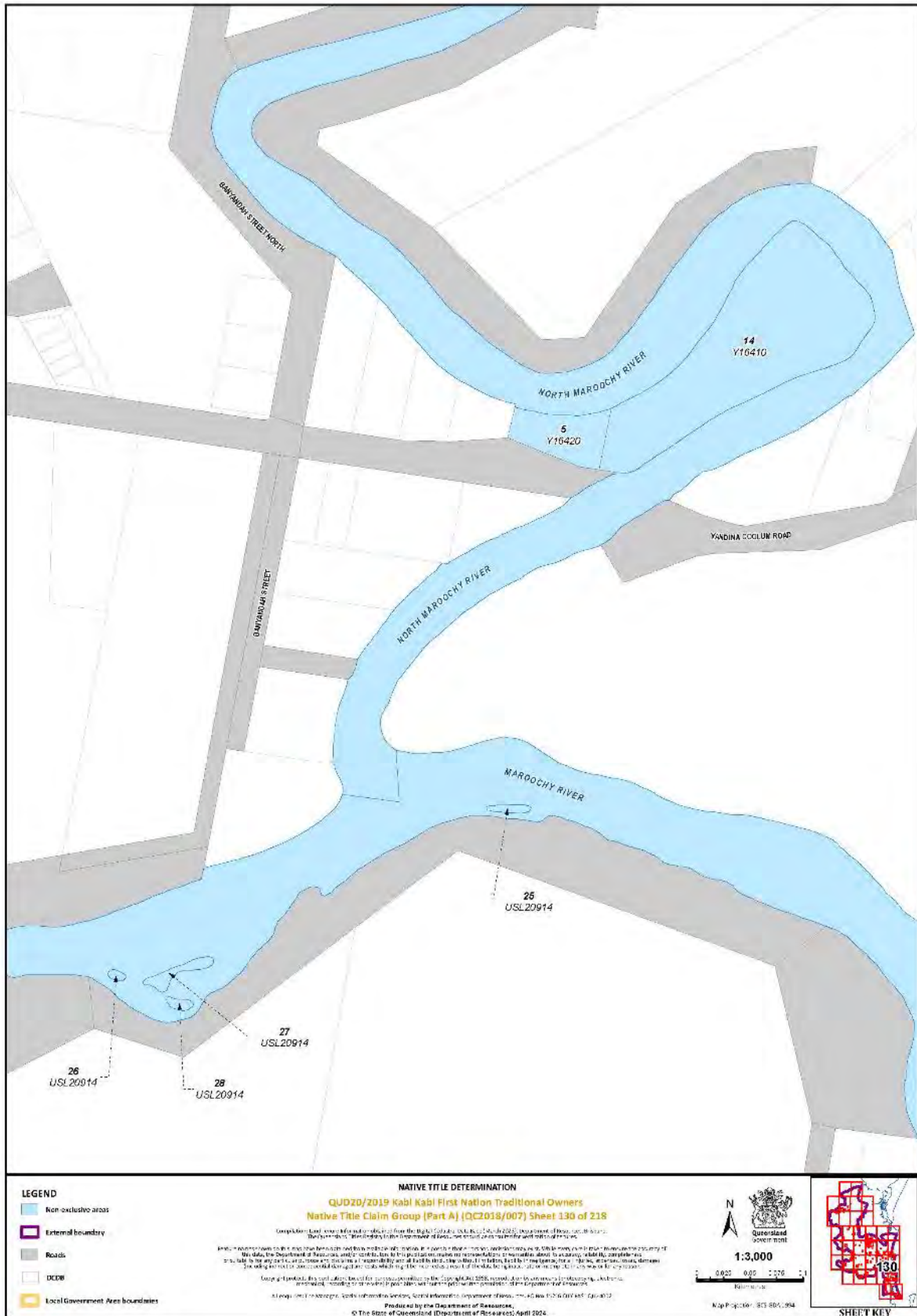
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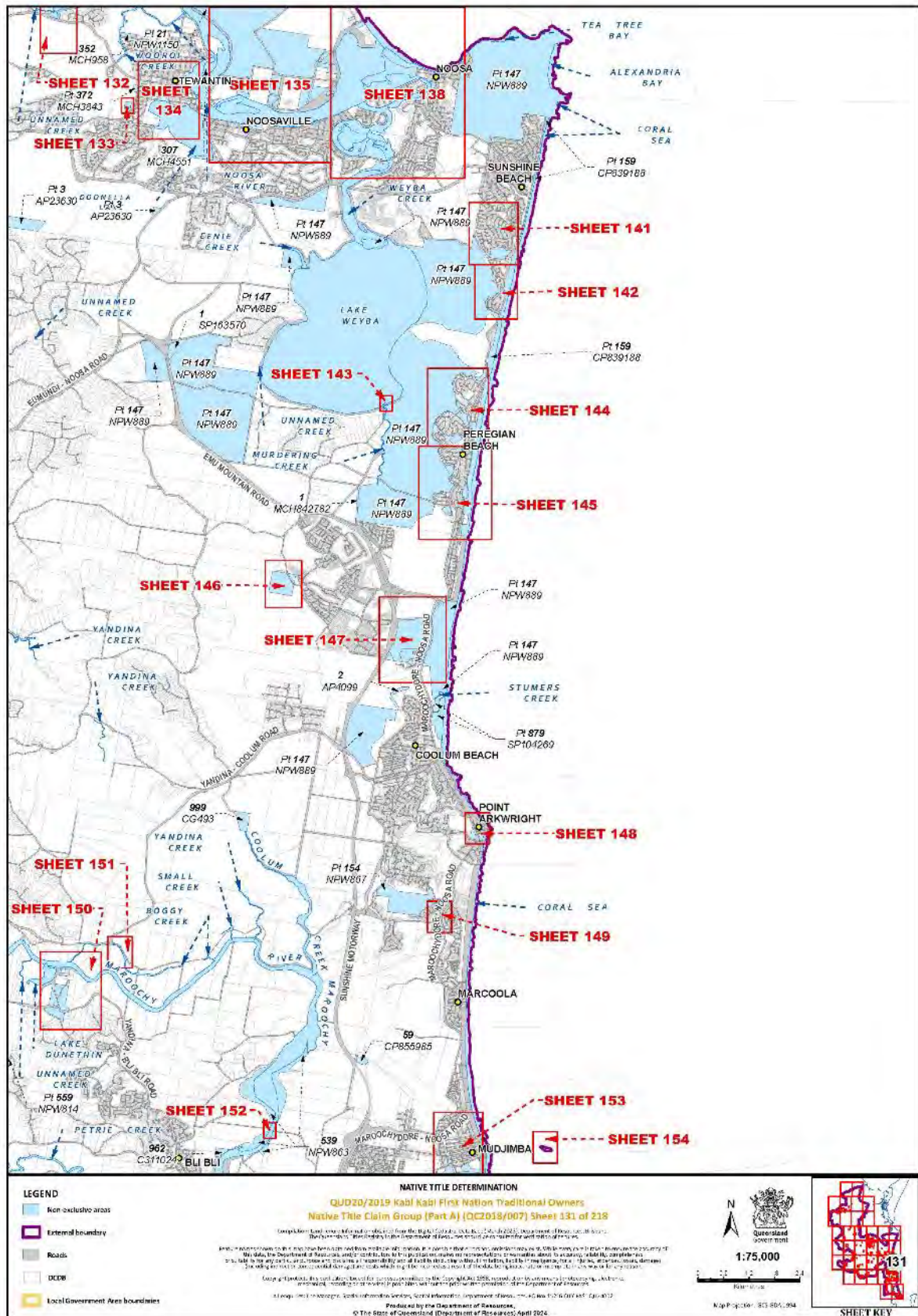
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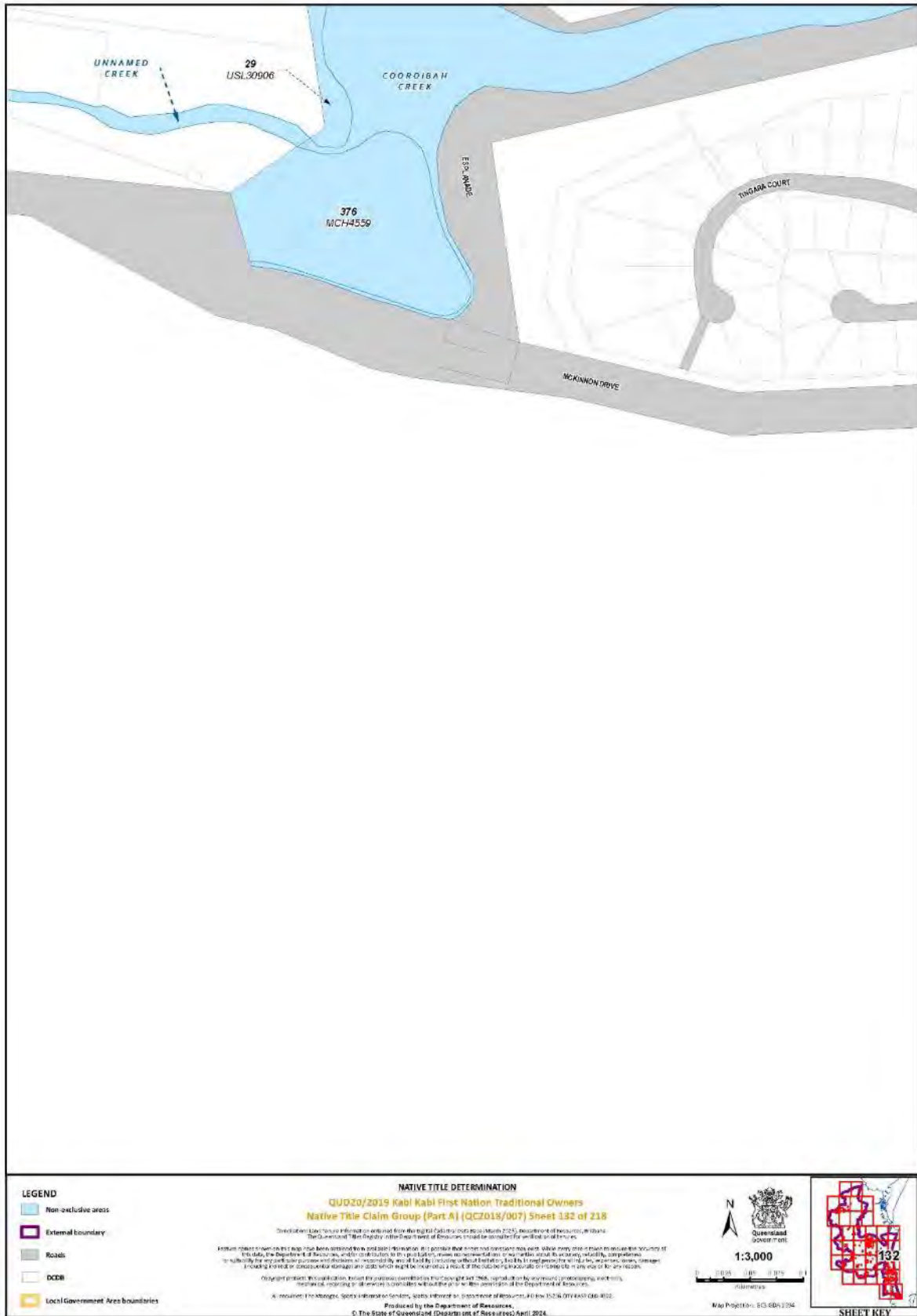








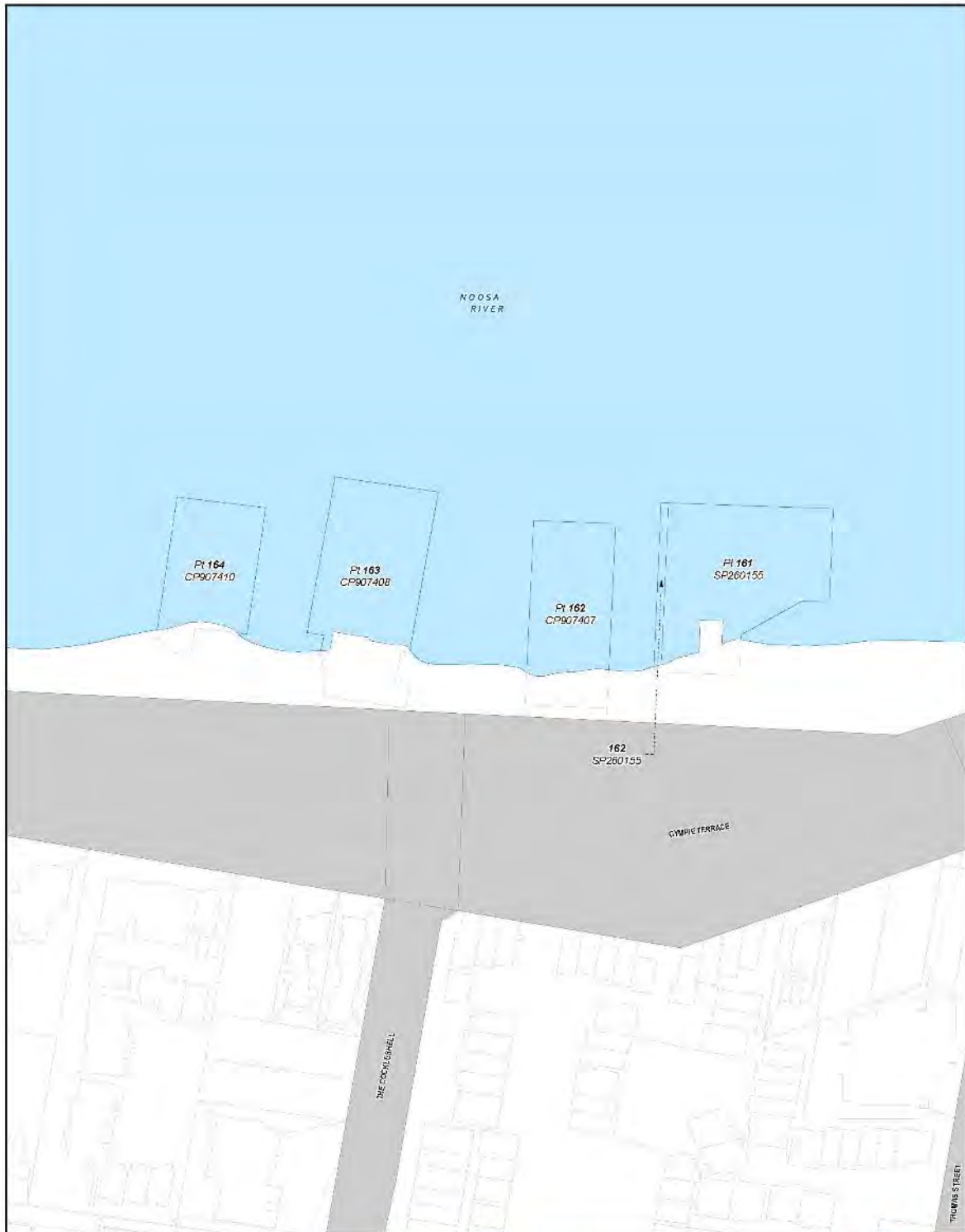












NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheet 136 of 218**

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LEGEND

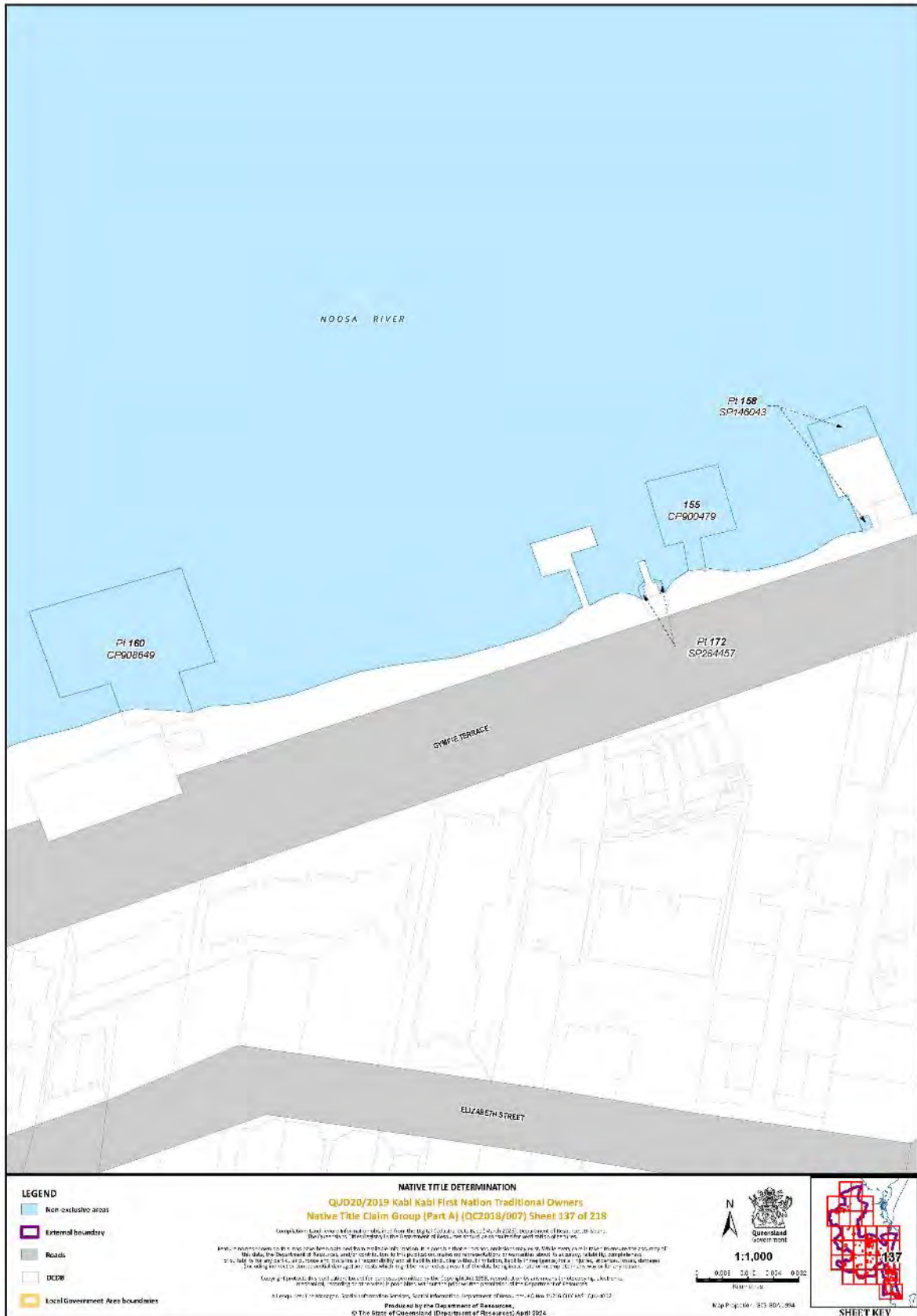
- Non-exclusive areas
- External boundary
- Roads
- LDDM
- Local Government Area boundaries

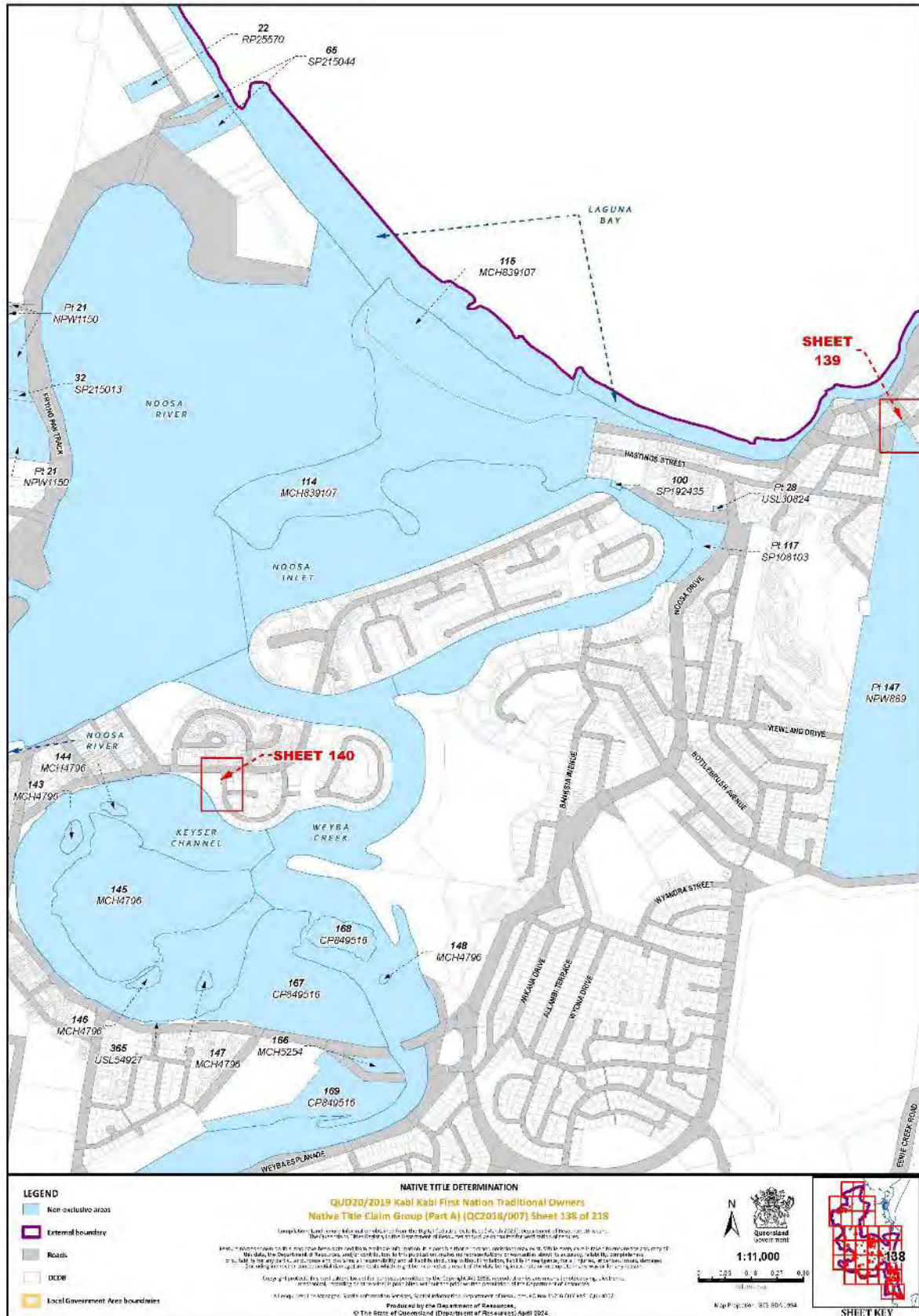
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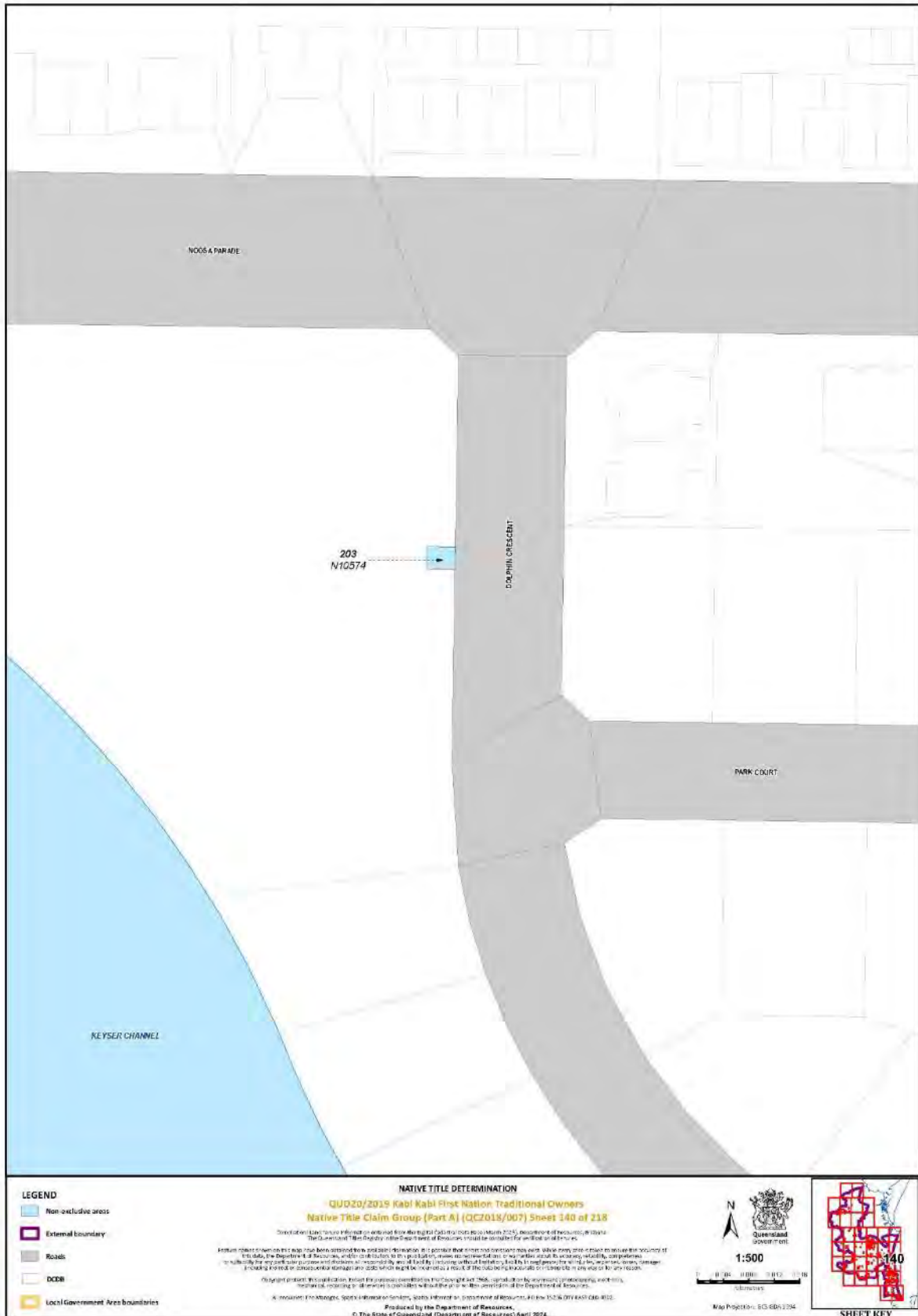
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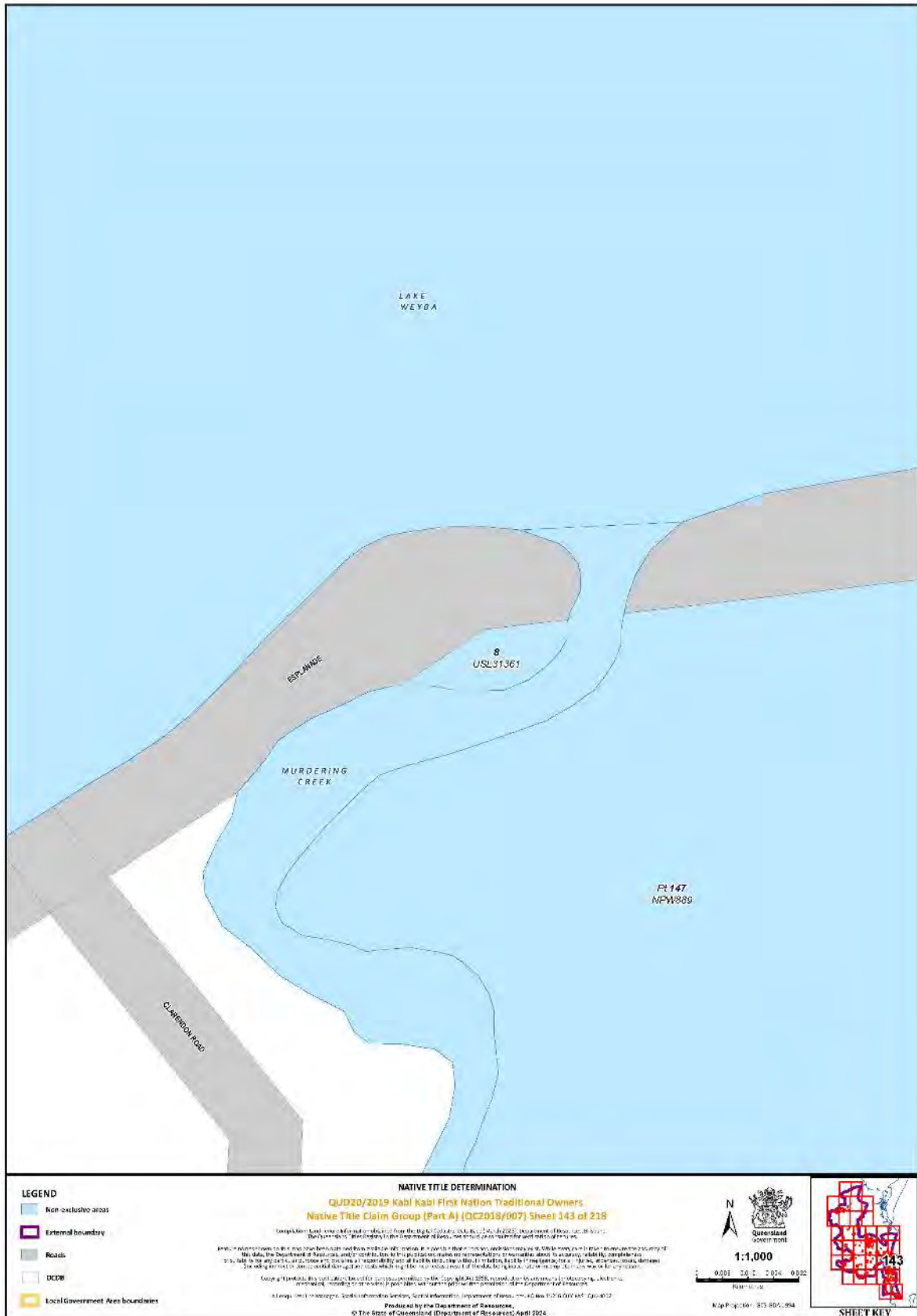






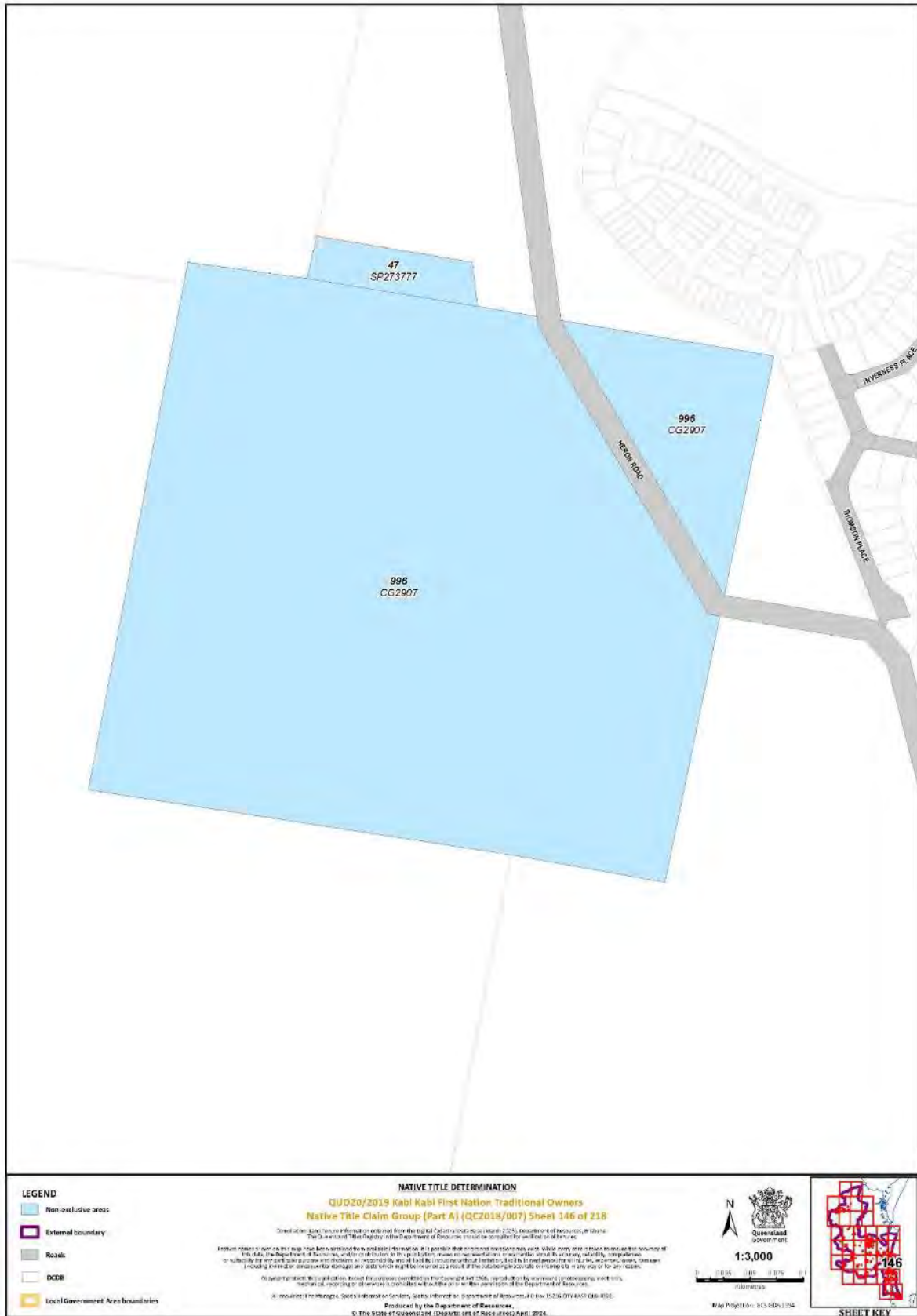


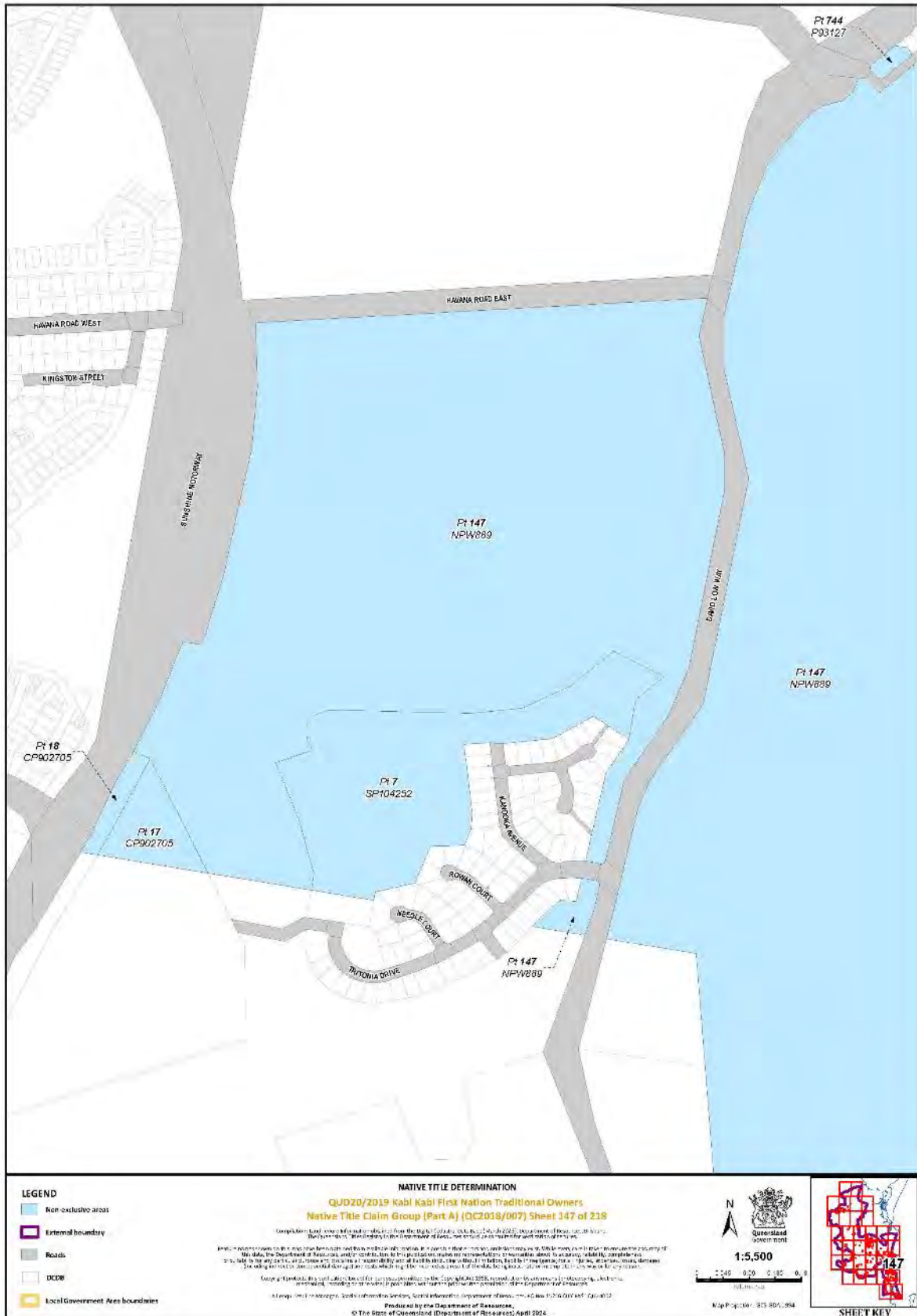




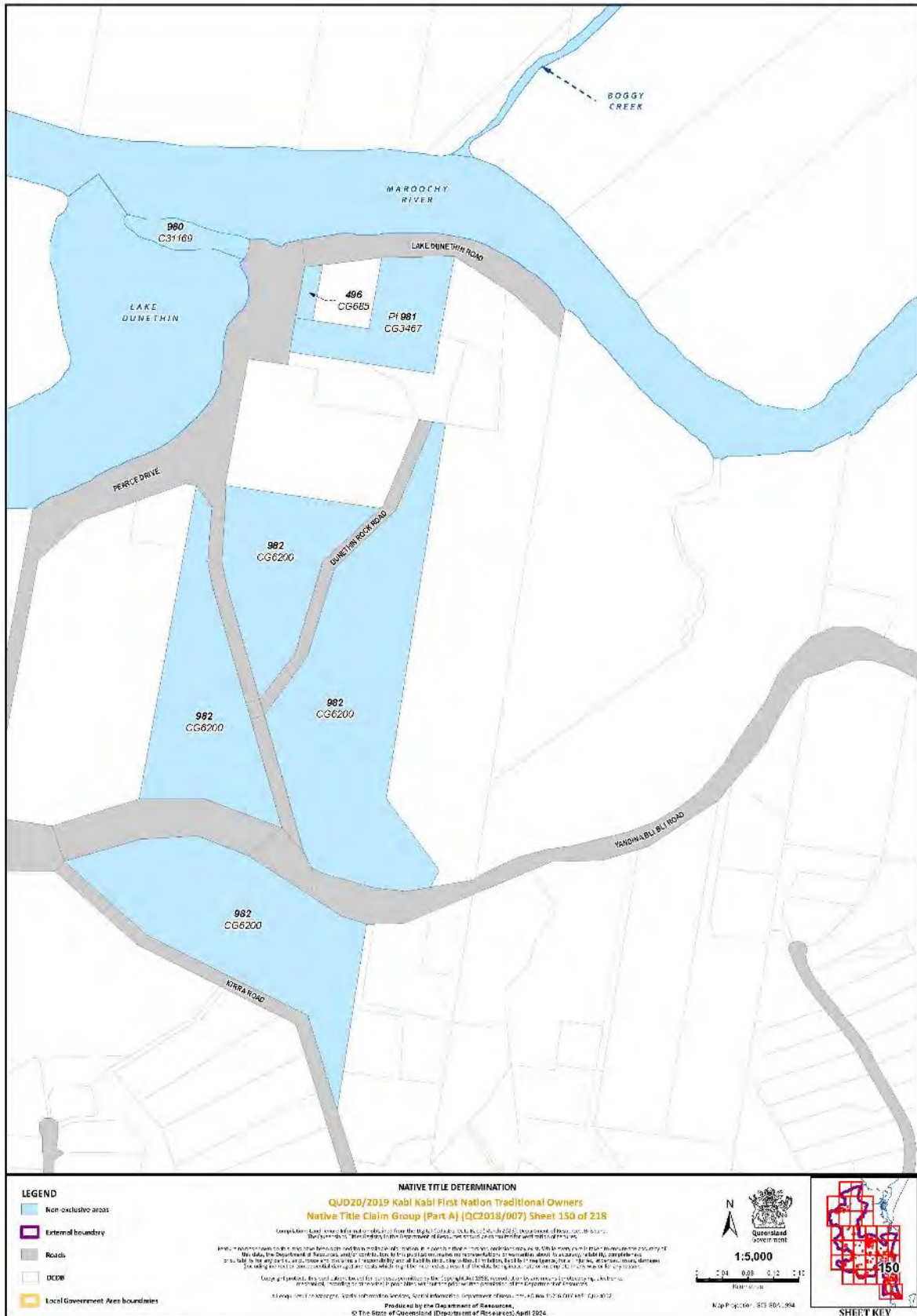




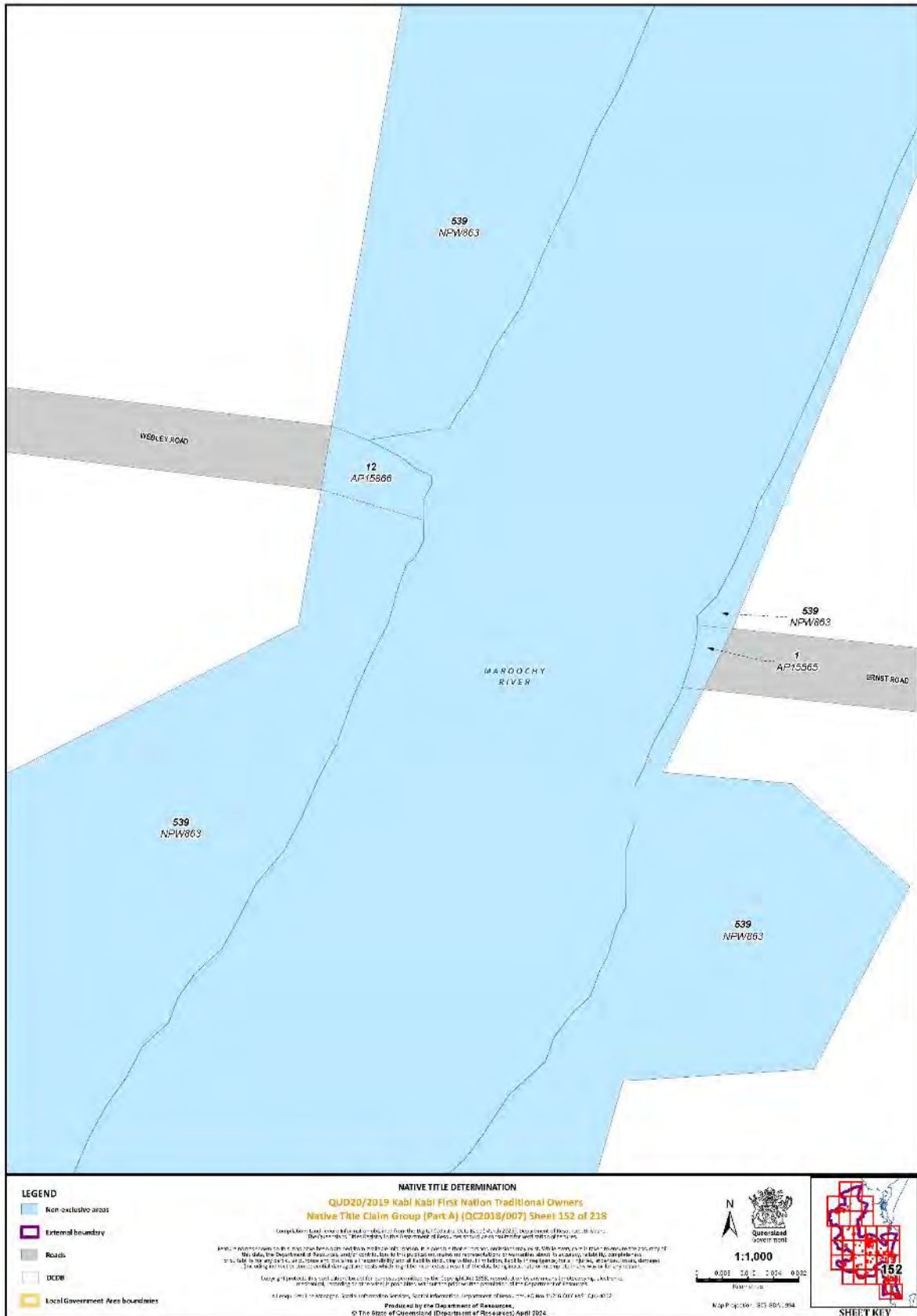


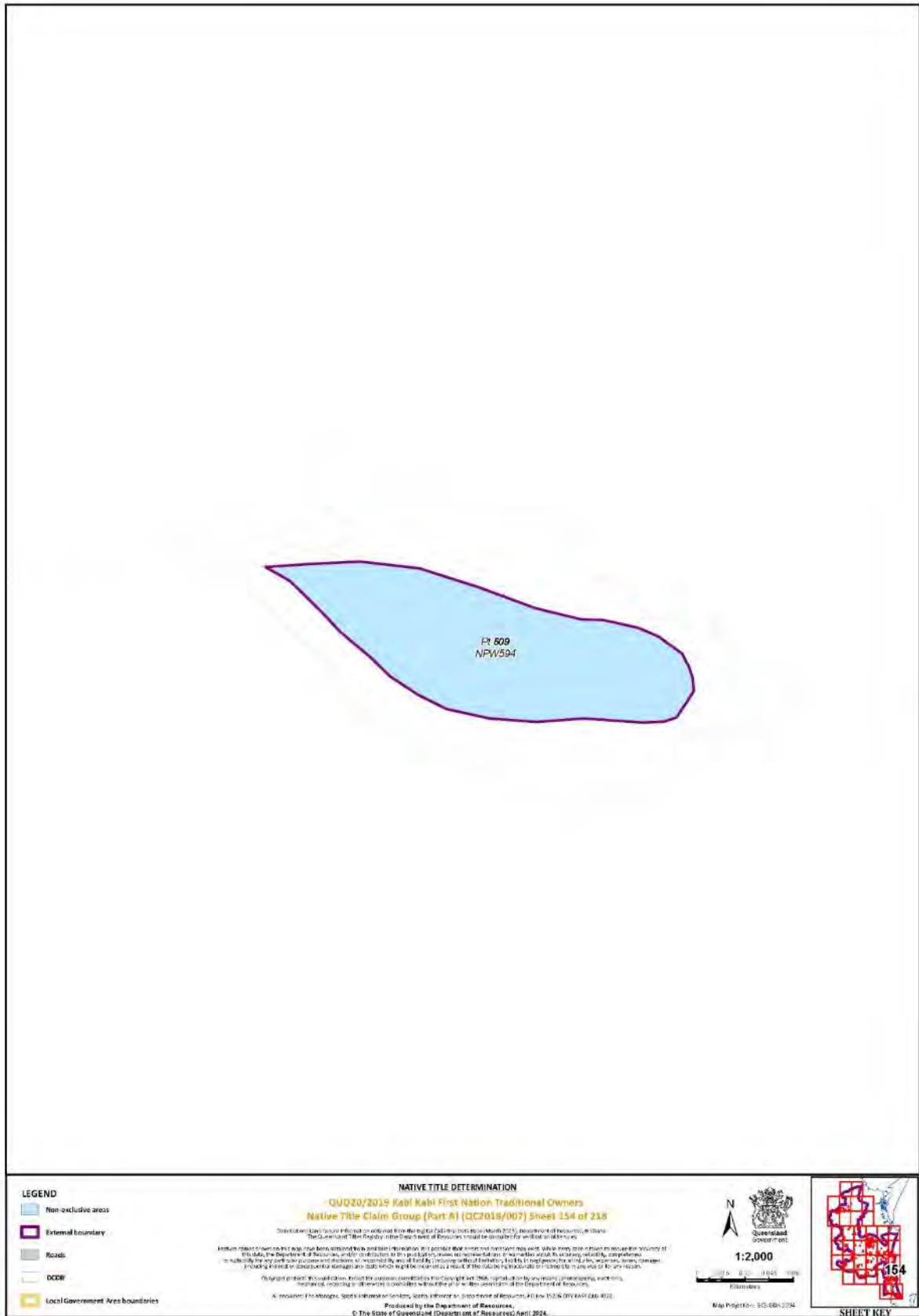




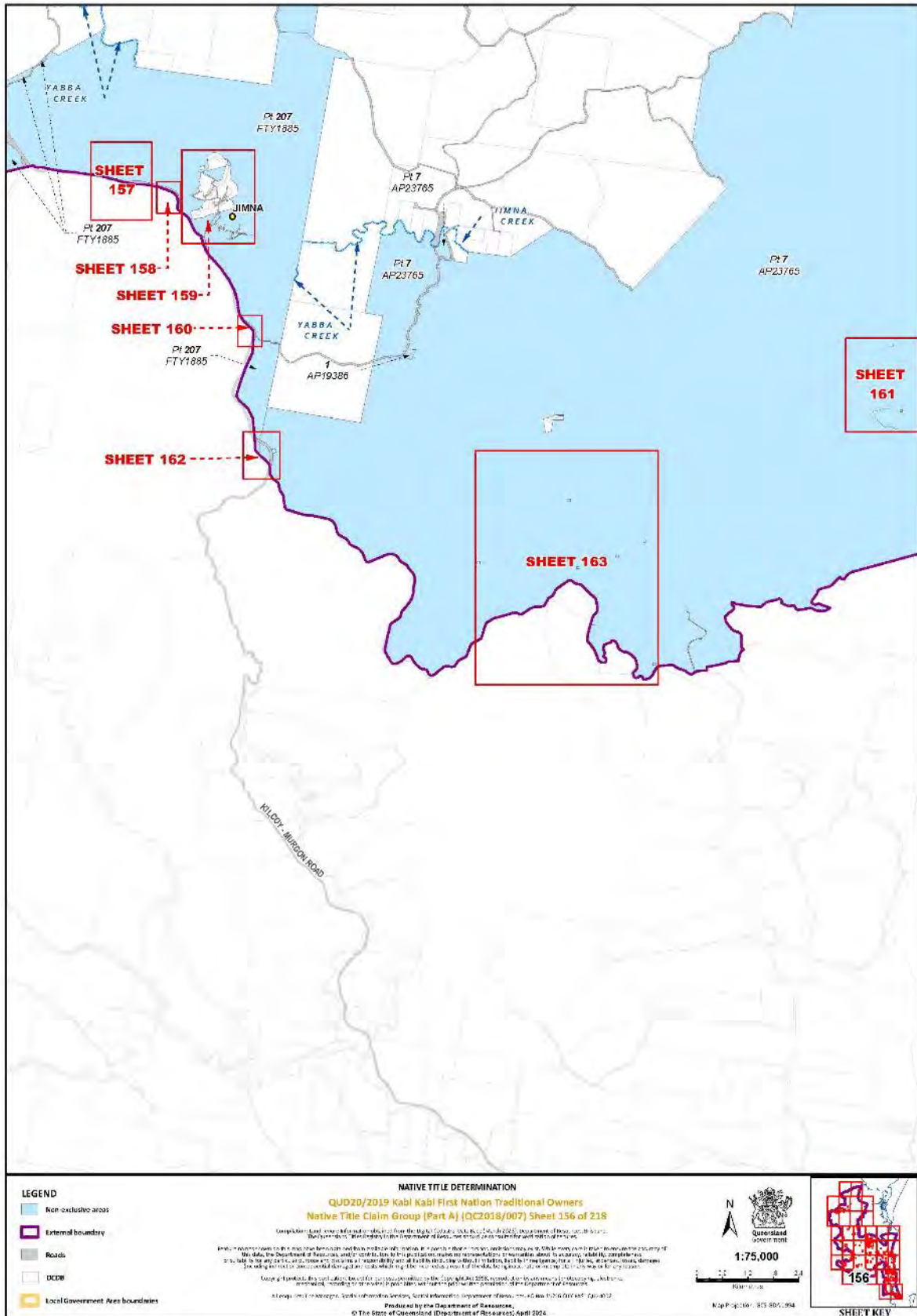


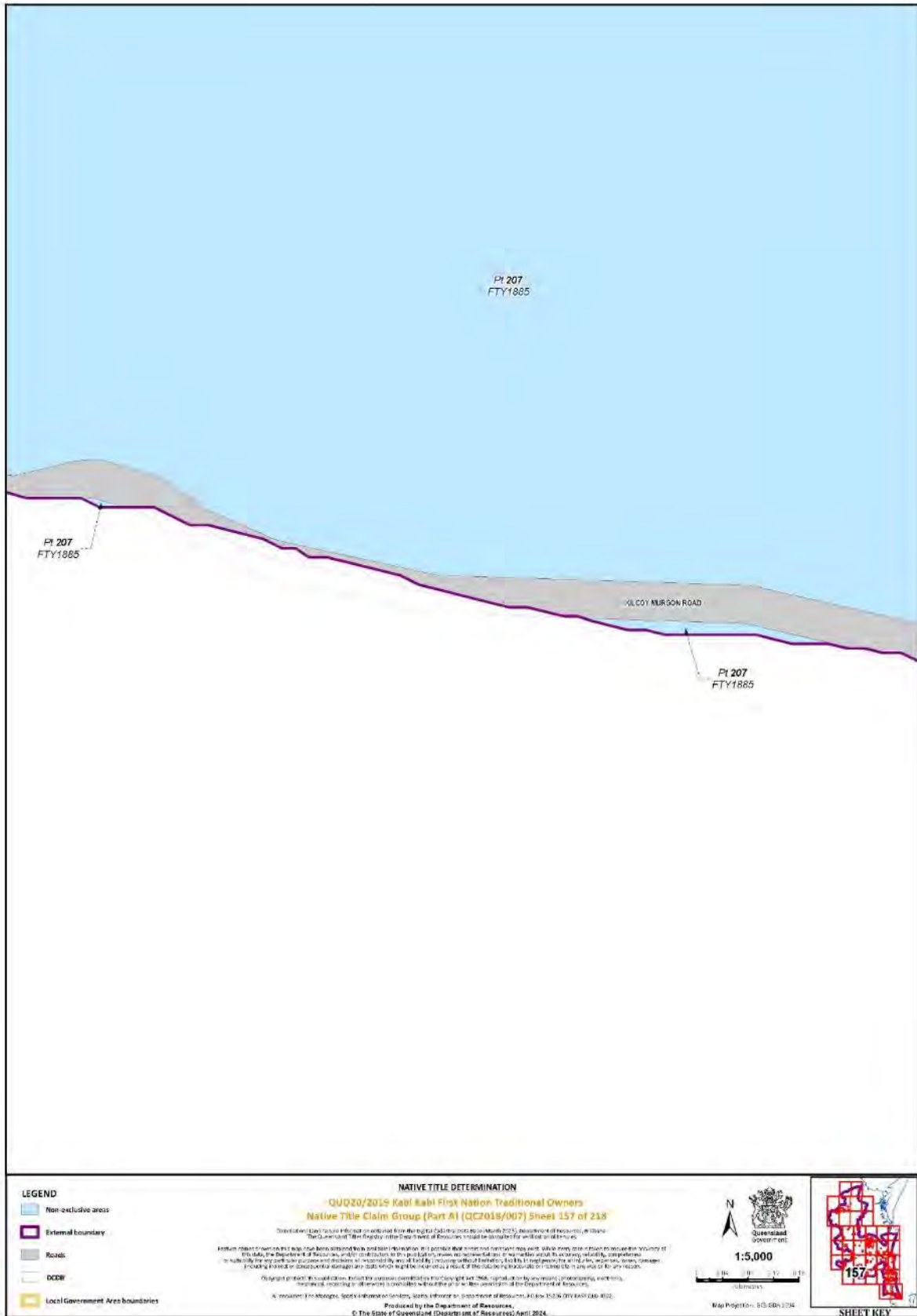


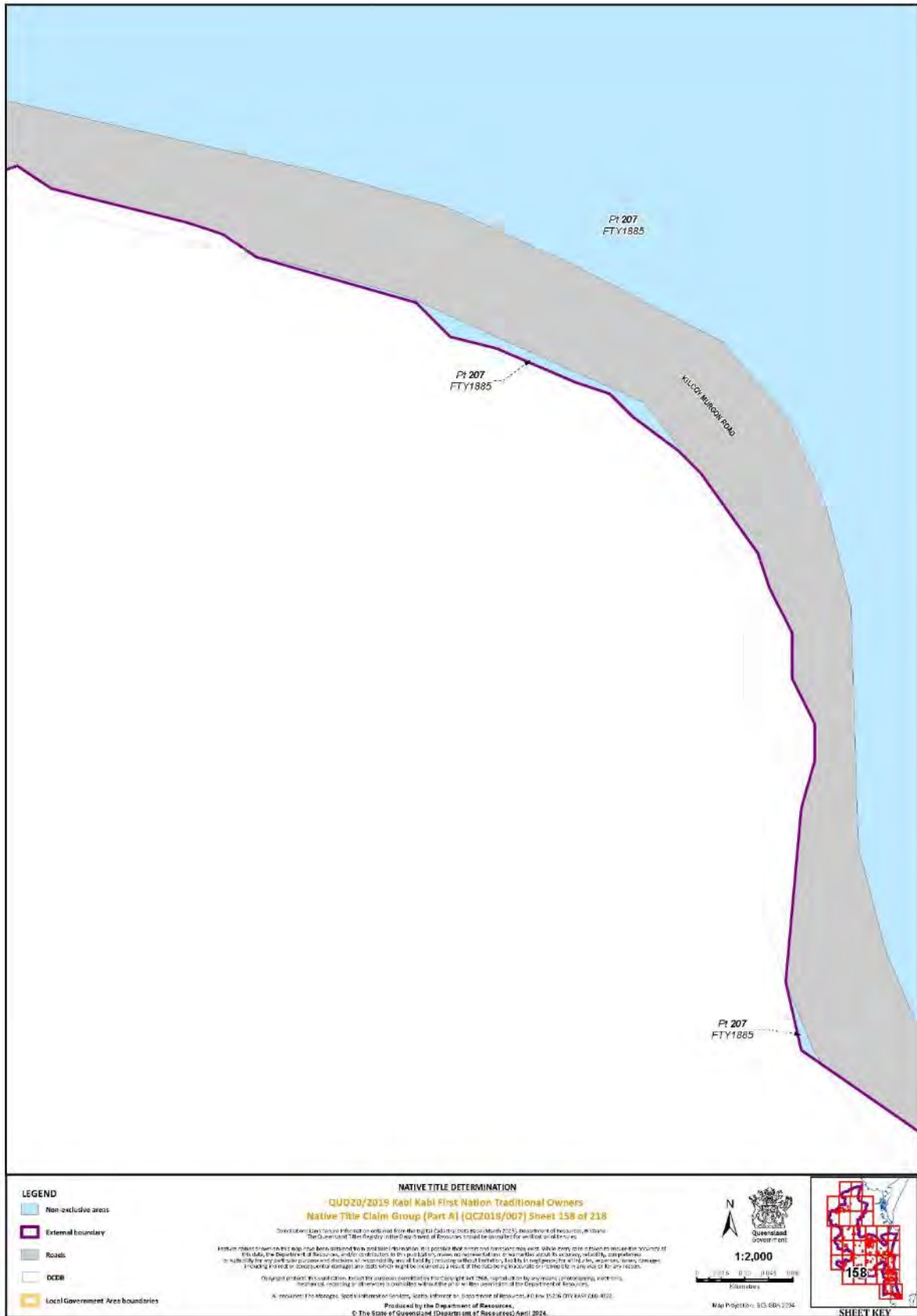




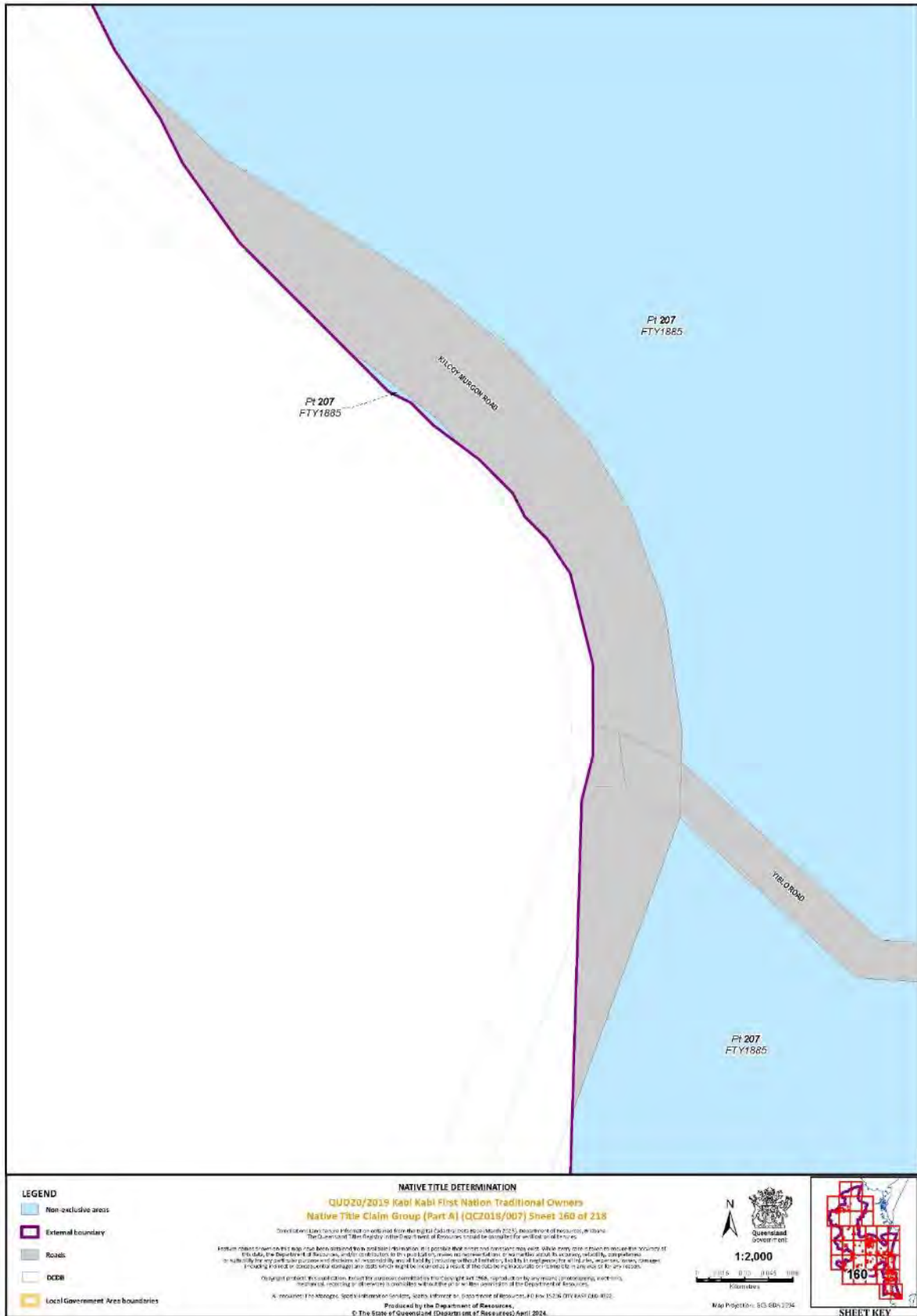


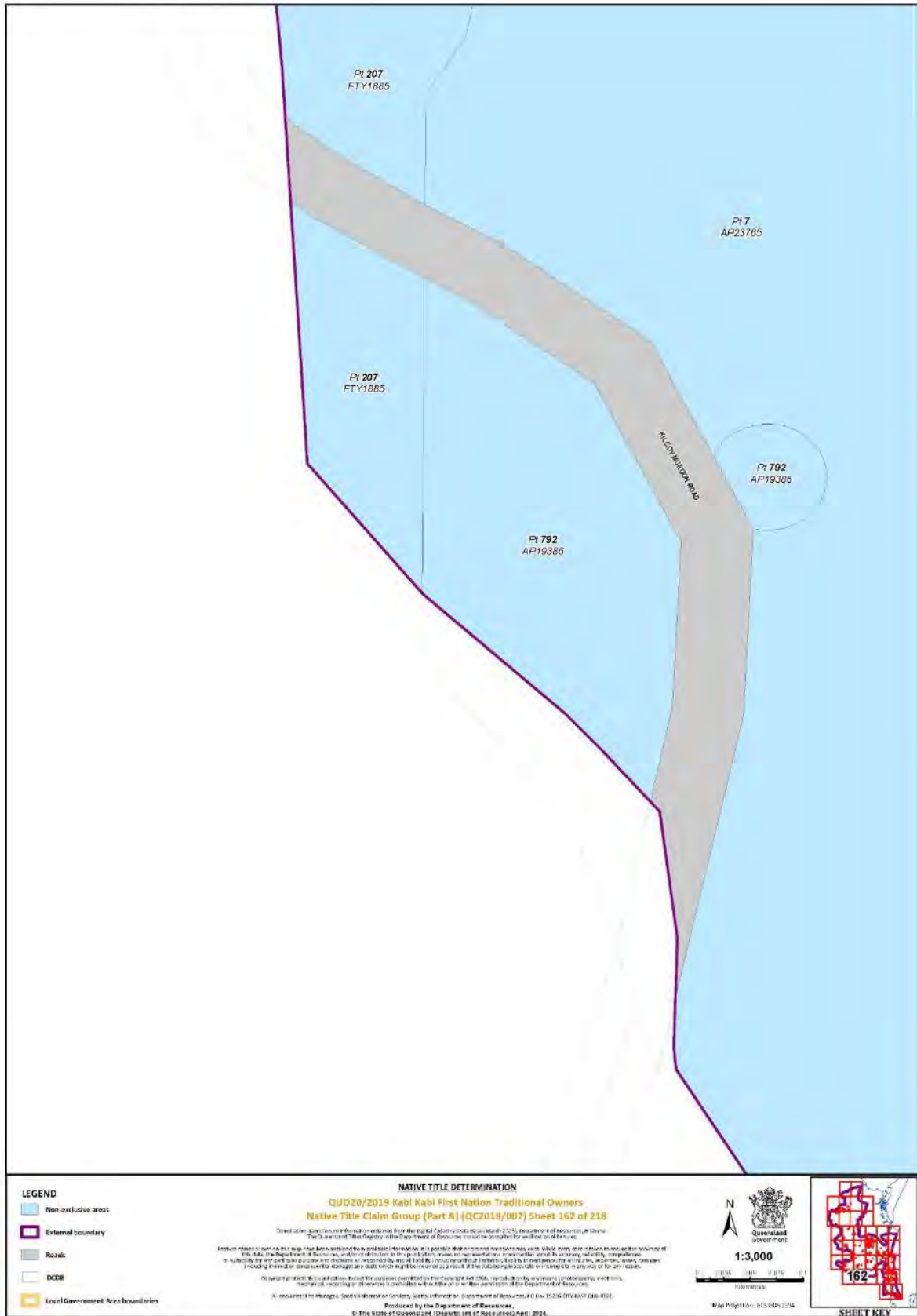


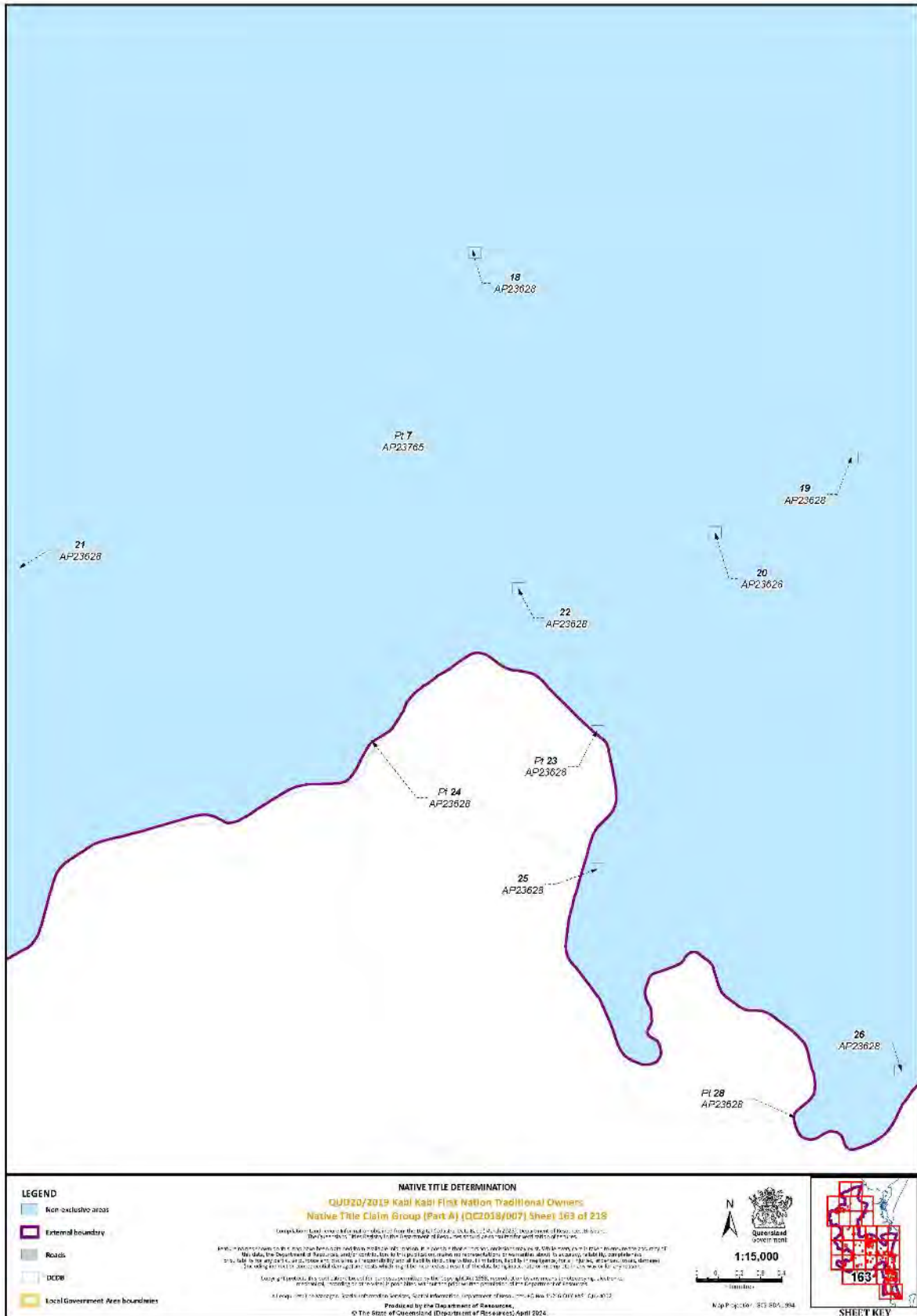




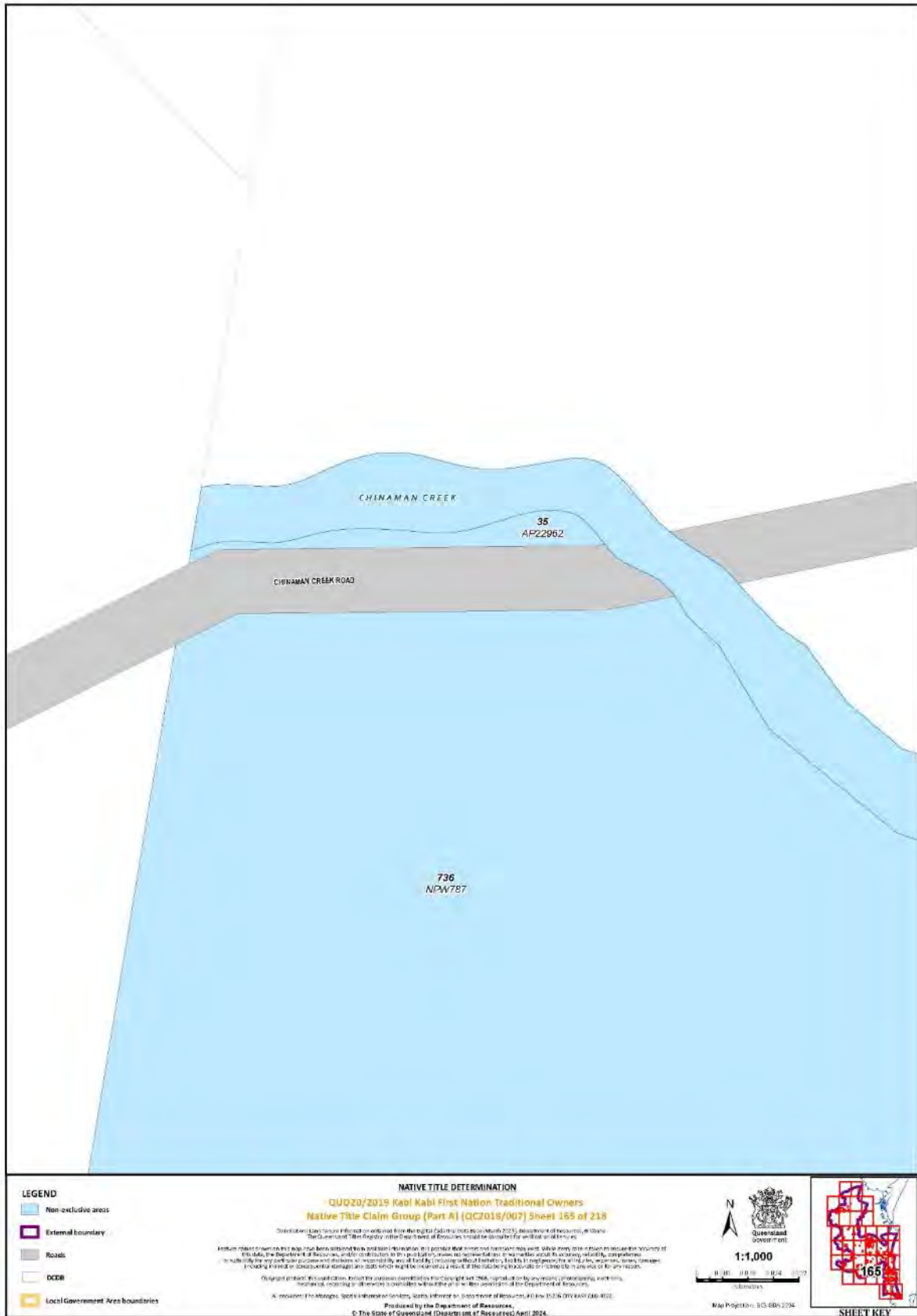


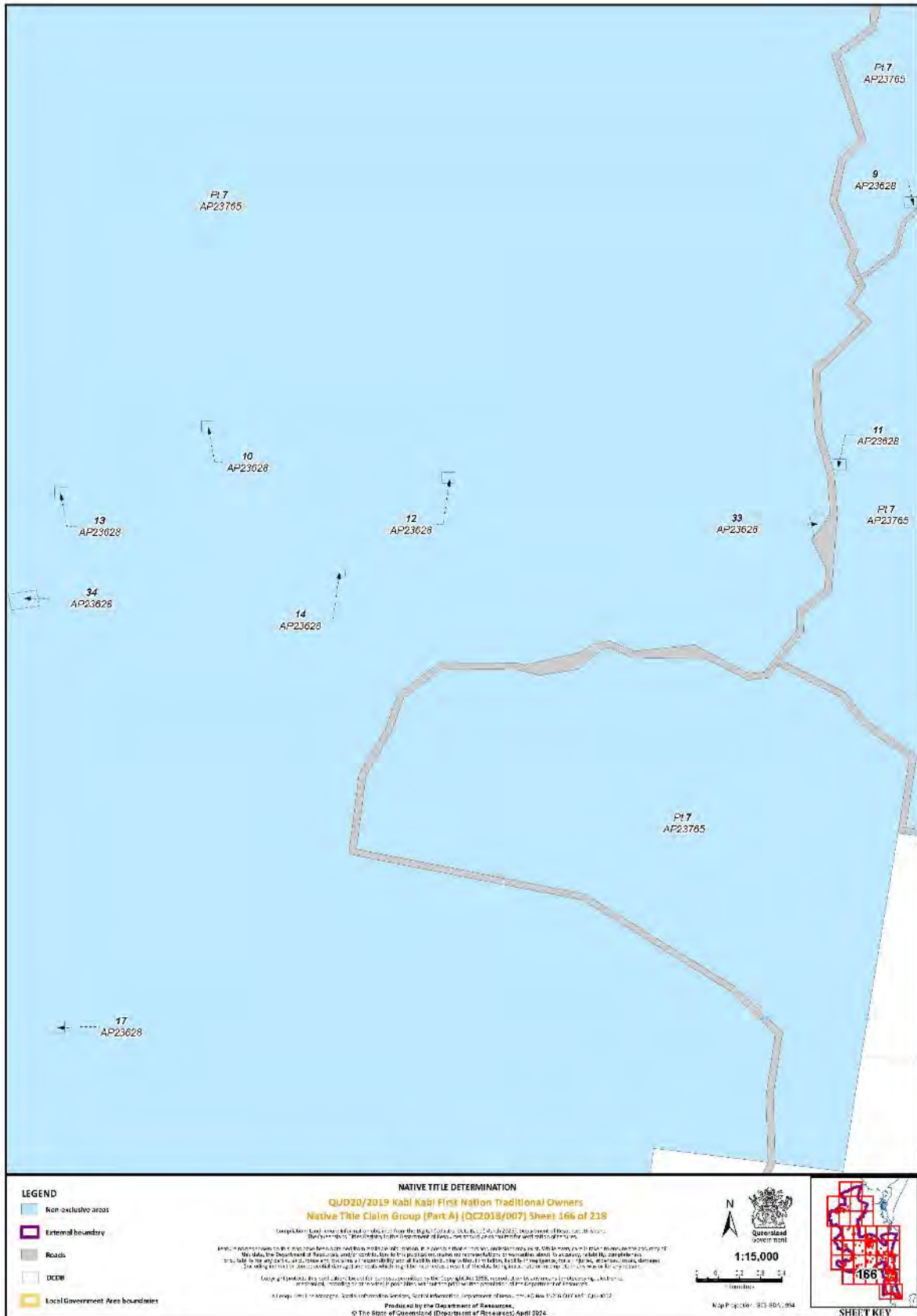


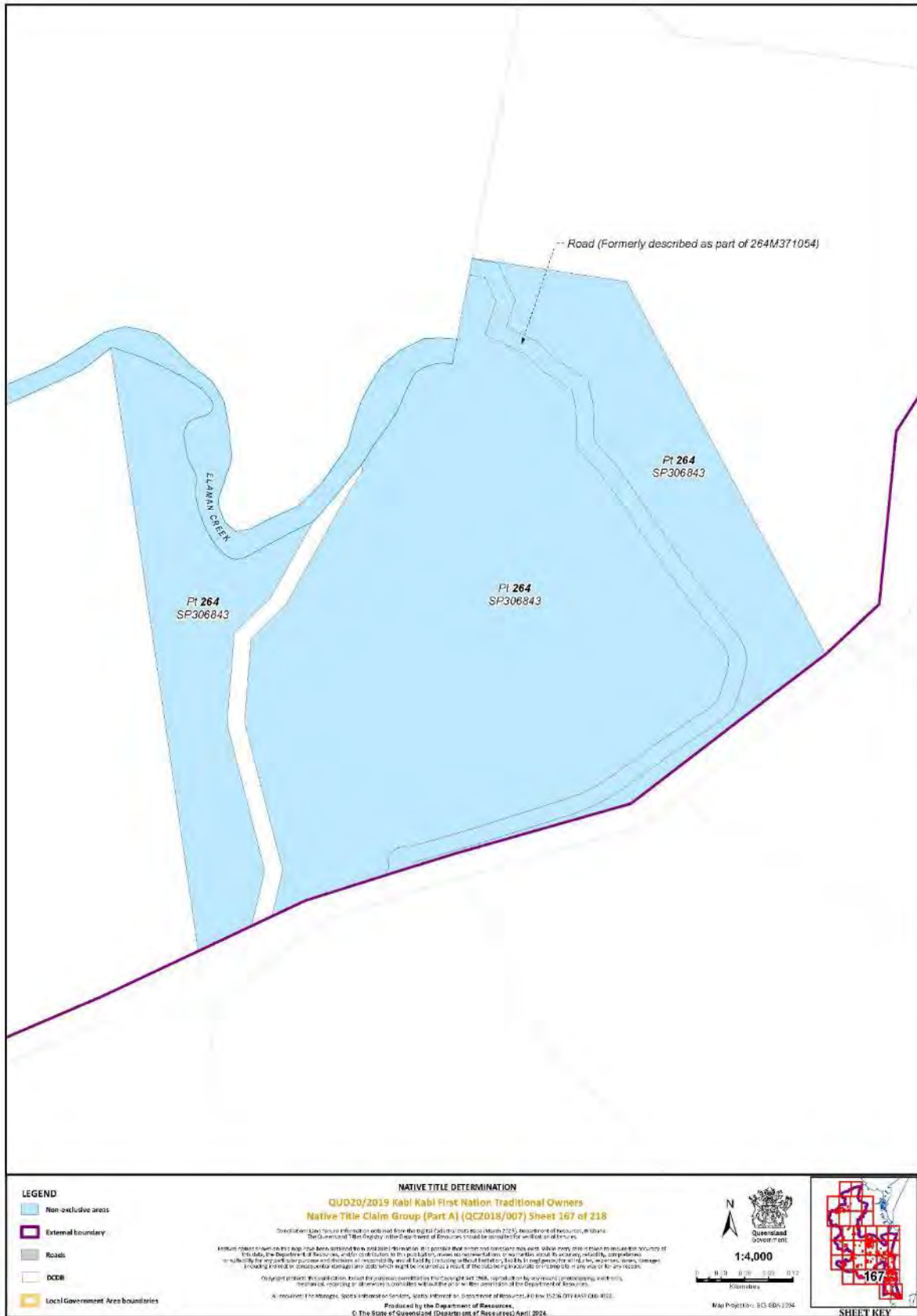


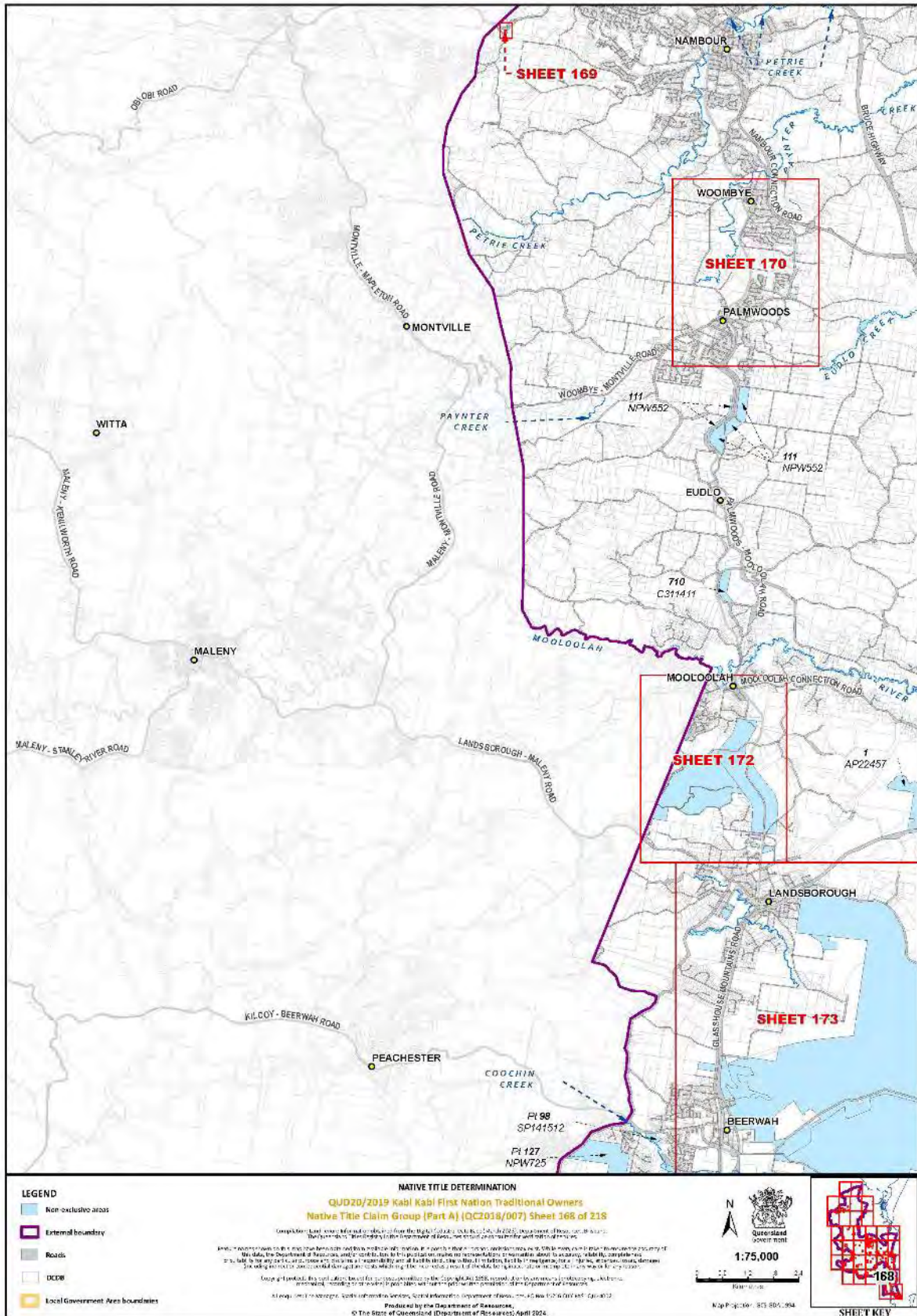




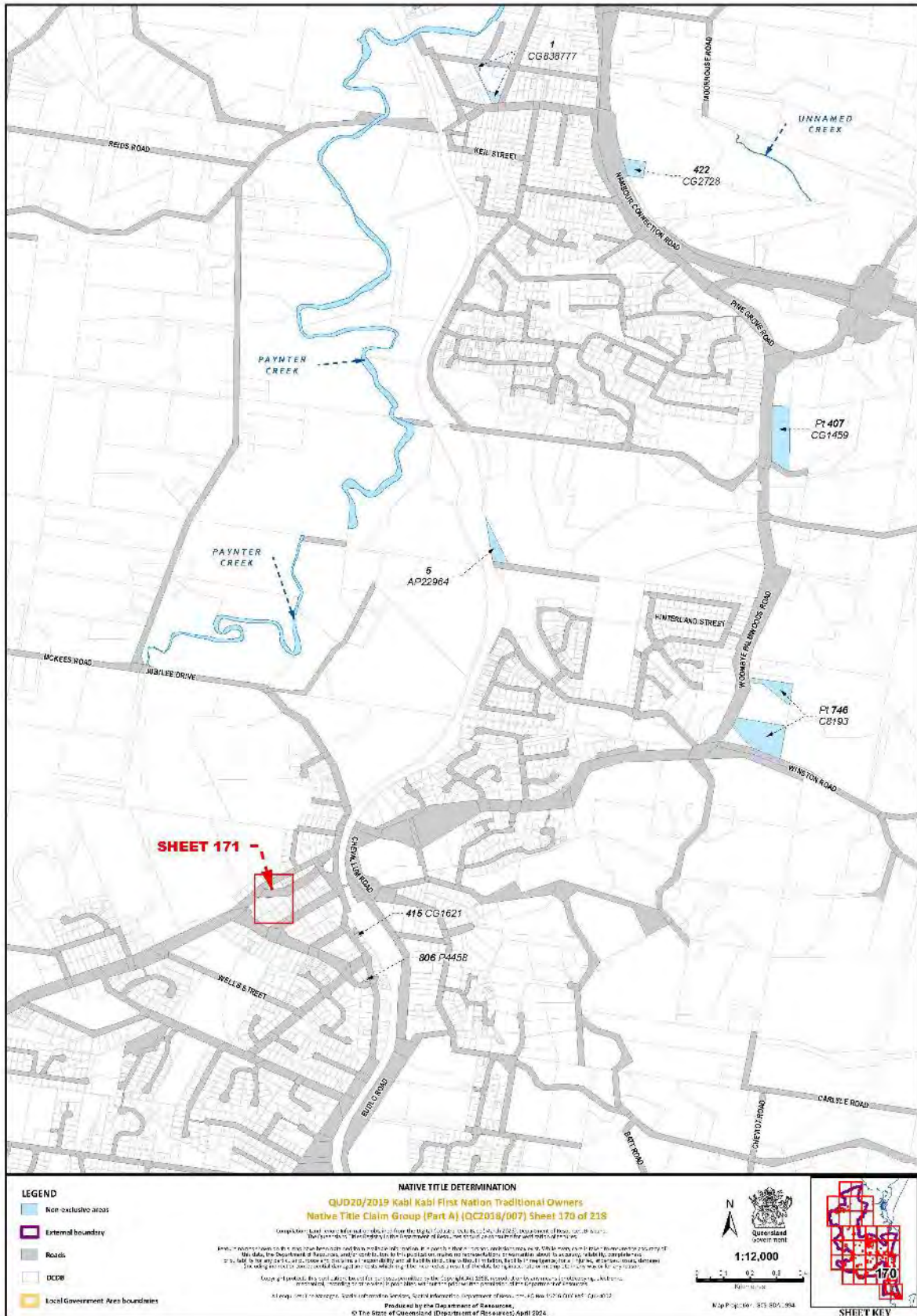




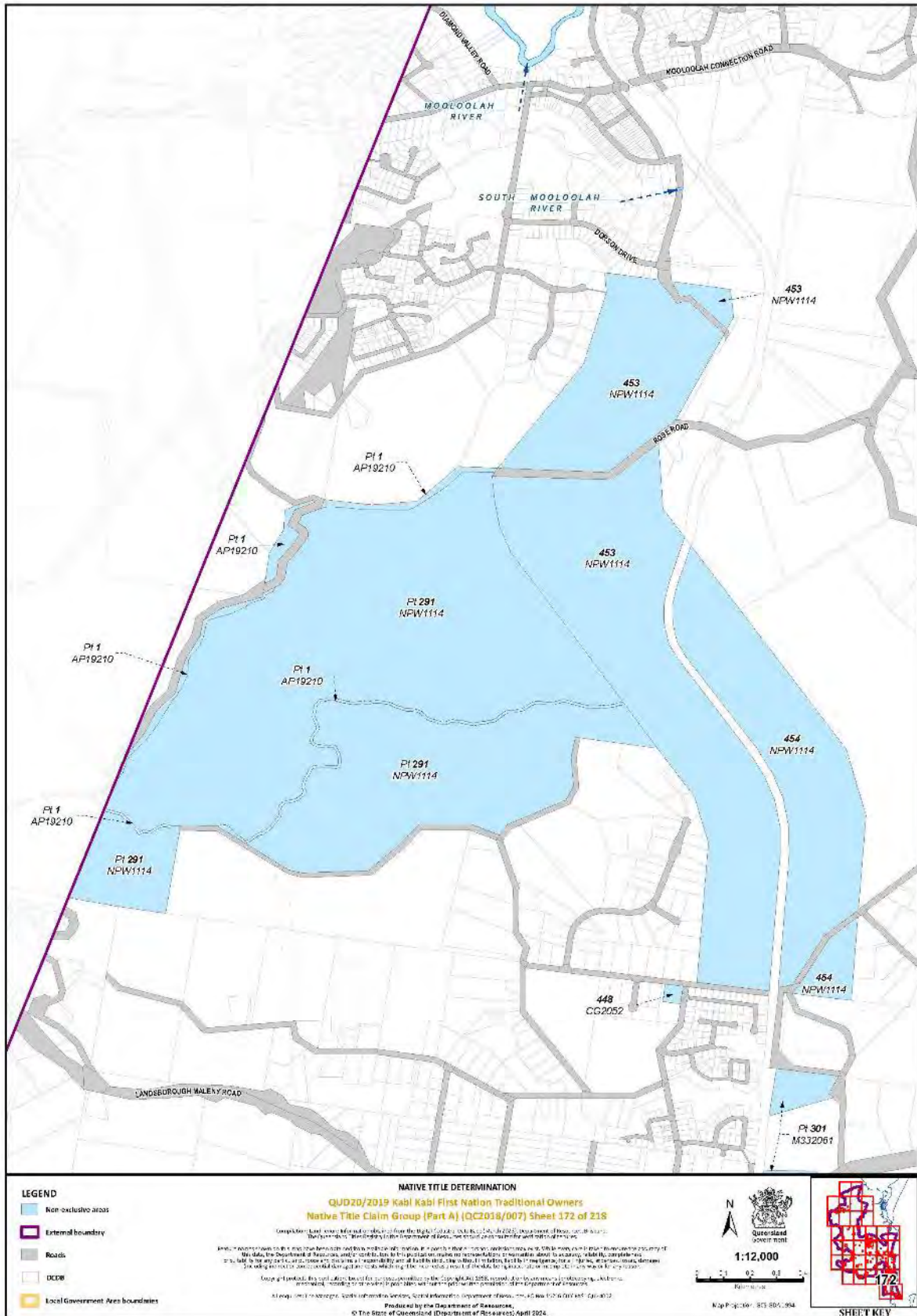






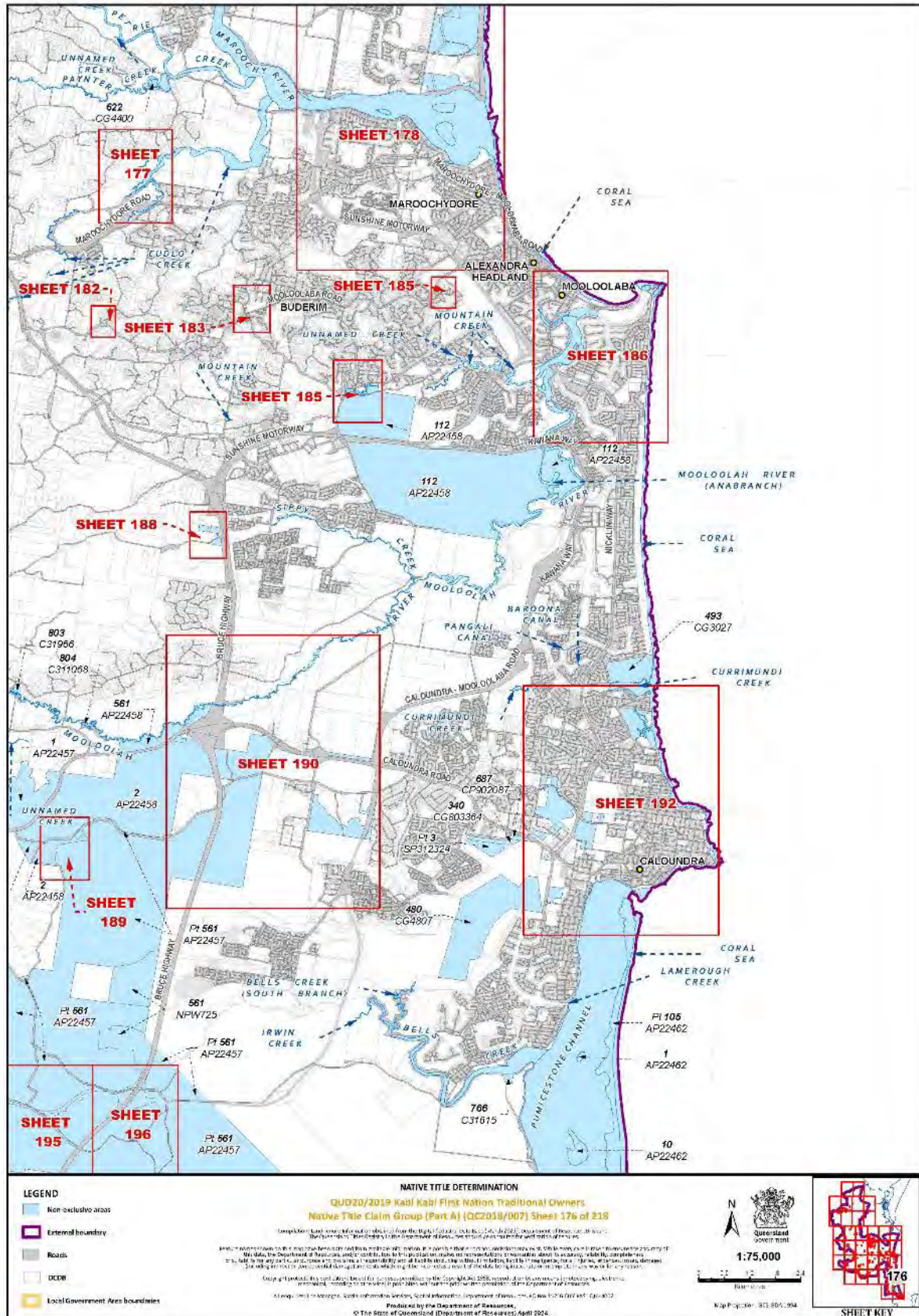


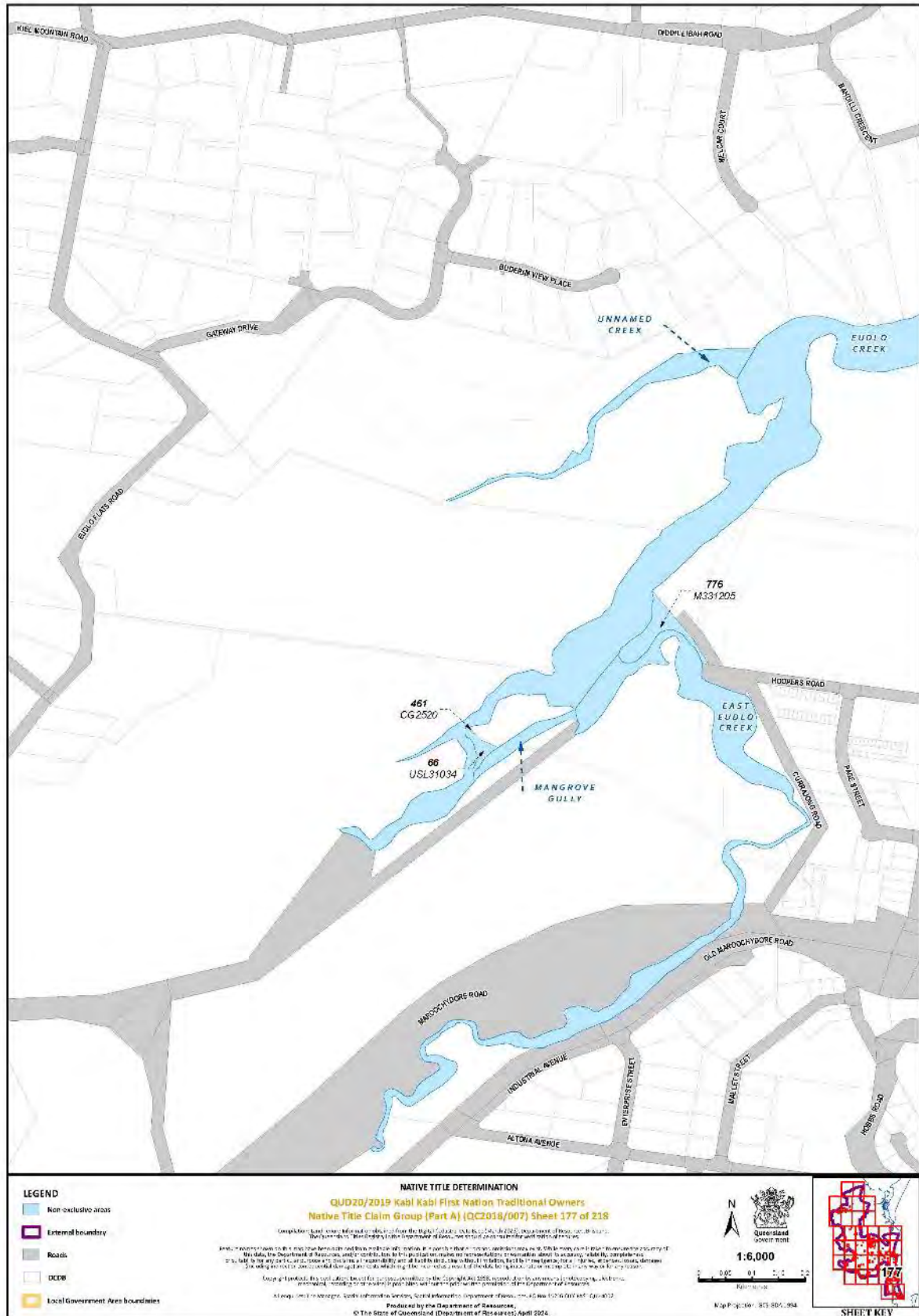


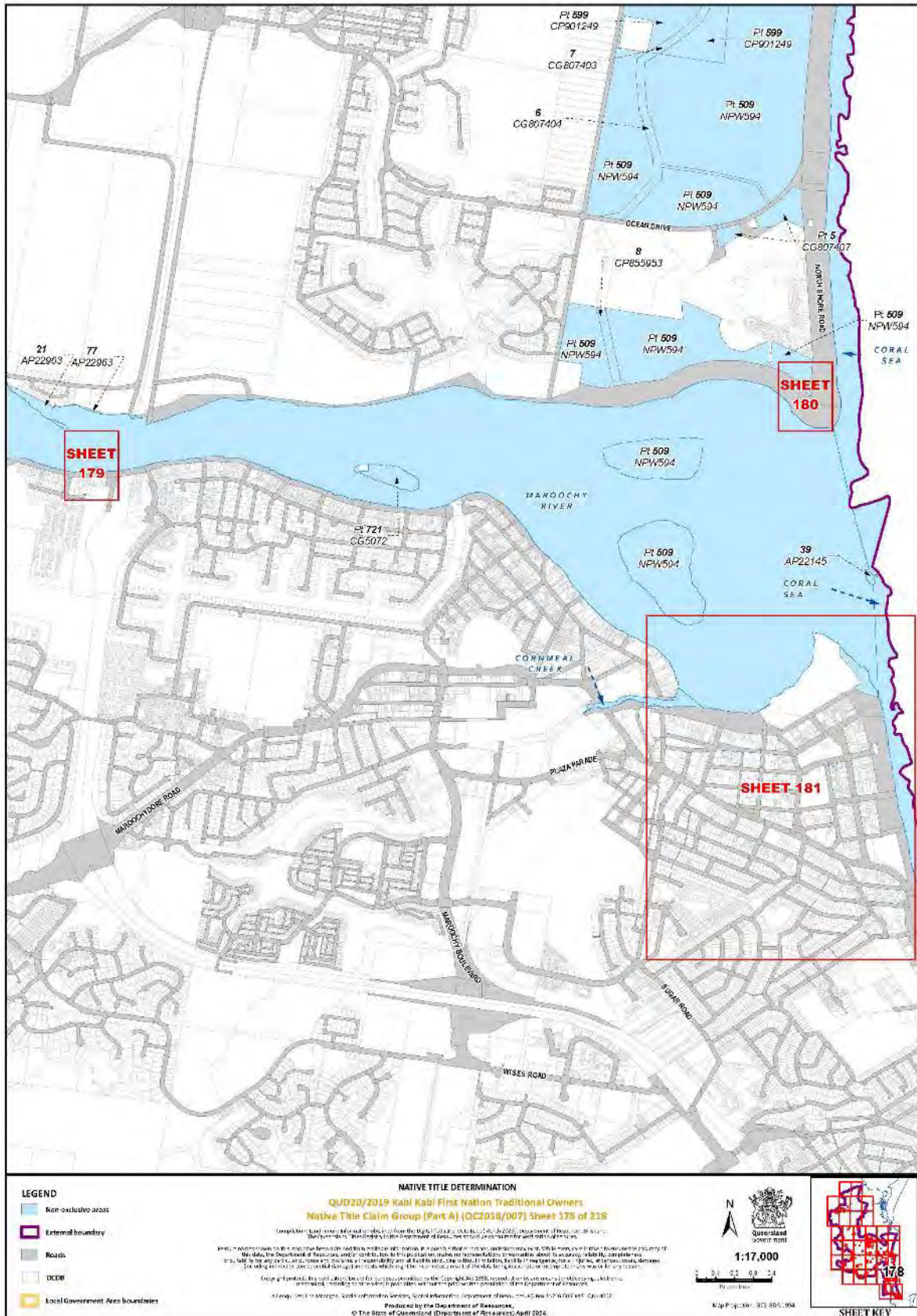










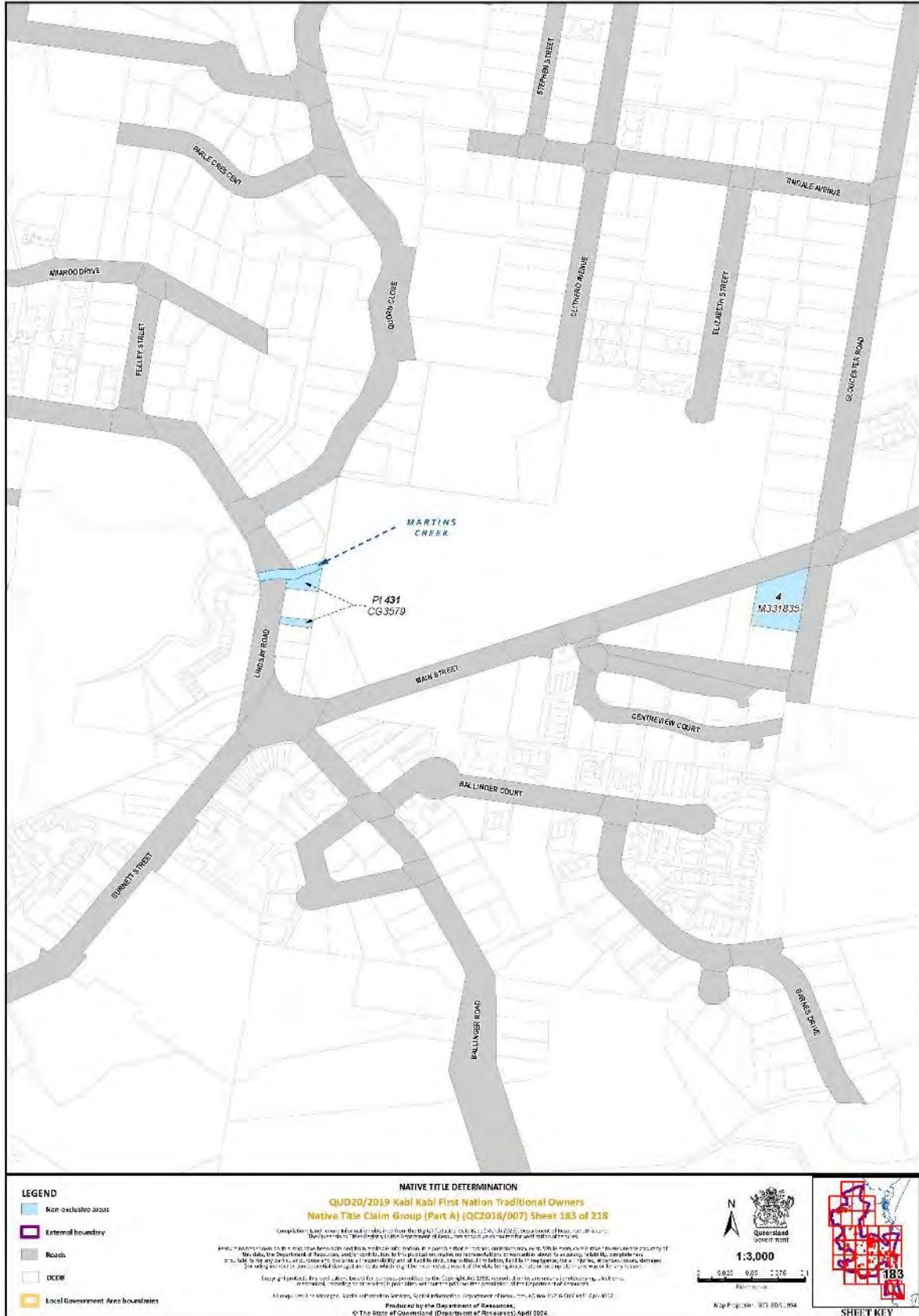


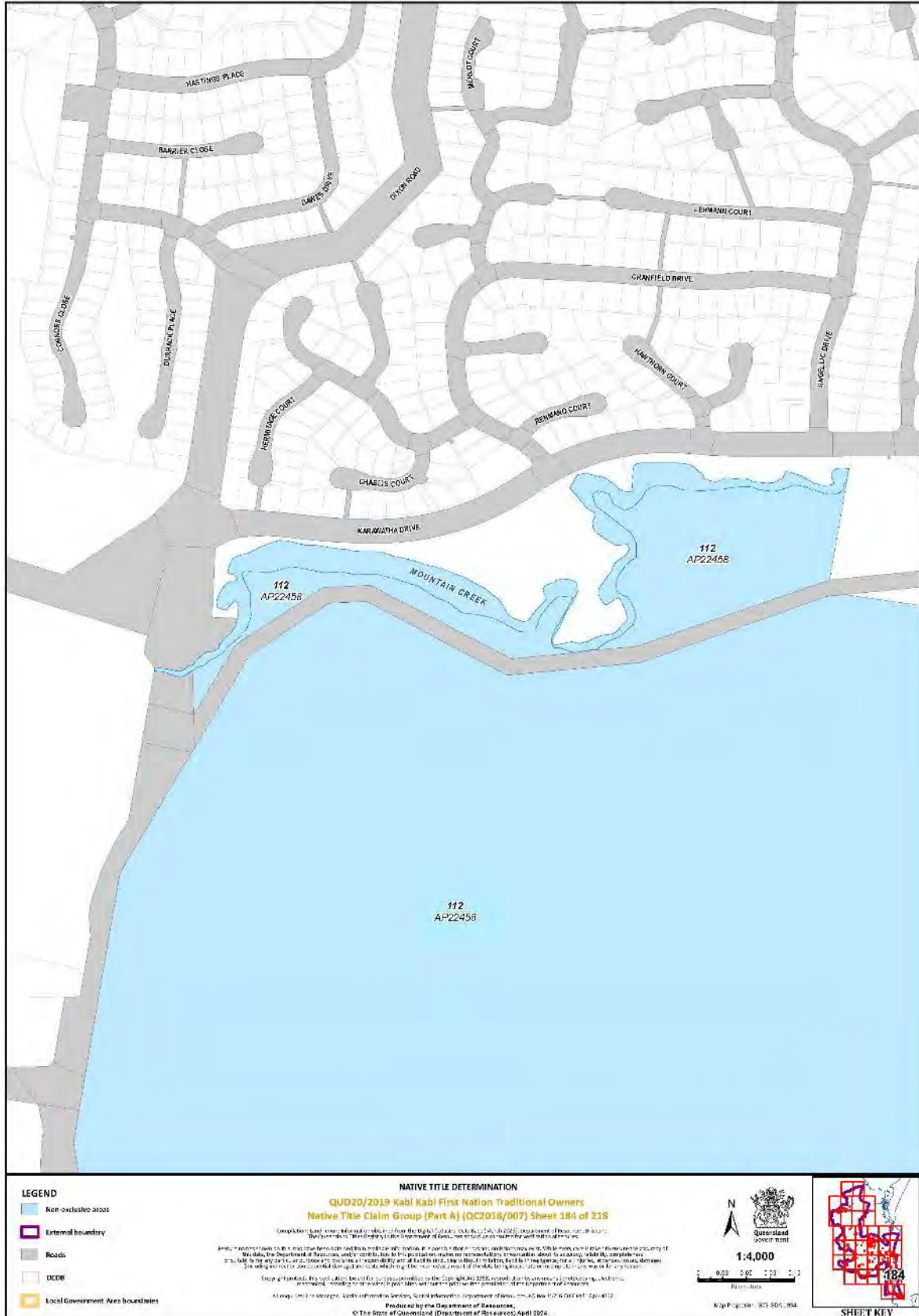




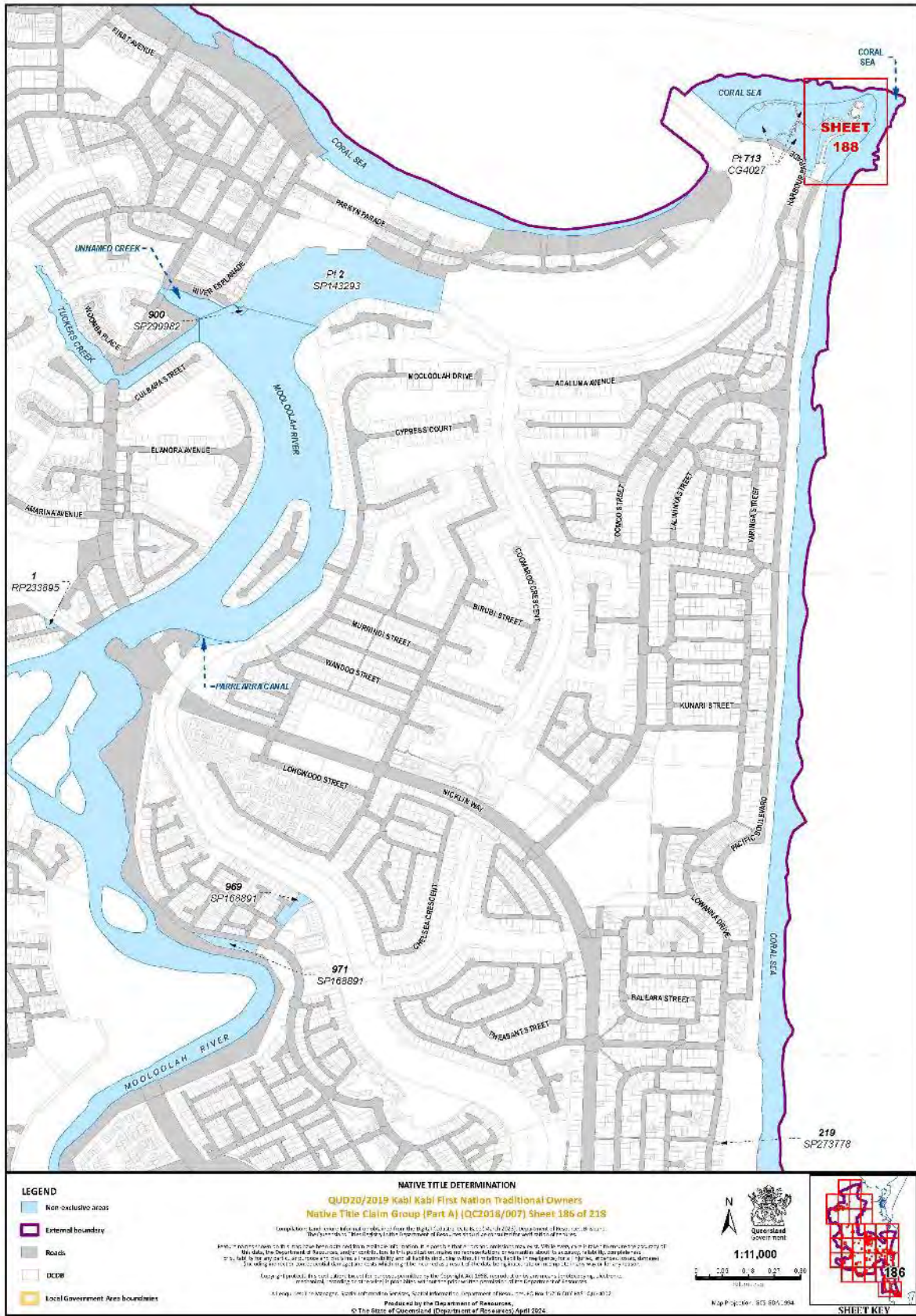
















NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheet 188 of 218**

Determination made pursuant to section 87 of the Native Title Act 1993 (Cth) (NTA) and section 223 of the Queensland Native Title Act 2009 (QNTA). The Queensland Native Title Act 2009 (QNTA) is a re-enactment of the NTA for Queensland. The Queensland Native Title Act 2009 (QNTA) is a re-enactment of the NTA for Queensland. The Queensland Native Title Act 2009 (QNTA) is a re-enactment of the NTA for Queensland.

Future claims over this area that have been determined by the National Native Title Tribunal (NNTT) or the Queensland Native Title Tribunal (QNTT) may affect the boundaries of the parcels shown on this map. The Department of Resources, Energy and Tourism (DET) is responsible for the accuracy of the information on this map. The Department of Resources, Energy and Tourism (DET) is responsible for the accuracy of the information on this map. The Department of Resources, Energy and Tourism (DET) is responsible for the accuracy of the information on this map.

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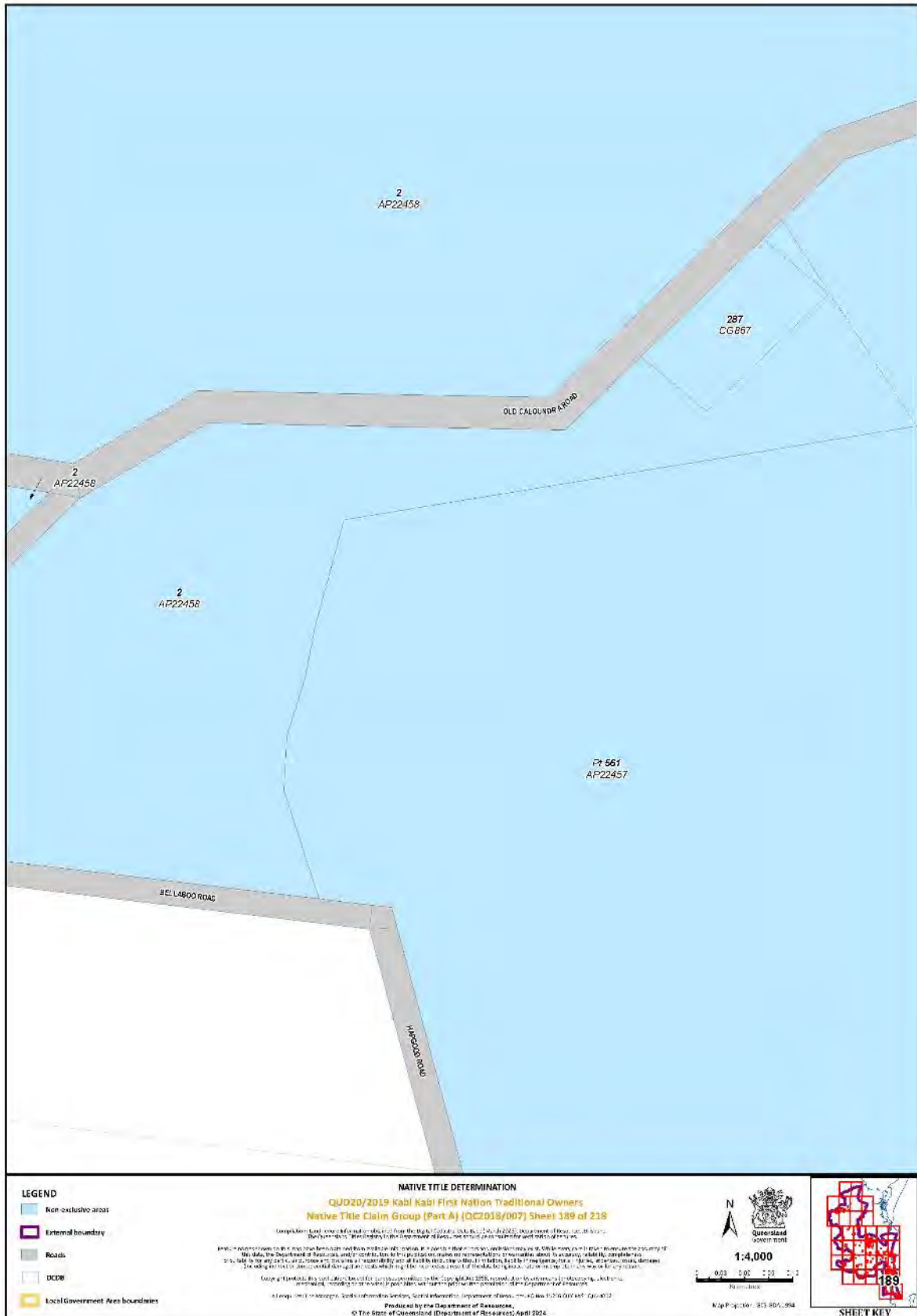
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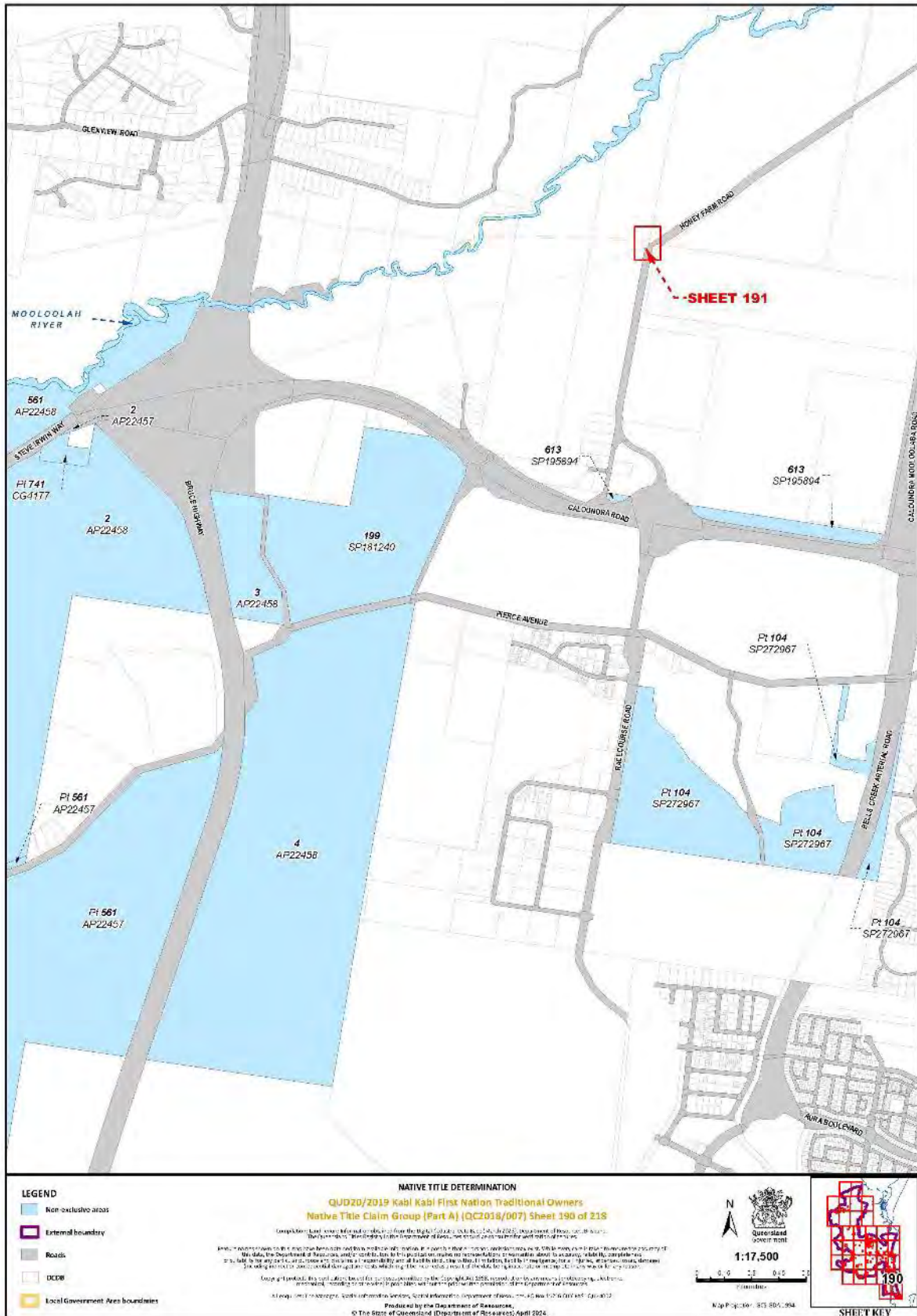
- Non-exclusive areas
- External boundary
- Roads
- DCDB
- Local Government Area boundaries

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Map Position: 63° 58' S 150° 42' E

SHEET KEY







NATIVE TITLE DETERMINATION

QUQ20/2019 Kabi Kabi First Nation Traditional Owners
Native Title Claim Group (Part A) (QC2018/007) Sheet 191 of 218

Determination made pursuant to section 87 of the Native Title Act 1993 (NTA), as amended, and section 237 of the Queensland Land Act 1994 (QLA), as amended, and section 237 of the Queensland Land Act 1994 (QLA), as amended. This determination is subject to the provisions of the Native Title Act 1993 (NTA), as amended, and section 237 of the Queensland Land Act 1994 (QLA), as amended.

Native title interests shown on this map have been determined based on the information provided to the Department of Resources and Energy Development (DER) by the Kabi Kabi First Nation Traditional Owners Native Title Claim Group. The Department of Resources and Energy Development (DER) is not responsible for any errors or omissions in this map, and the Department of Resources and Energy Development (DER) is not responsible for any errors or omissions in this map, and the Department of Resources and Energy Development (DER) is not responsible for any errors or omissions in this map.

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCCRF
- Local Government Area boundaries

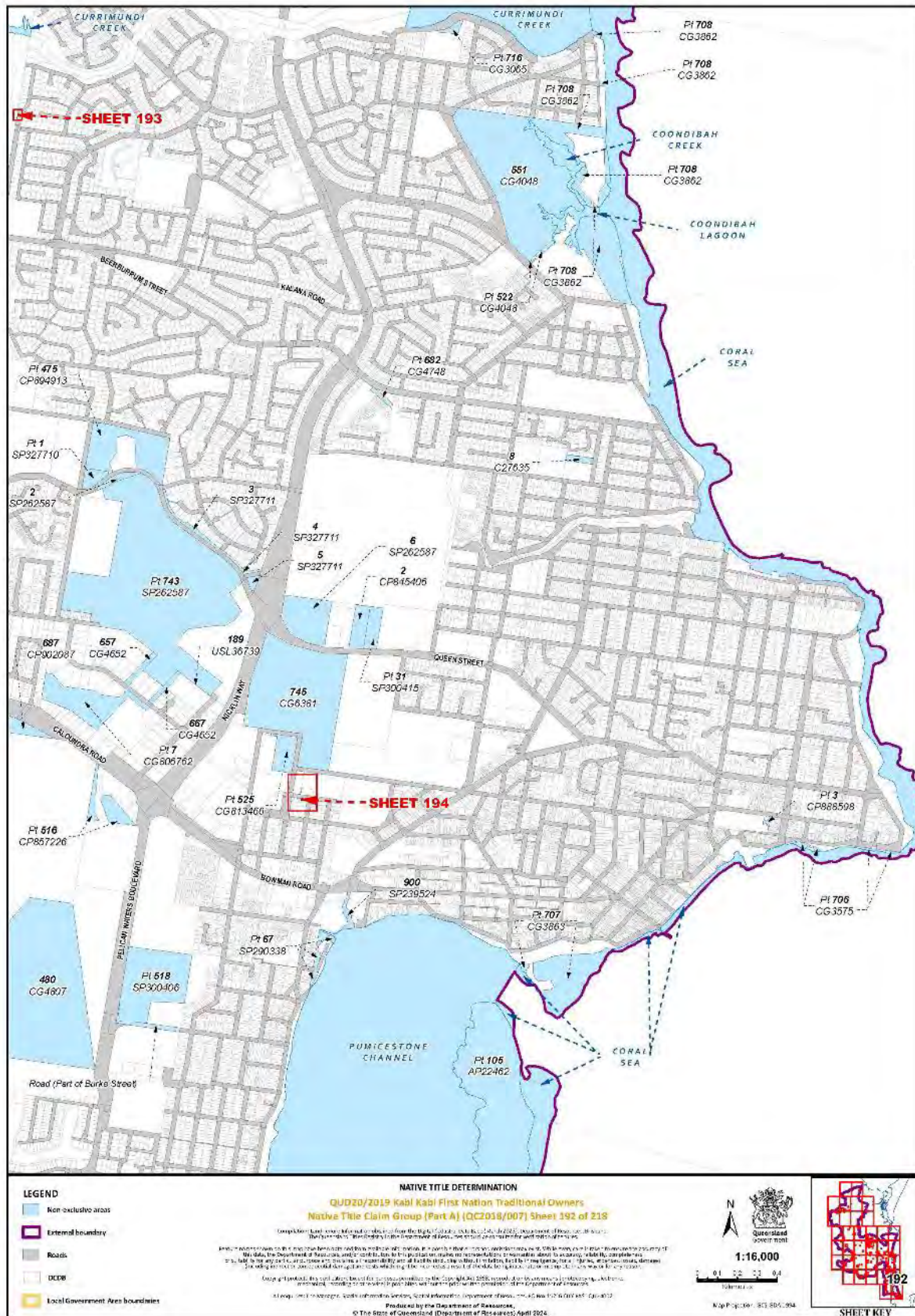
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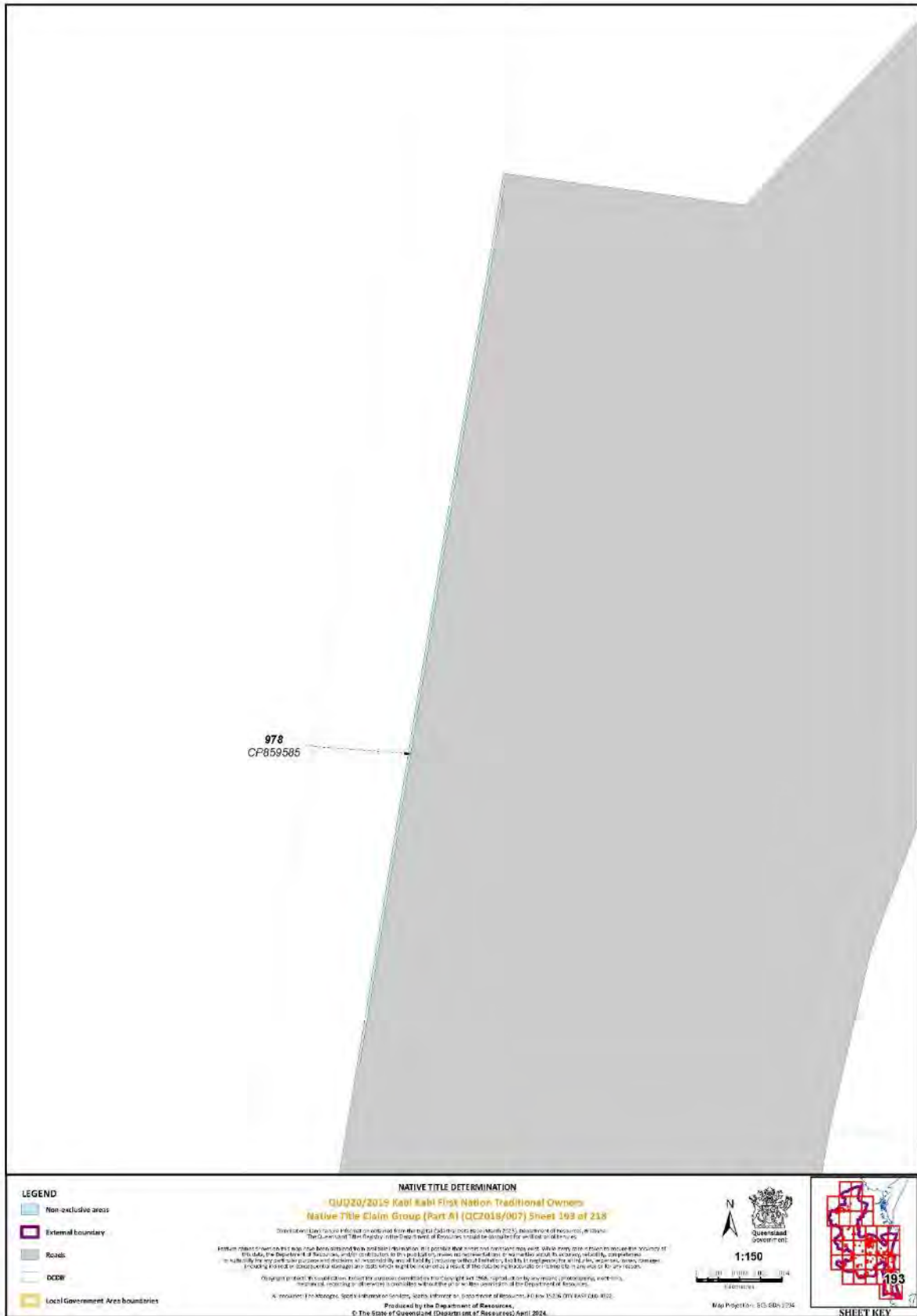
Scale in metres

Map Projection: GDA 2011 UTM

191

SHEET KEY







NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group (Part A) (QC2018/007) Sheets 194 of 218**

Determination made pursuant to section 223 of the Native Title Act 1993 (Cth) (NTA) and section 223(1)(b) of the Native Title Act 1993 (Cth) (NTA) as amended. This Determination is subject to the provisions of the NTA and the Native Title Act 1993 (Cth) (NTA) as amended. It is possible that there may be other native title claims in the area of the subject of this Determination. The Department of Resources, Energy and Tourism (DET) is not responsible for the accuracy of the information contained in this Determination. The Department of Resources, Energy and Tourism (DET) is not responsible for the accuracy of the information contained in this Determination. The Department of Resources, Energy and Tourism (DET) is not responsible for the accuracy of the information contained in this Determination.

LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCDB
- Local Government Area boundaries

1:500

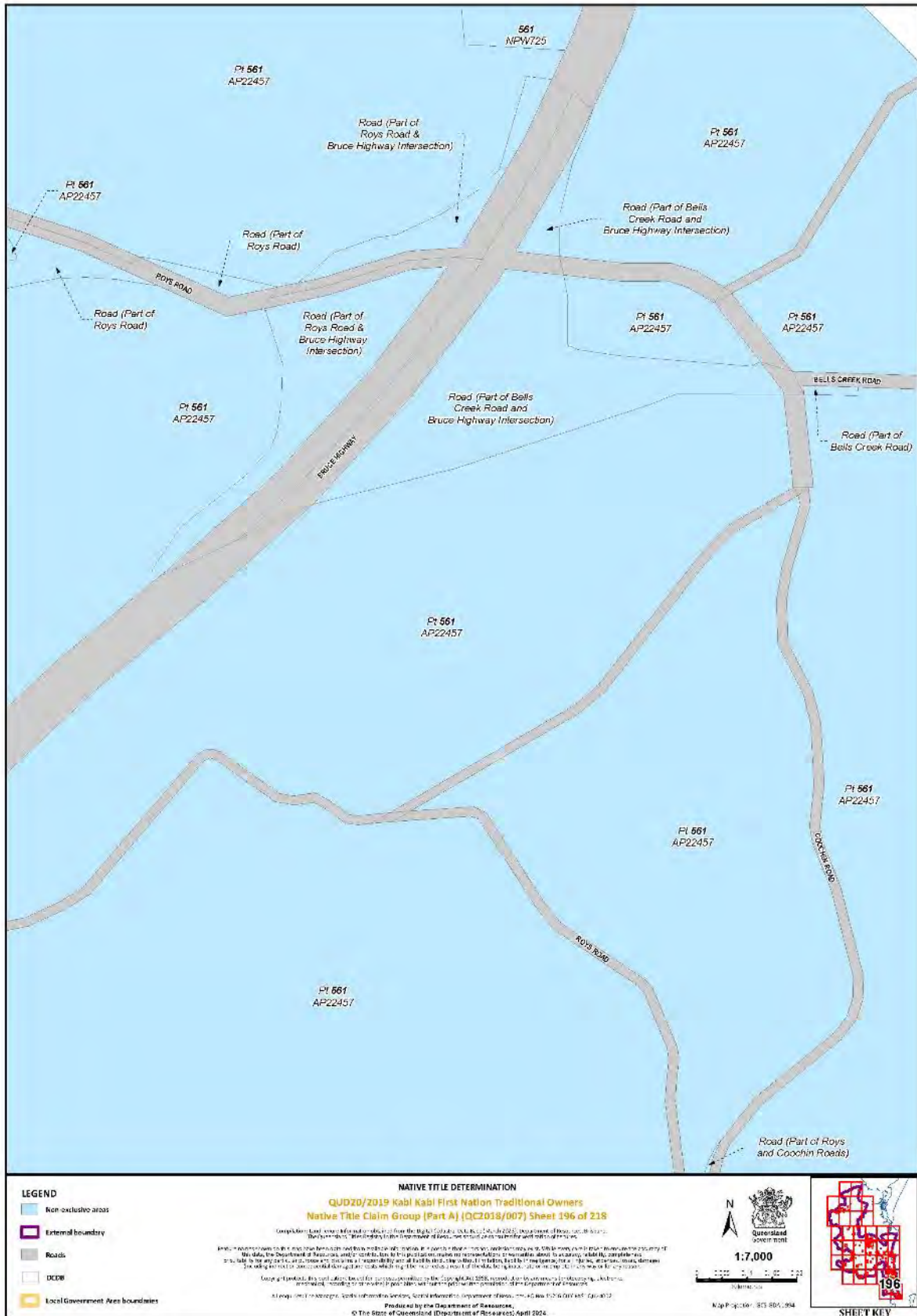
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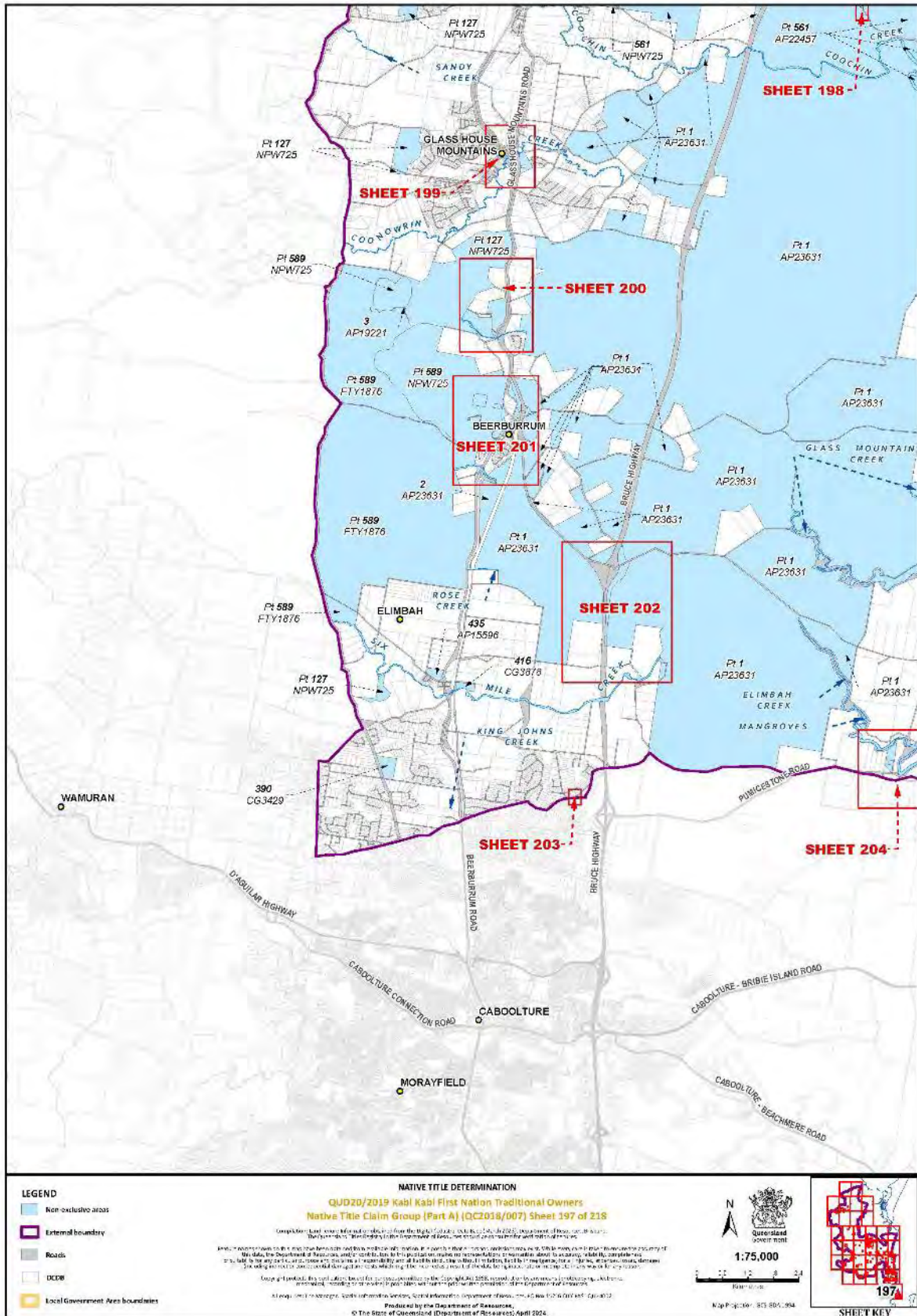
194

SHEET KEY

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NATIVE TITLE DETERMINATION		
QUD20/2019 Kabi Kabi First Nation Traditional Owners		
Native Title Claim Group (Part A) (QC2018/007) Sheet 195 of 218		
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LEGEND

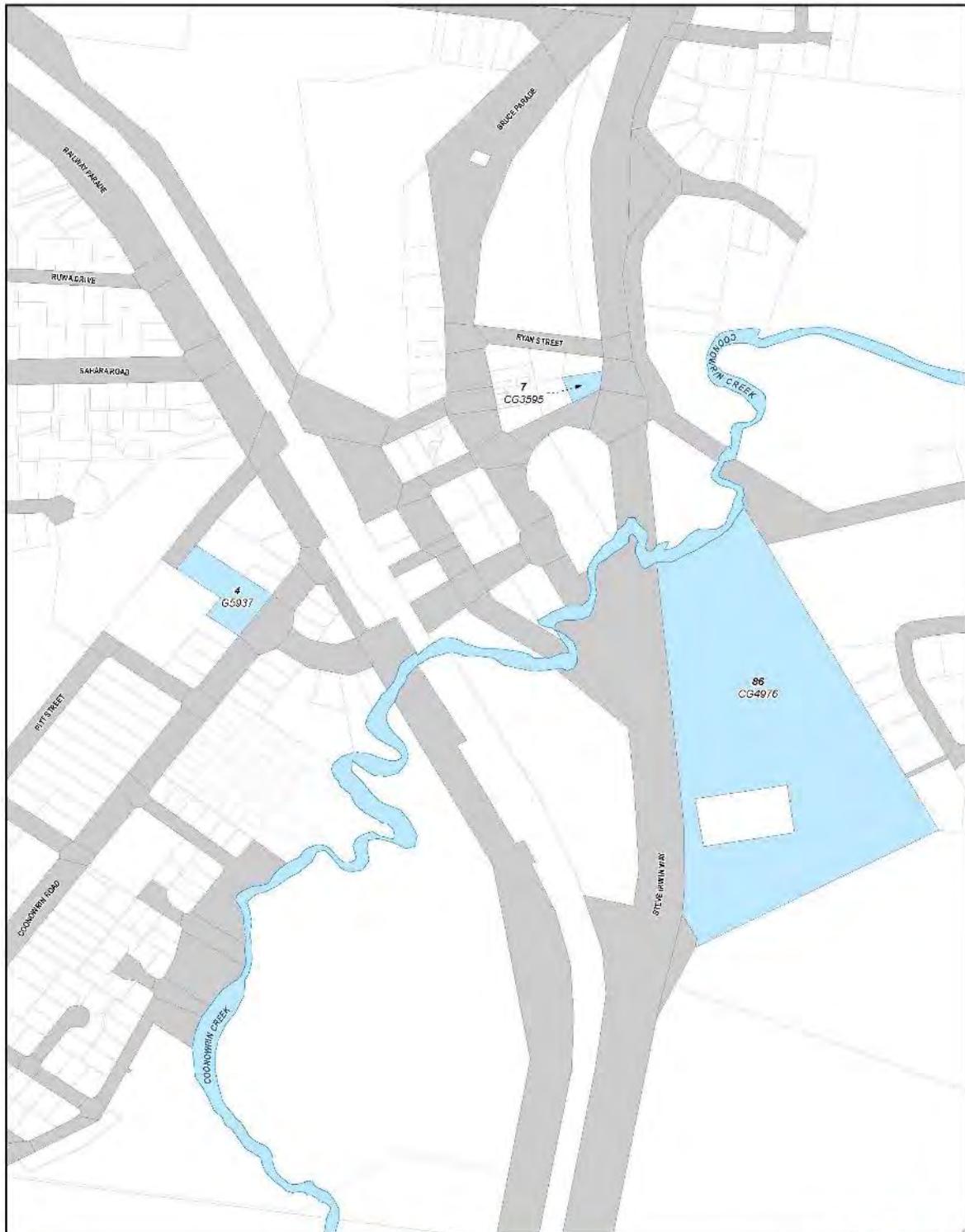
- Non-exclusive areas
- External boundary
- Roads
- DCDM
- Local Government Area boundaries

1:1,000

Metres

195

SHEET KEY



NATIVE TITLE DETERMINATION

QUD20/2019 Kabi Kabi First Nation Traditional Owners
Native Title Claim Group (Part A) (QC2018/007) Sheet 199 of 218

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DLDR
- Local Government Area boundaries

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Metres



Queensland
GOVERNMENT



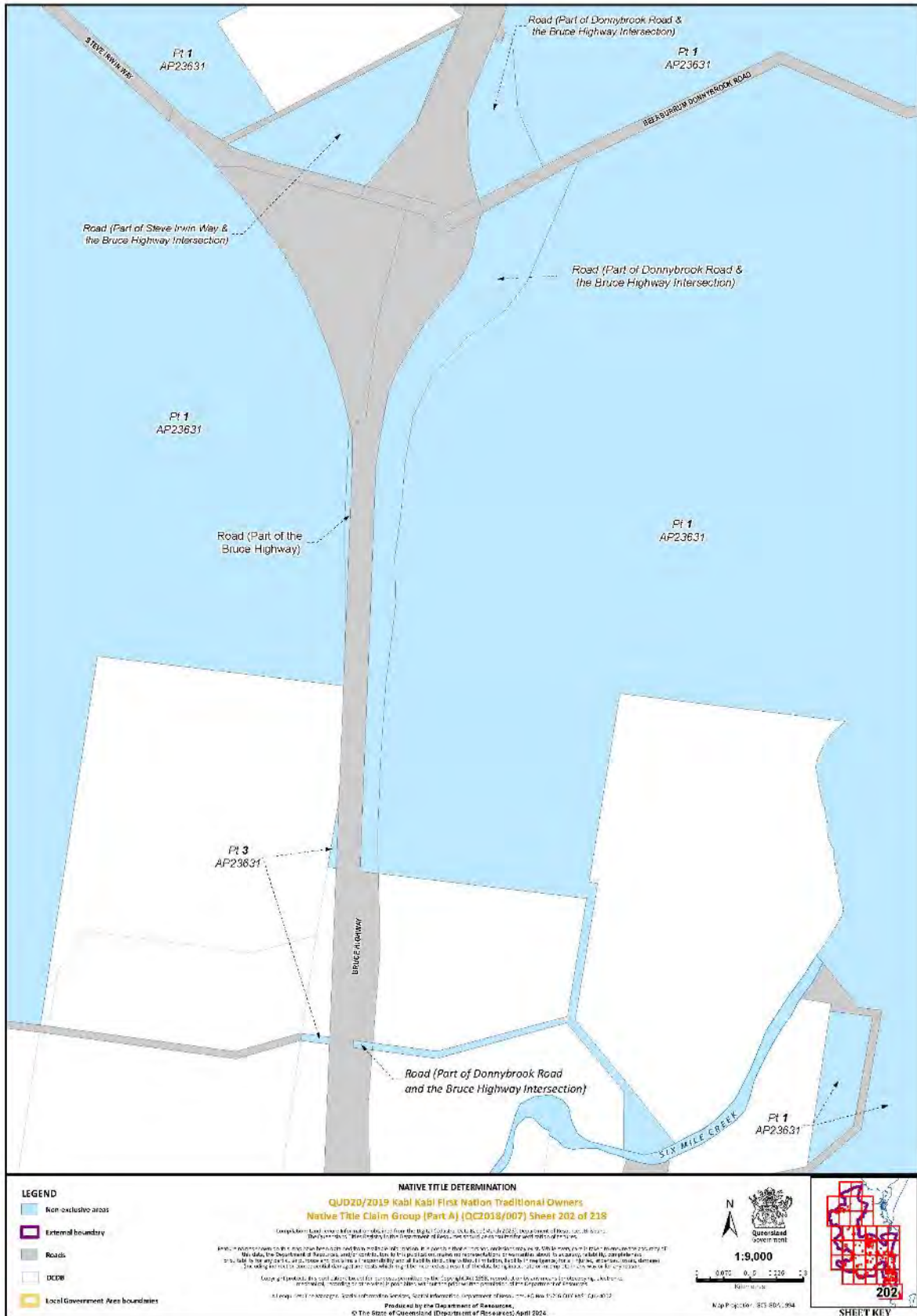
199

SHEET KEY

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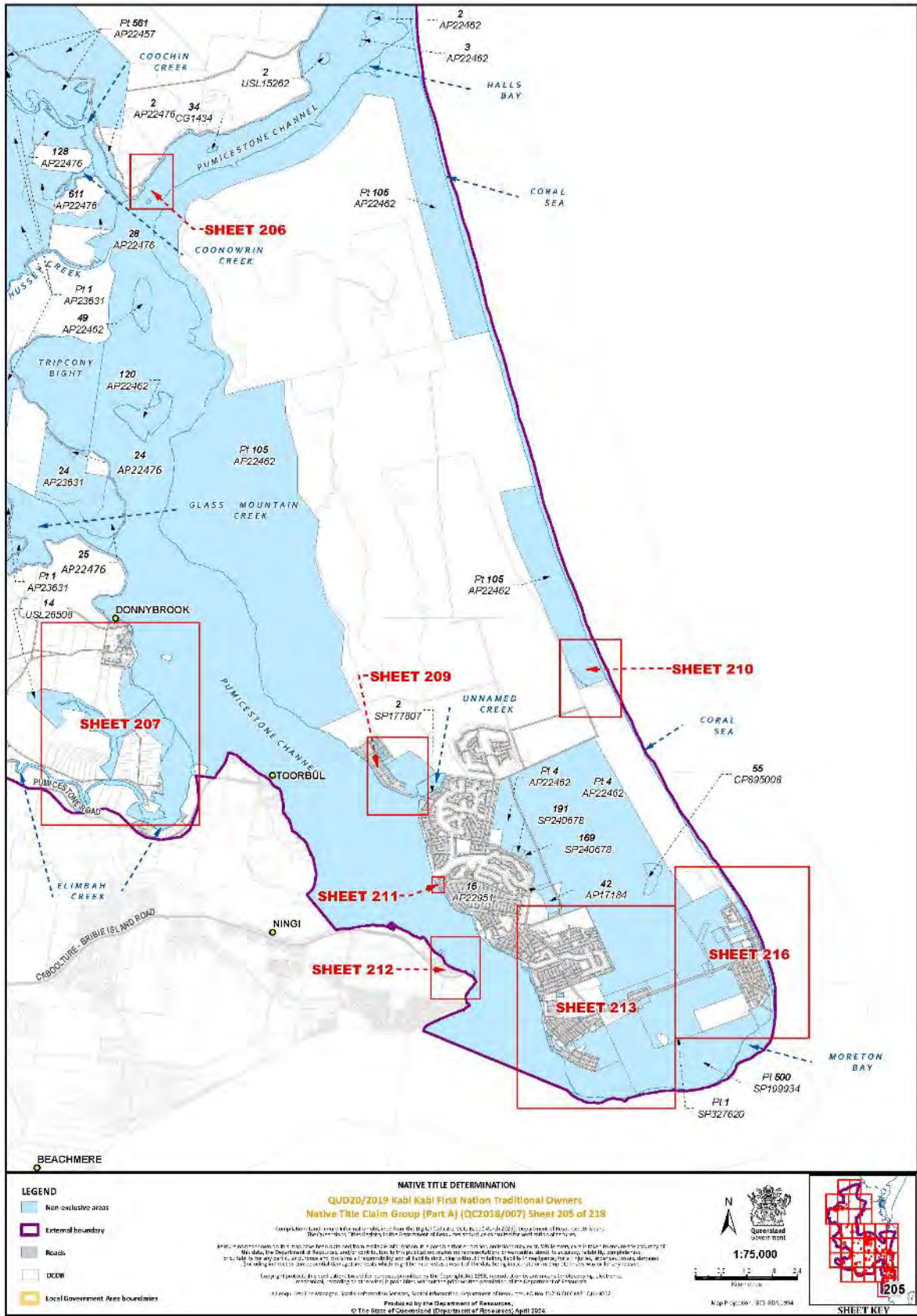


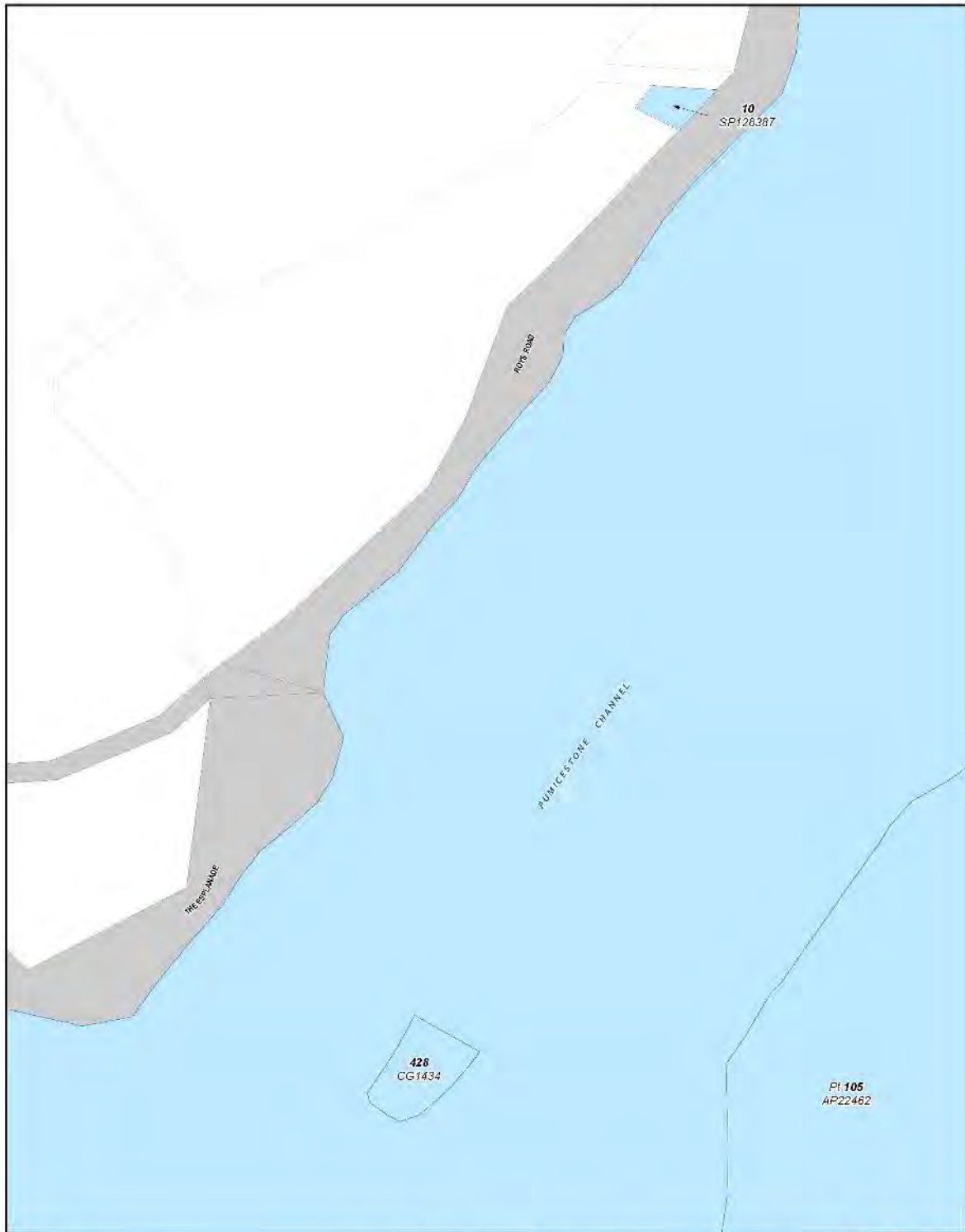












NATIVE TITLE DETERMINATION
QUD20/2019 Kabi Kabi First Nation Traditional Owners
Native Title Claim Group (Part A) (QC2018/007) Sheet 206 of 218

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCDM
- Local Government Area boundaries

1:3,500

Scale



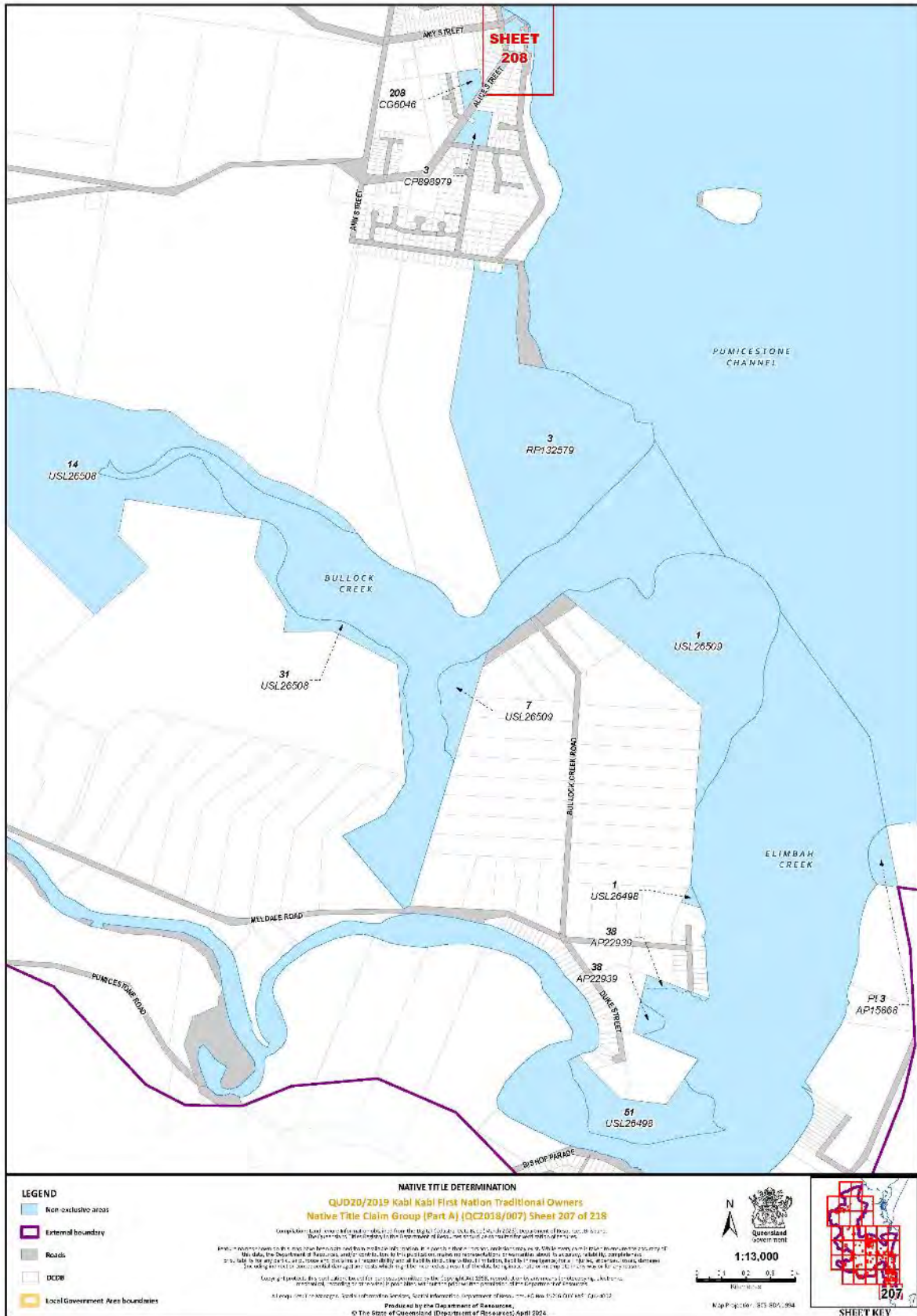
Queensland
Department

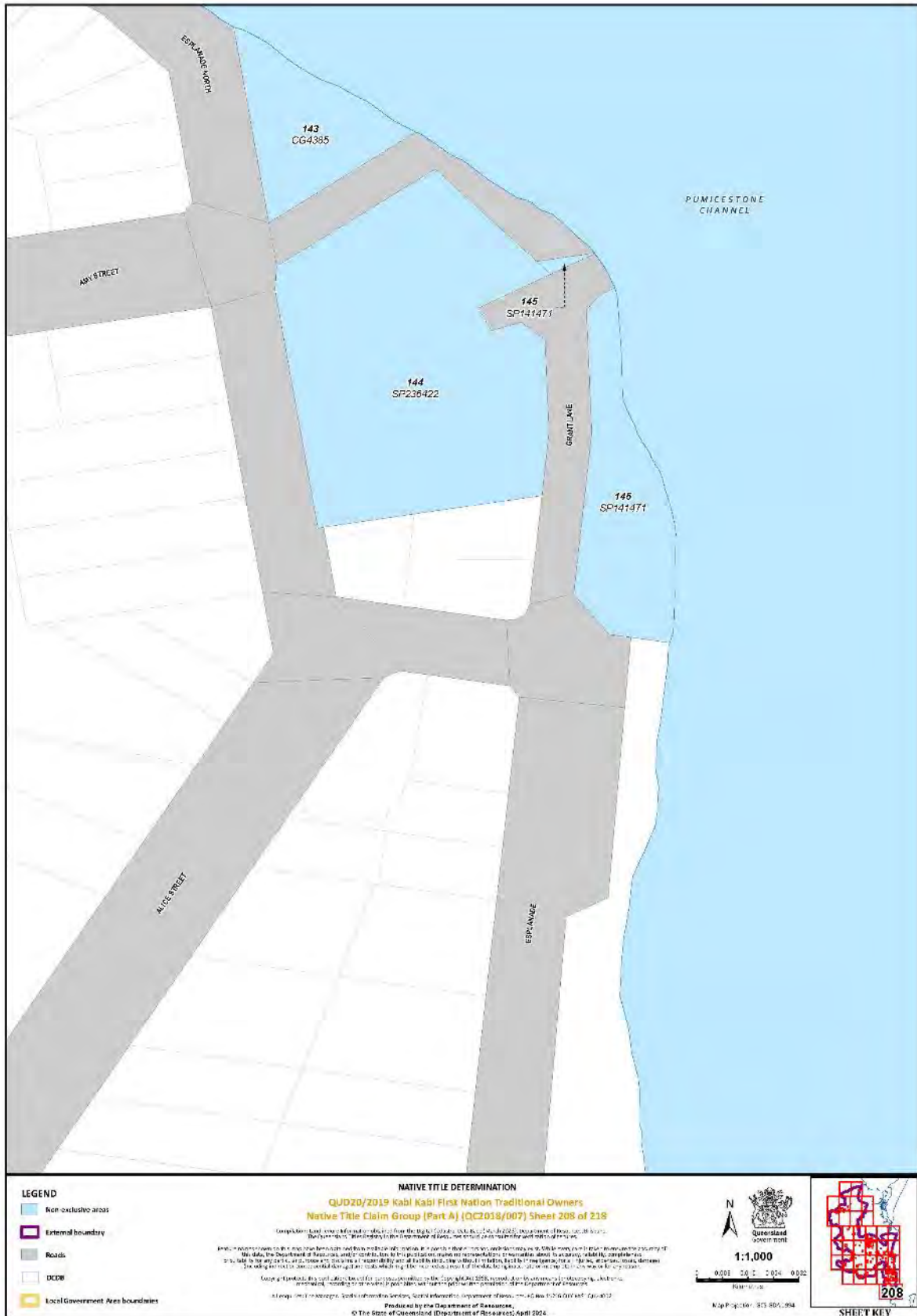


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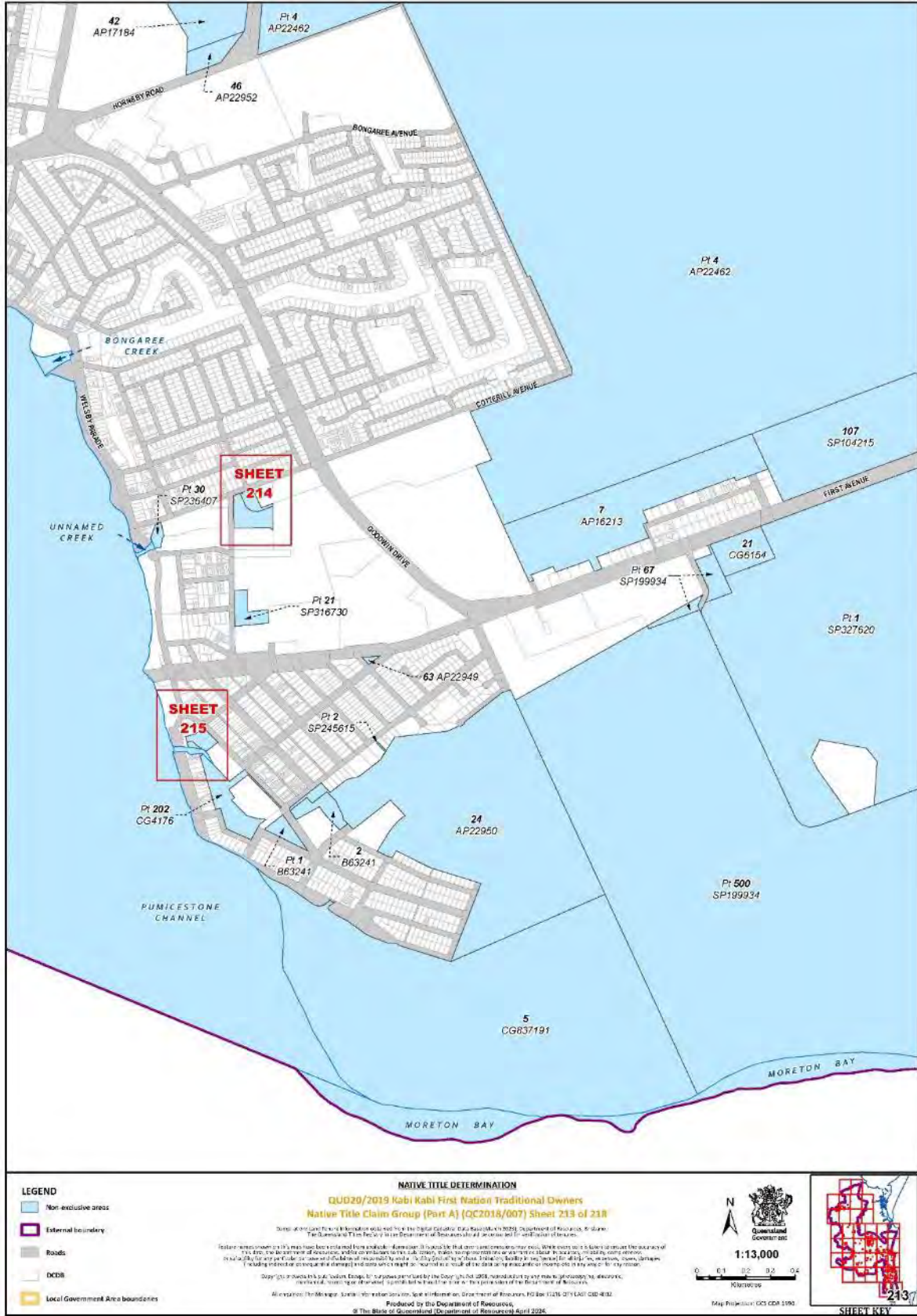
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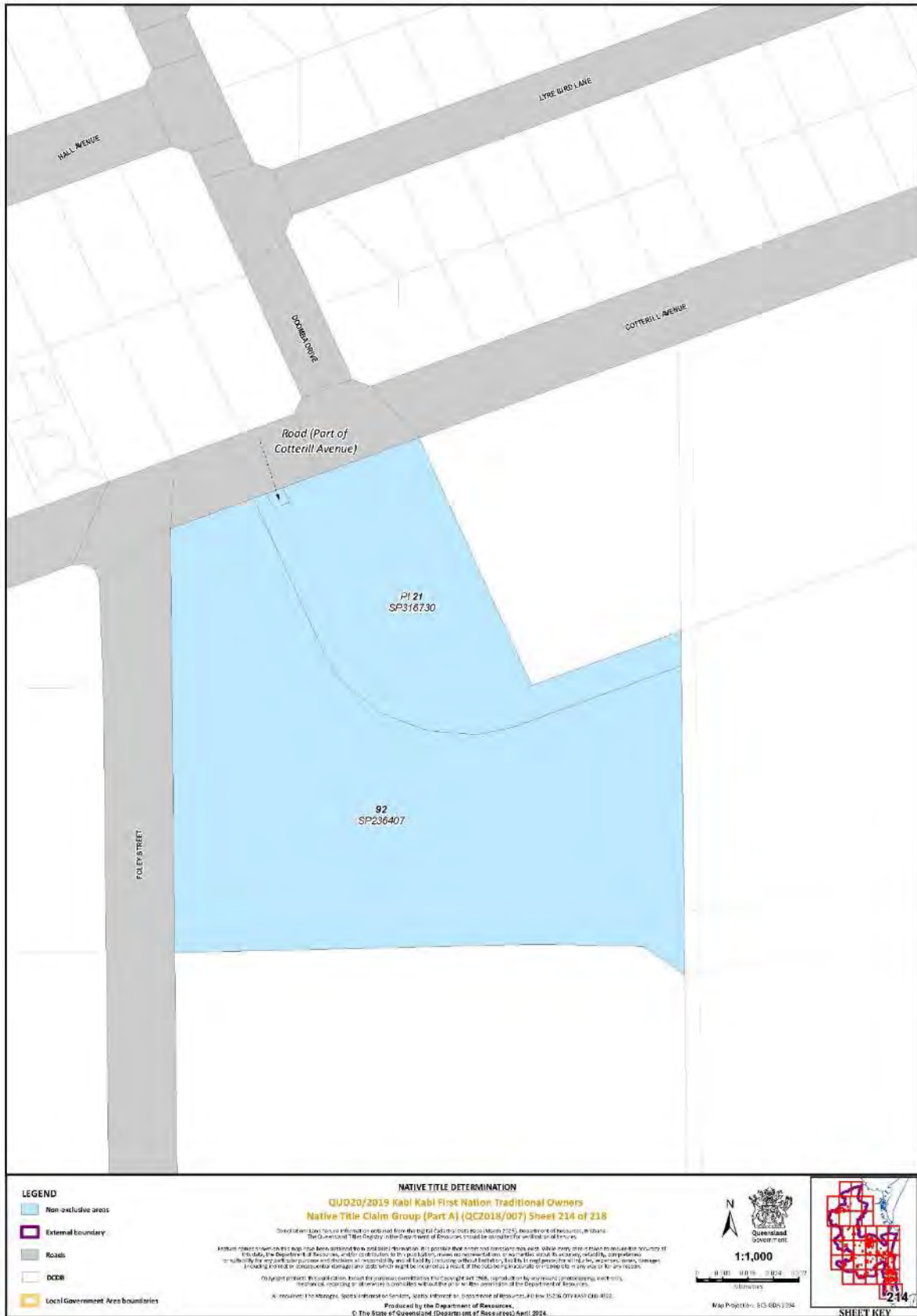
Produced by the Department of Resources, April 2024



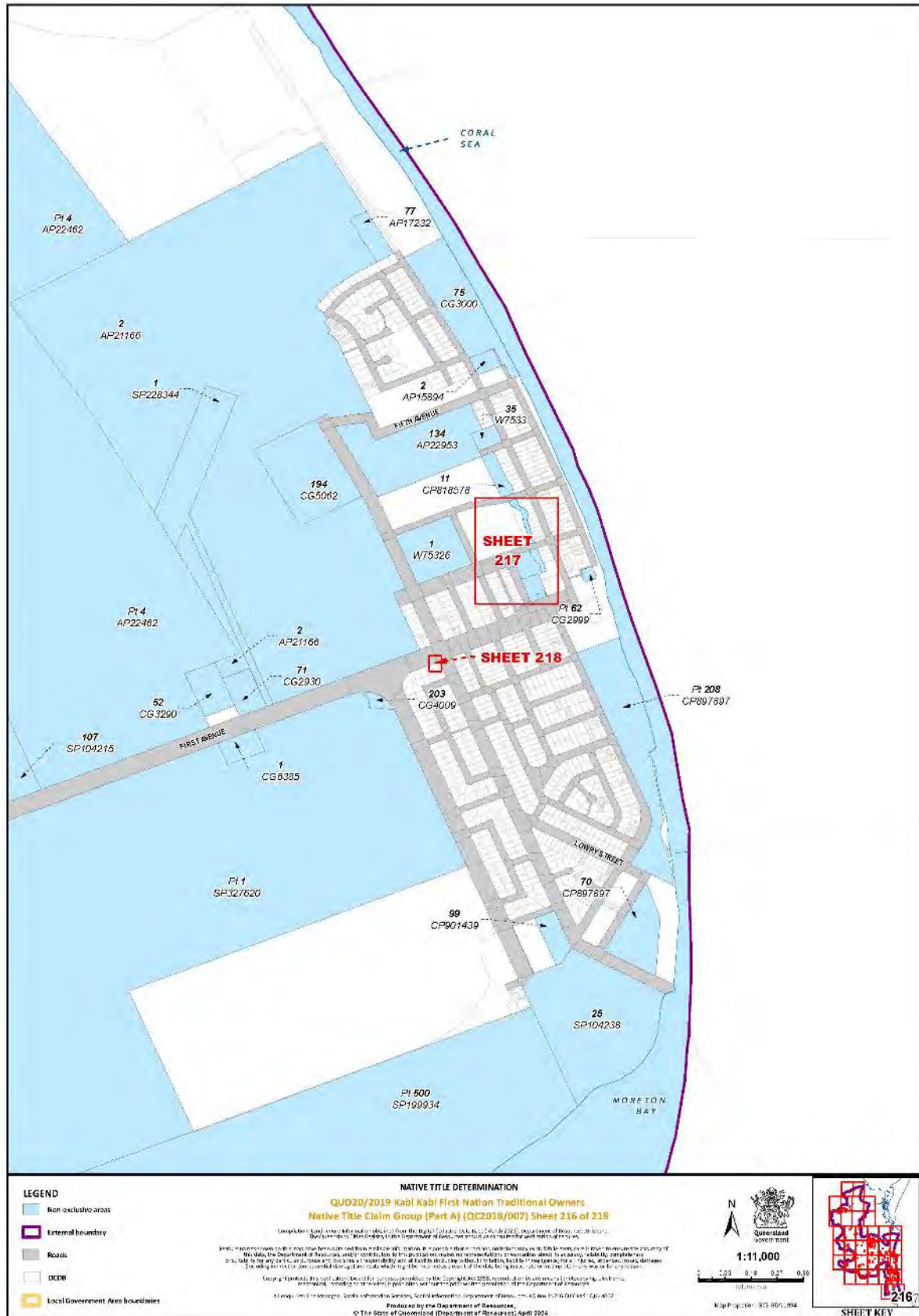














NATIVE TITLE DETERMINATION

**QUD20/2019 Kabi Kabi First Nation Traditional Owners
 Native Title Claim Group [Part A] (QC2018/007) Sheet 217 of 218**

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LEGEND

- Non-exclusive areas
- External boundary
- Roads
- DCDM
- Local Government Area boundaries

N



Queensland
Government

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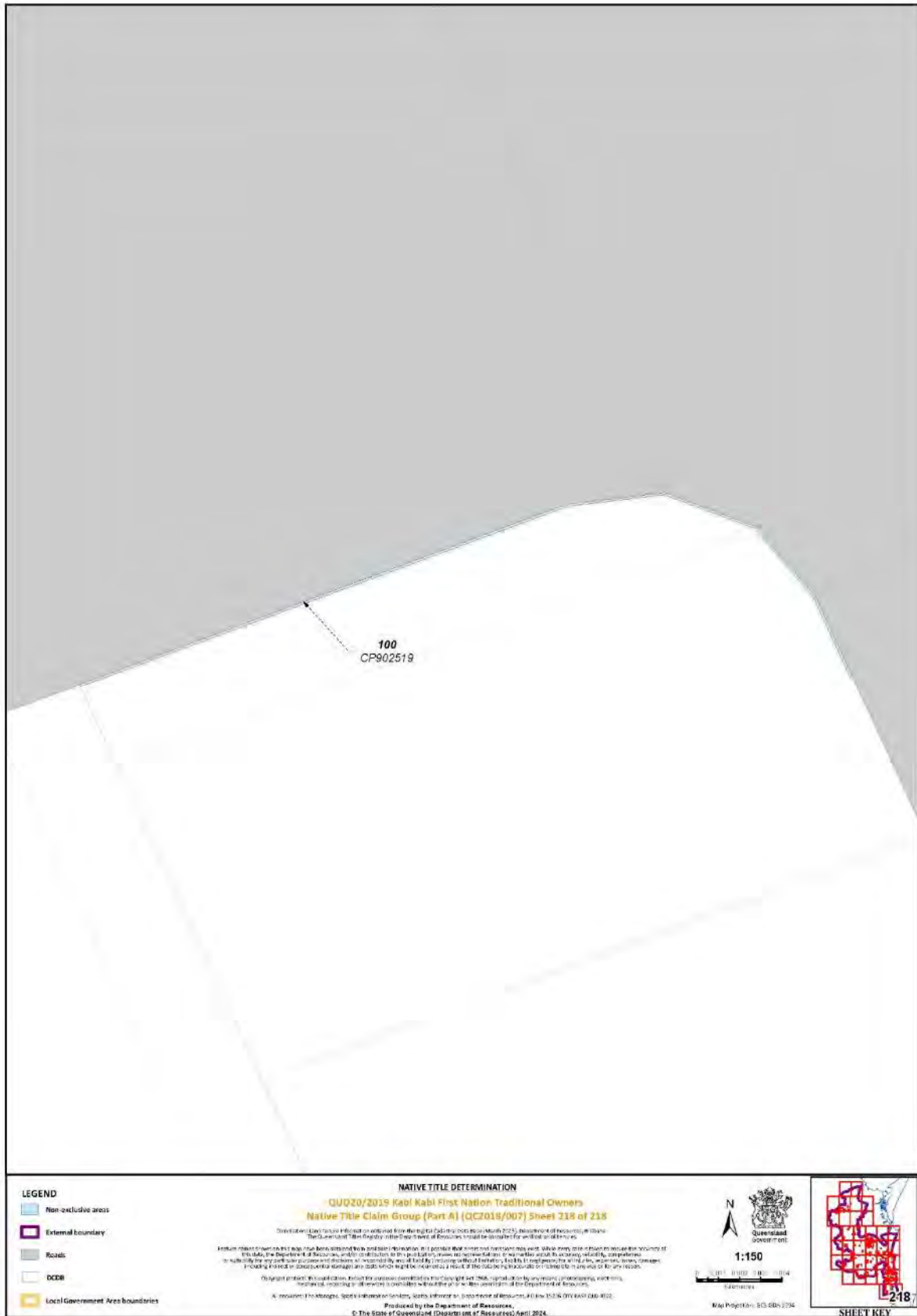
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217

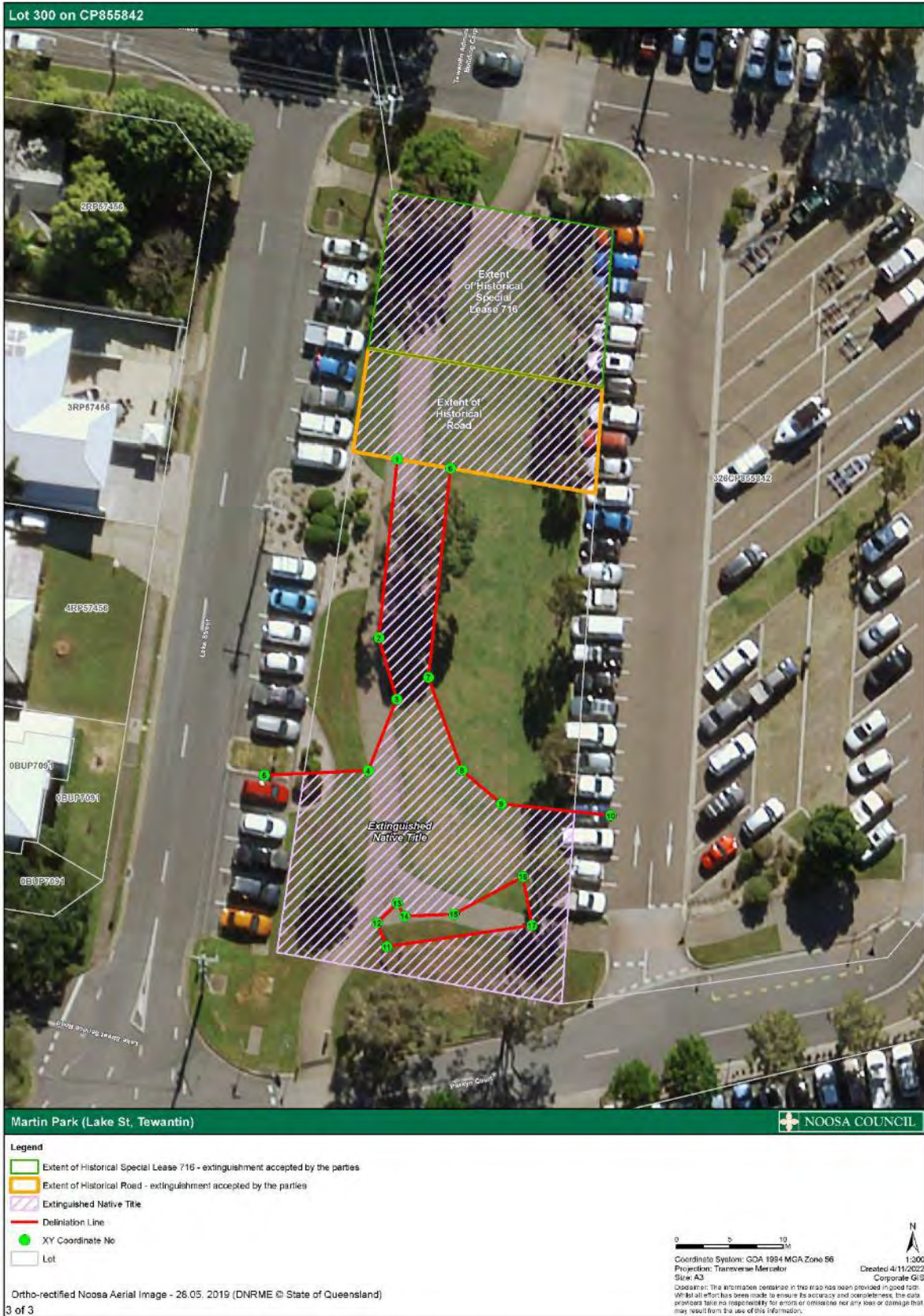
SHEET KEY



Schedule 7 – Map of Areas Partly Affected by Public Works







Lot 300 on CP855842

Martin Park (Lake St, Tewantin)



- Legend**
- Extent of Historical Special Lease 716 - extinguishment accepted by the parties
 - Extent of Historical Road - extinguishment accepted by the parties
 - Extinguished Native Title
 - Delineation Line
 - XY Coordinate No
 - Lot

0 5 10 M
 Coordinate System: GOA 1984 MGA Zone 56
 Projection: Transverse Mercator
 Scale: 63
 Disclaimer: The information contained in this map has been provided in good faith. Whilst all effort has been made to ensure its accuracy and completeness, the data providers bear no responsibility for errors or omissions nor any loss or damage that may result from the use of this information.
 1:200
 Created: 4/11/2022
 Corporate GIS



Stan Topper Park (21 Reserve St, Pomona)

Legend

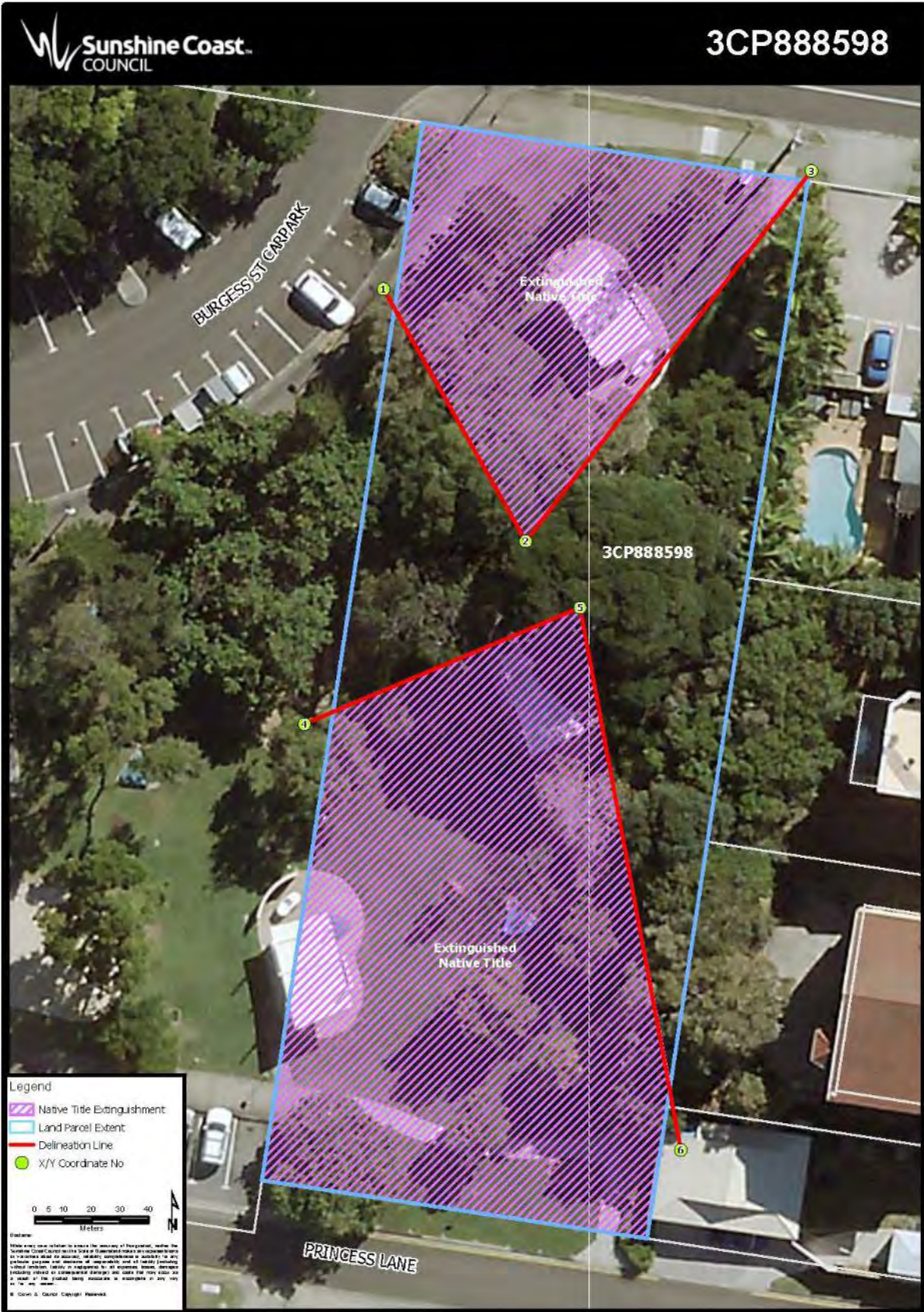
- Extinguished Native Title
- Delineation Line
- XY Coordinate No
- Lot

Ortho-rectified Noosa Aerial Image - 28.05. 2019 (DNRME © State of Queensland)

2 of 2

Coordinate System: GDA 1984 MGA Zone 56
Projection: Transverse Mercator
Scale: 1:1000
Created: 4/11/2022
Corporate GIS
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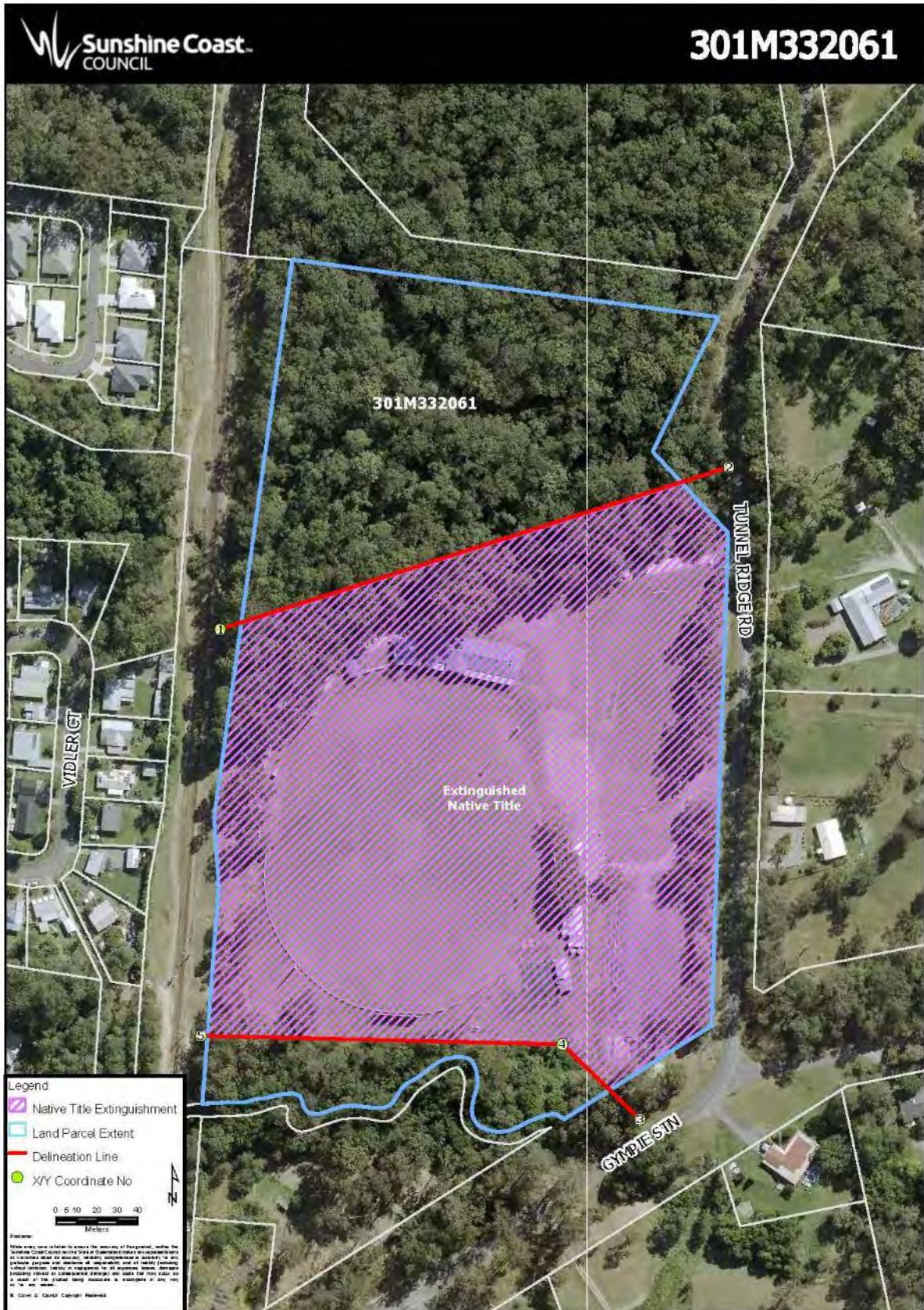










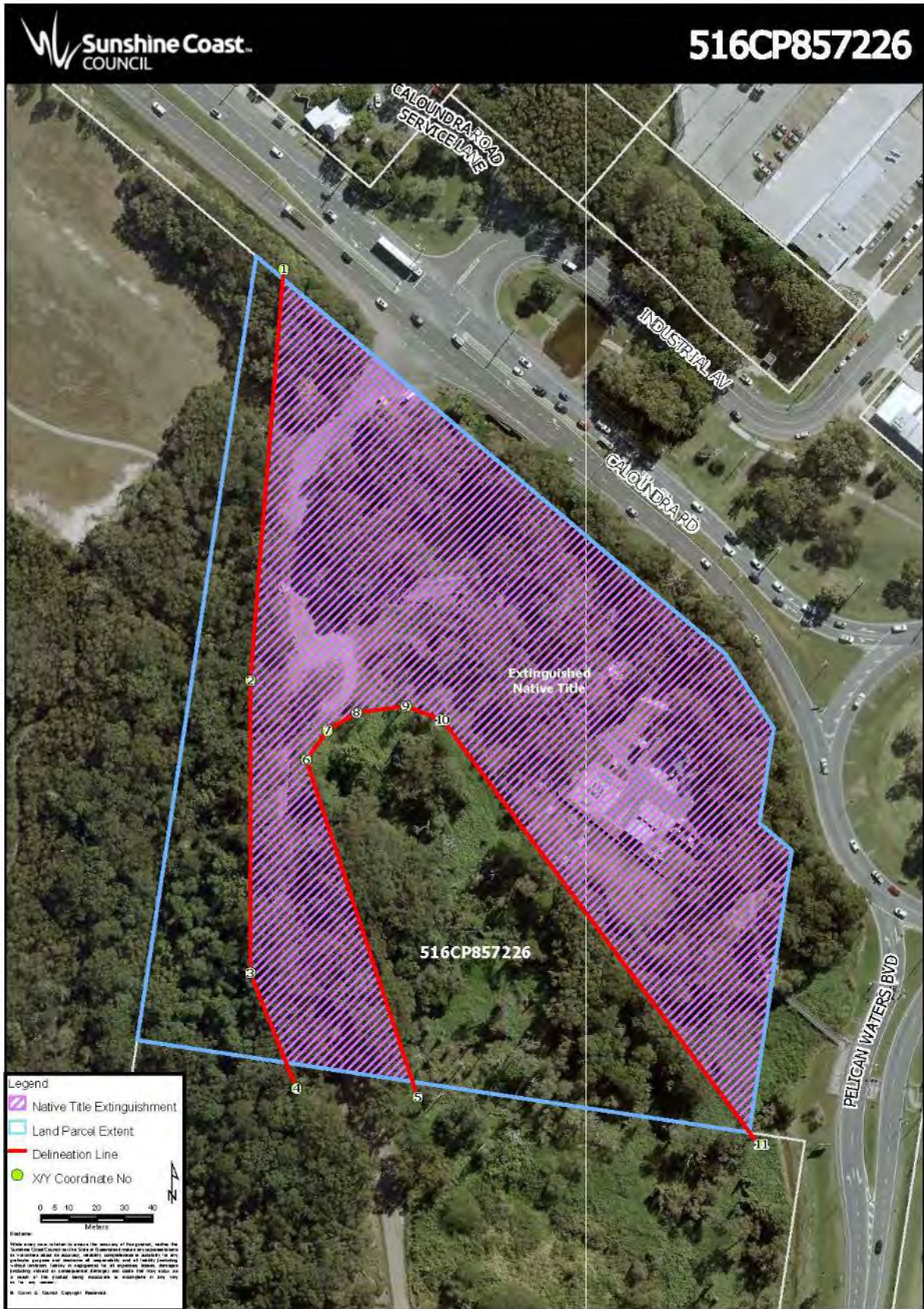


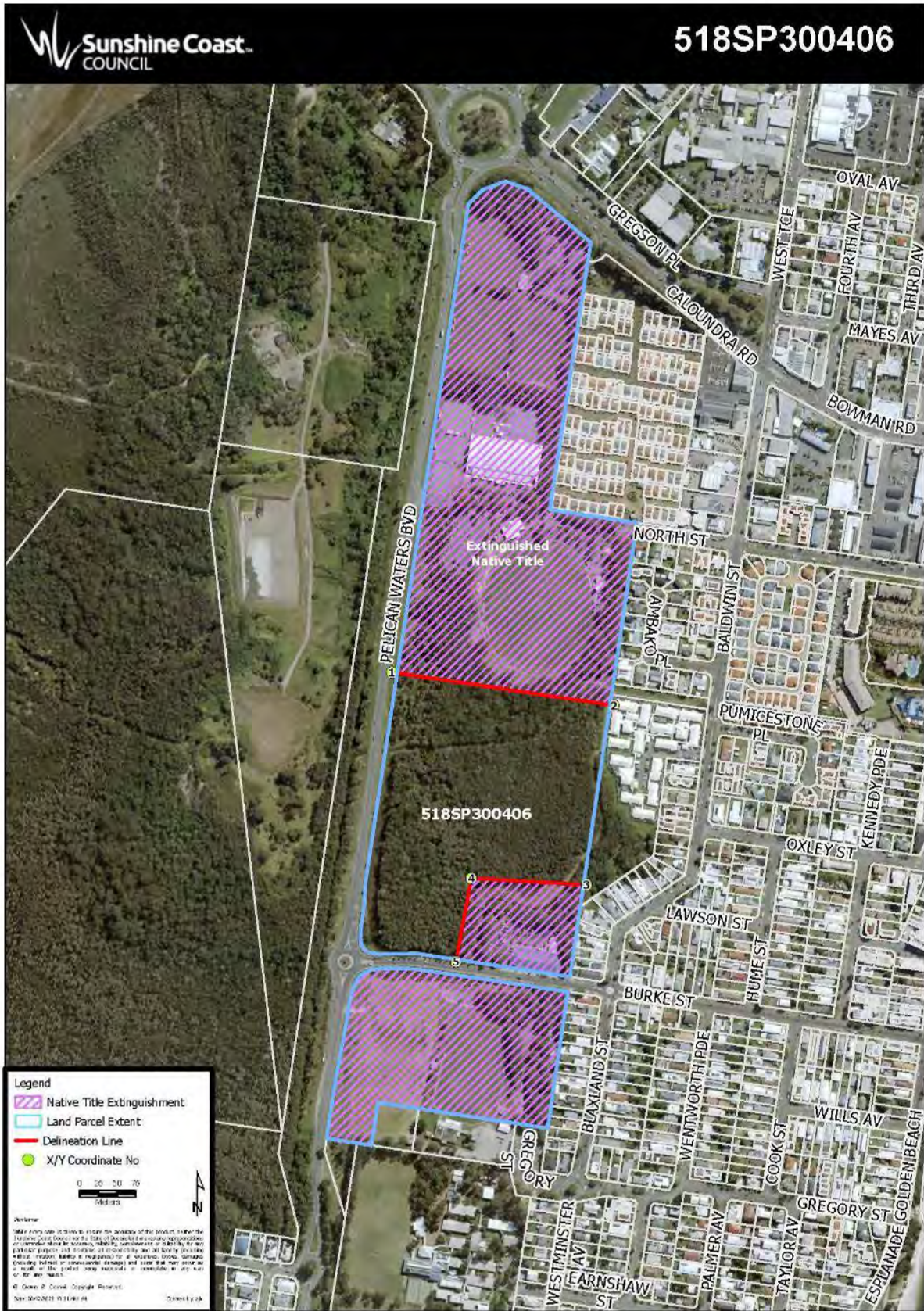






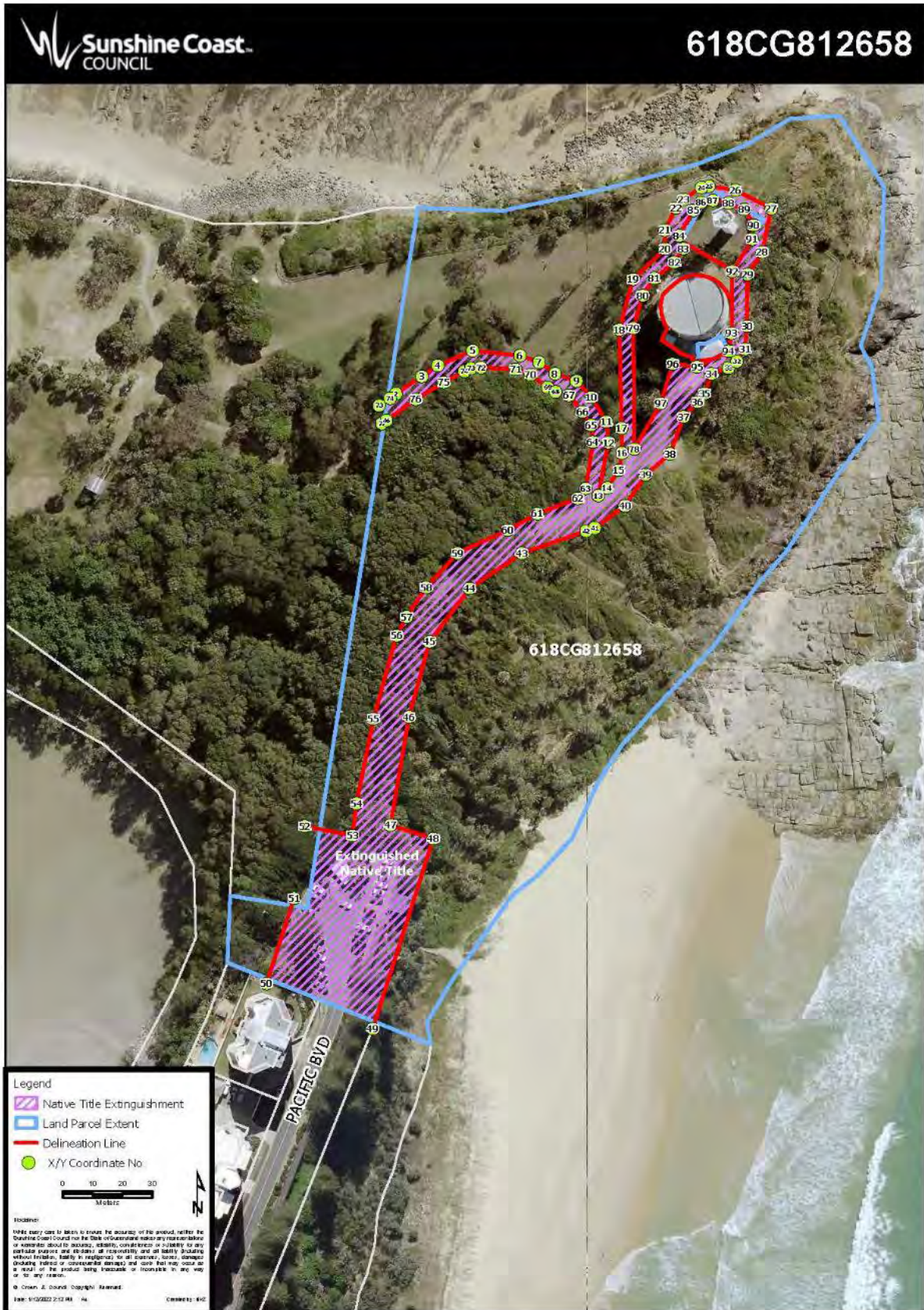


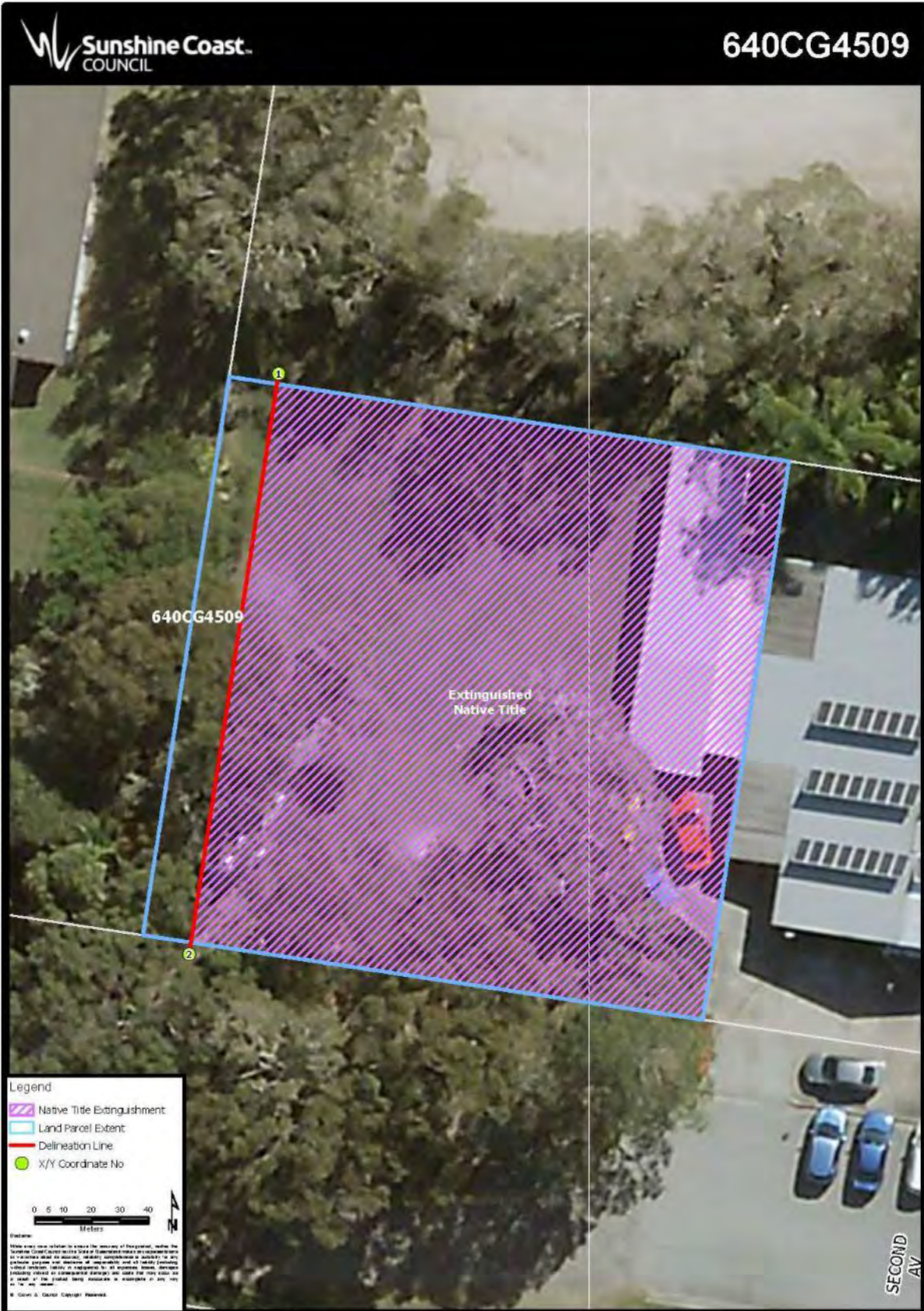






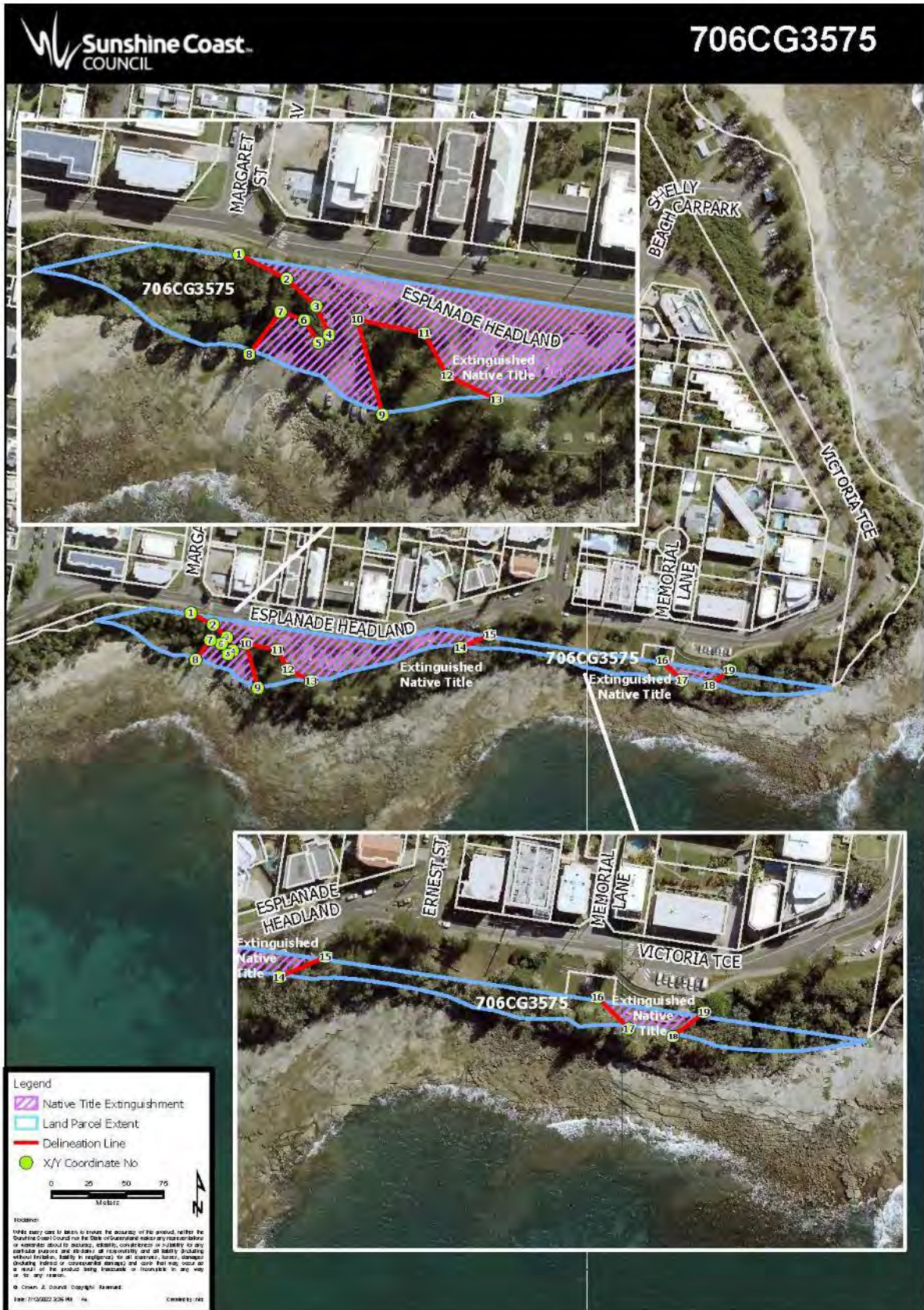
























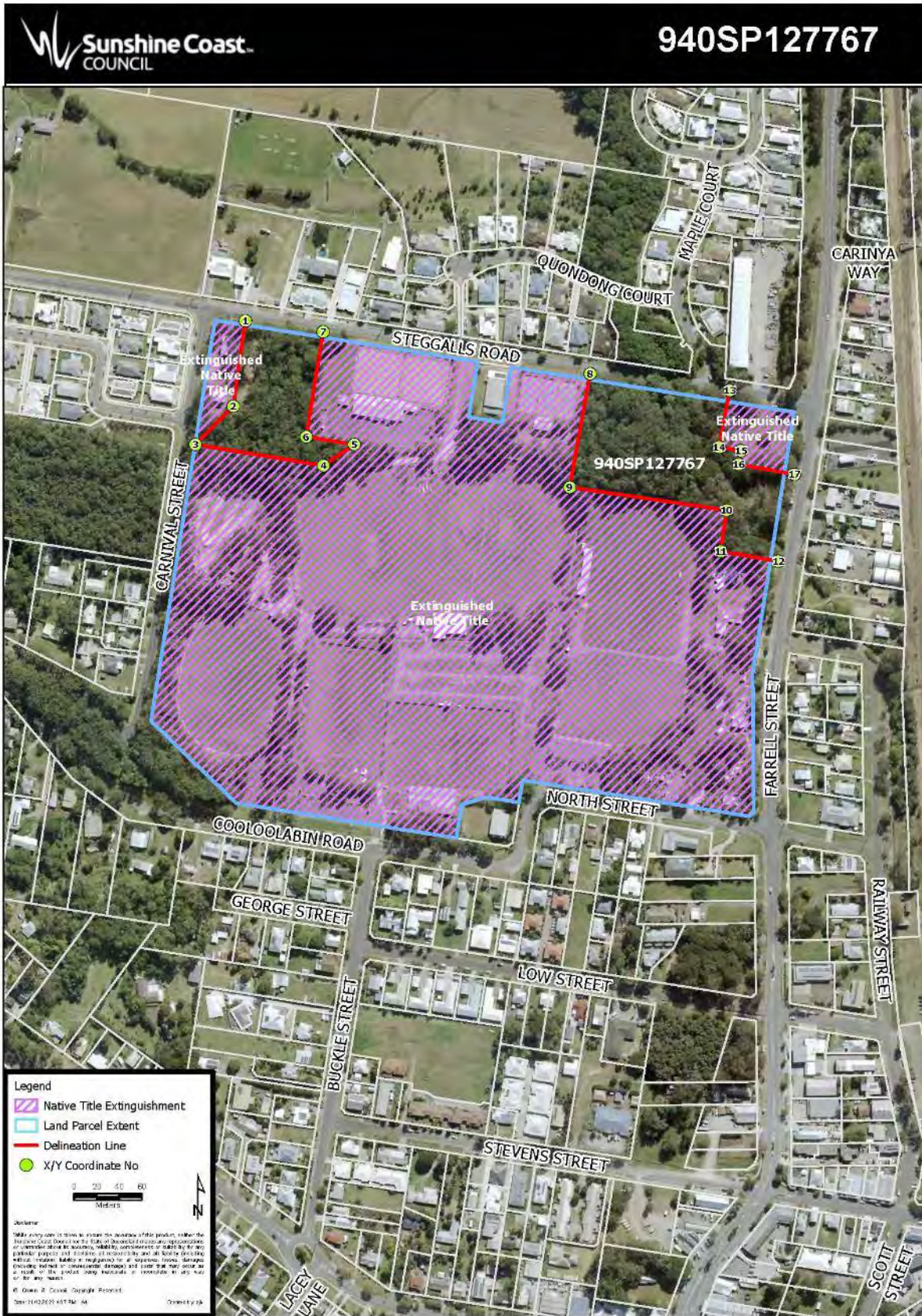


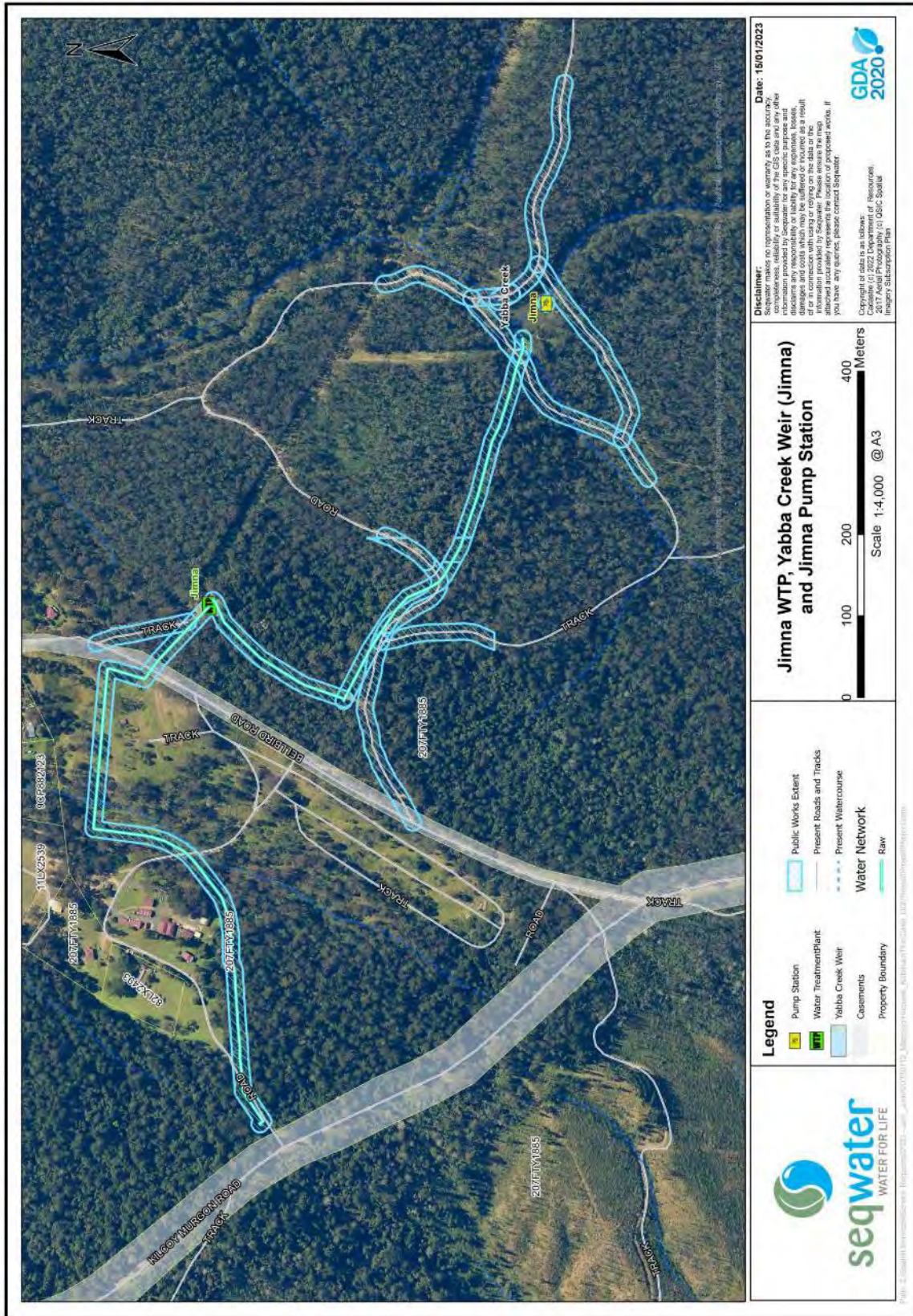


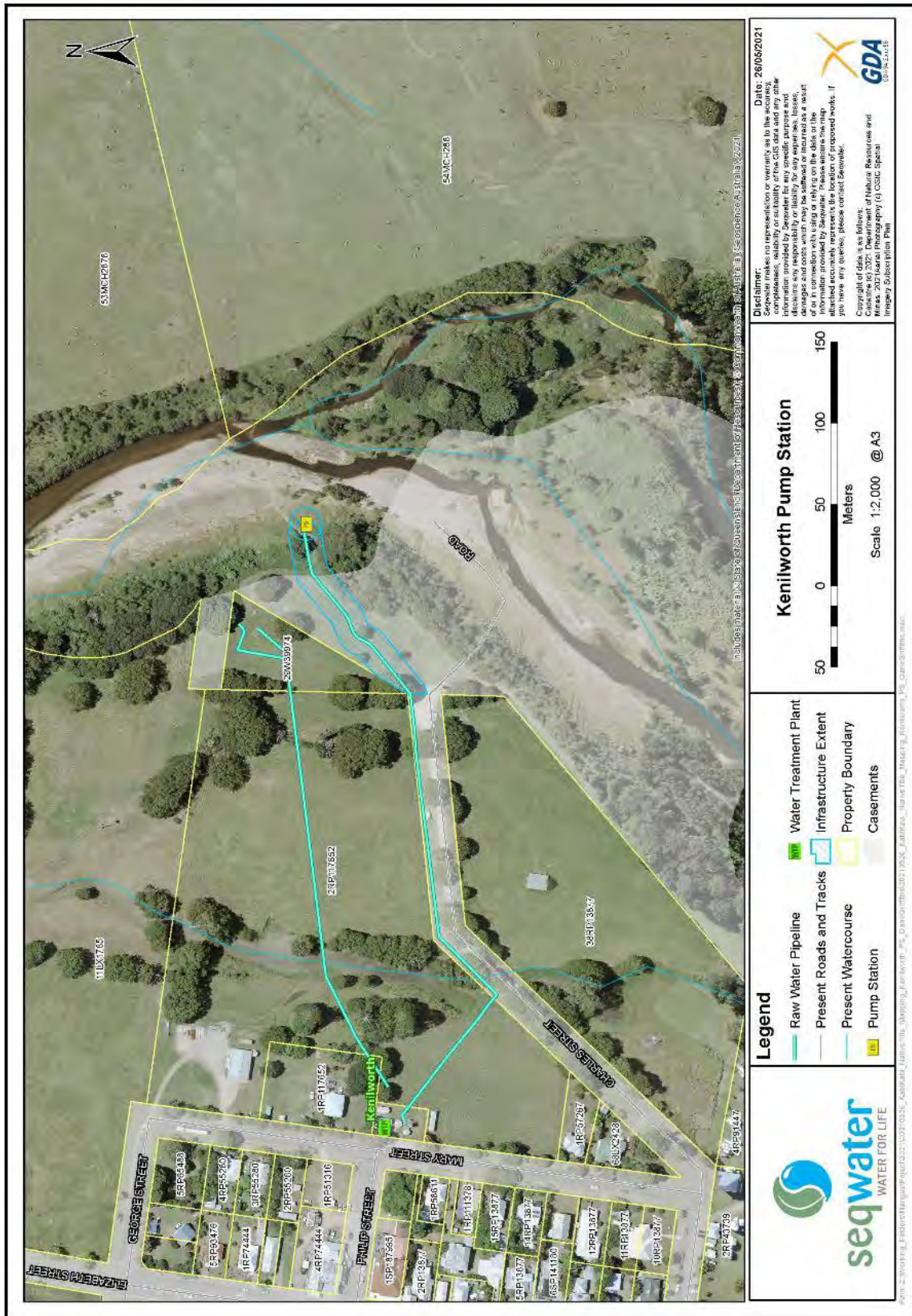


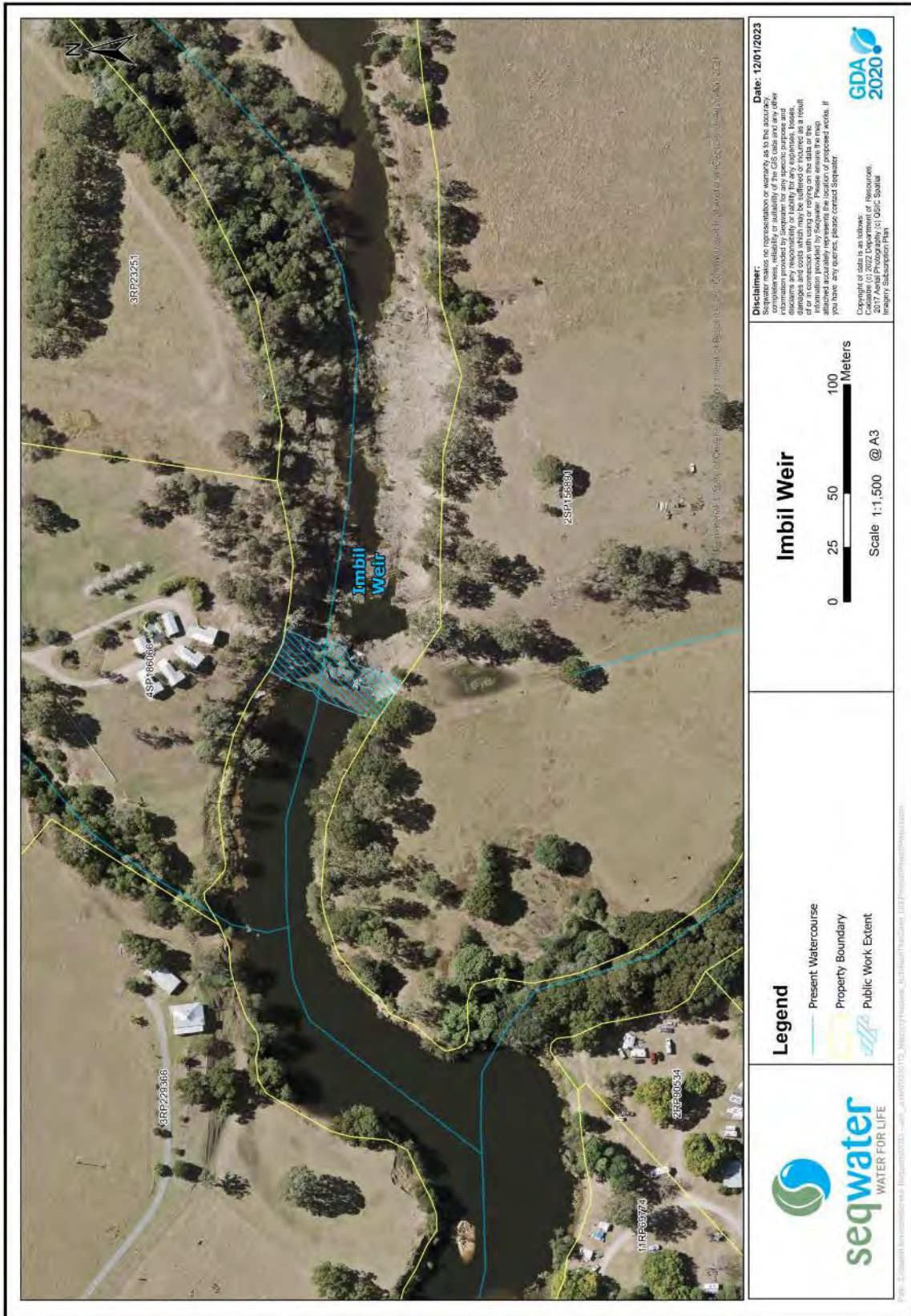












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Date: 12/01/2023

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GDA 2020

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0 25 50 100 Meters

Scale 1:1,500 @ A3

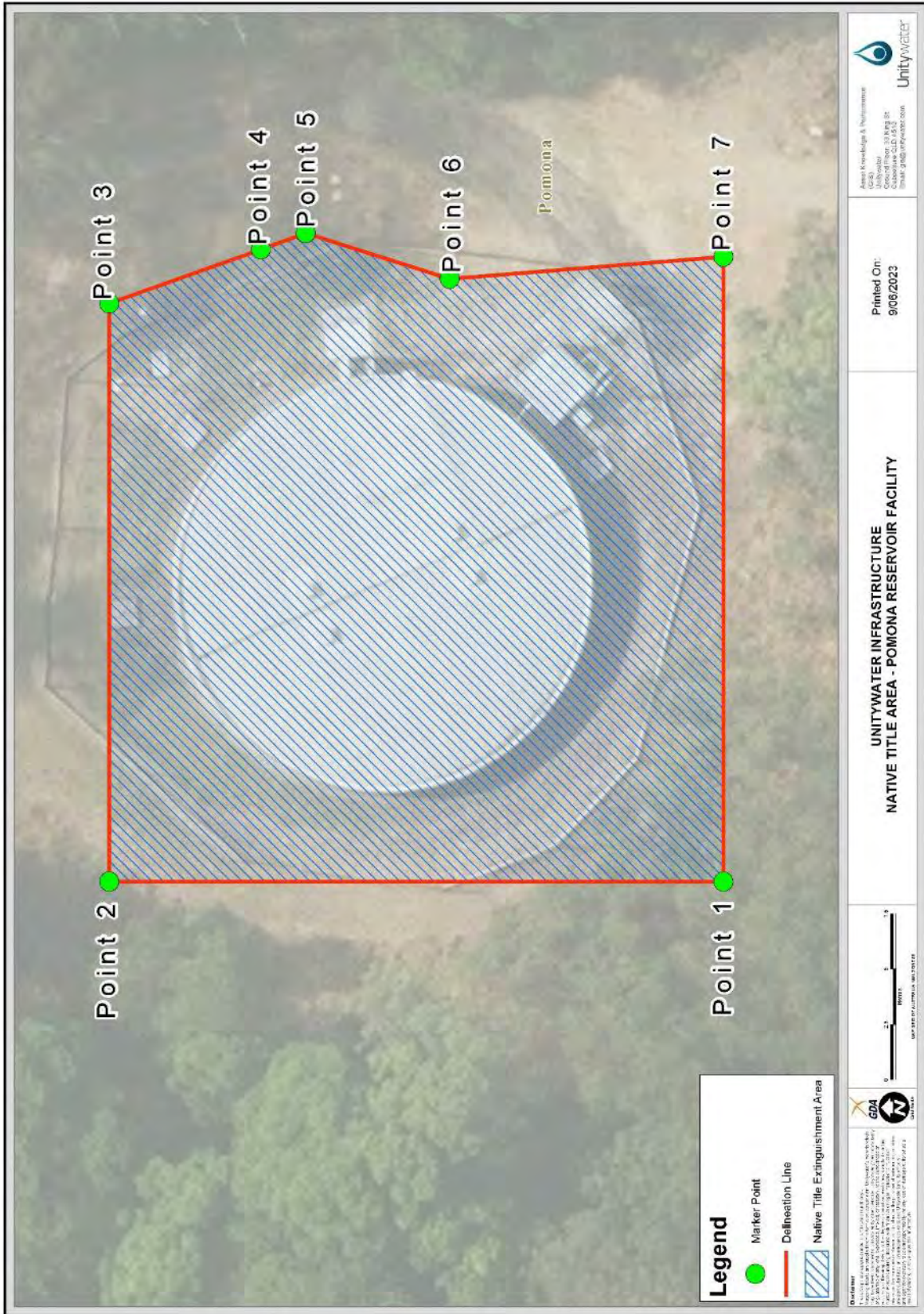
Legend

- Present Watercourse
- Property Boundary
- Public Work Extent



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Legend

- Marker Point
- Delineation Line
- Native Title Extinguishment Area

Scale

0 2.5 5 7.5 10 METRES

UNITY AREA BY APPLICABLE LAW 2023/01/01

Logos: GDA, W.A., and other official symbols.

**UNITYWATER INFRASTRUCTURE
 NATIVE TITLE AREA - POMONA RESERVOIR FACILITY**

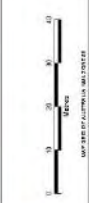
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9/06/2023

Unitywater
 Asset Knowledge & Performance
 (08) 9438 3333
 One of River, 30 King St
 South Brisbane QLD 4101
 www.unitywater.com.au



Legend

- Marker Point
- Delineation Line
- Native Title Extinguishment Area



Disclaimer

This map is an illustrative representation of the Native Title Extinguishment Area. It is not a legal document and should not be relied upon for legal purposes. The map is based on the information provided by the Kabi Kabi First Nation Traditional Owners Native Title Claim Group and the Queensland Government. The map is subject to change without notice. The map is provided for informational purposes only. The map is not a guarantee of accuracy. The map is not a warranty of any kind. The map is not a representation of any kind. The map is not a statement of any kind. The map is not a declaration of any kind. The map is not a promise of any kind. The map is not a contract of any kind. The map is not a deed of any kind. The map is not a will of any kind. The map is not a power of attorney of any kind. The map is not a trust of any kind. The map is not a partnership of any kind. The map is not a joint venture of any kind. The map is not a consortium of any kind. The map is not a syndicate of any kind. The map is not a pool of any kind. The map is not a trust of any kind. The map is not a partnership of any kind. The map is not a joint venture of any kind. The map is not a consortium of any kind. The map is not a syndicate of any kind. The map is not a pool of any kind.

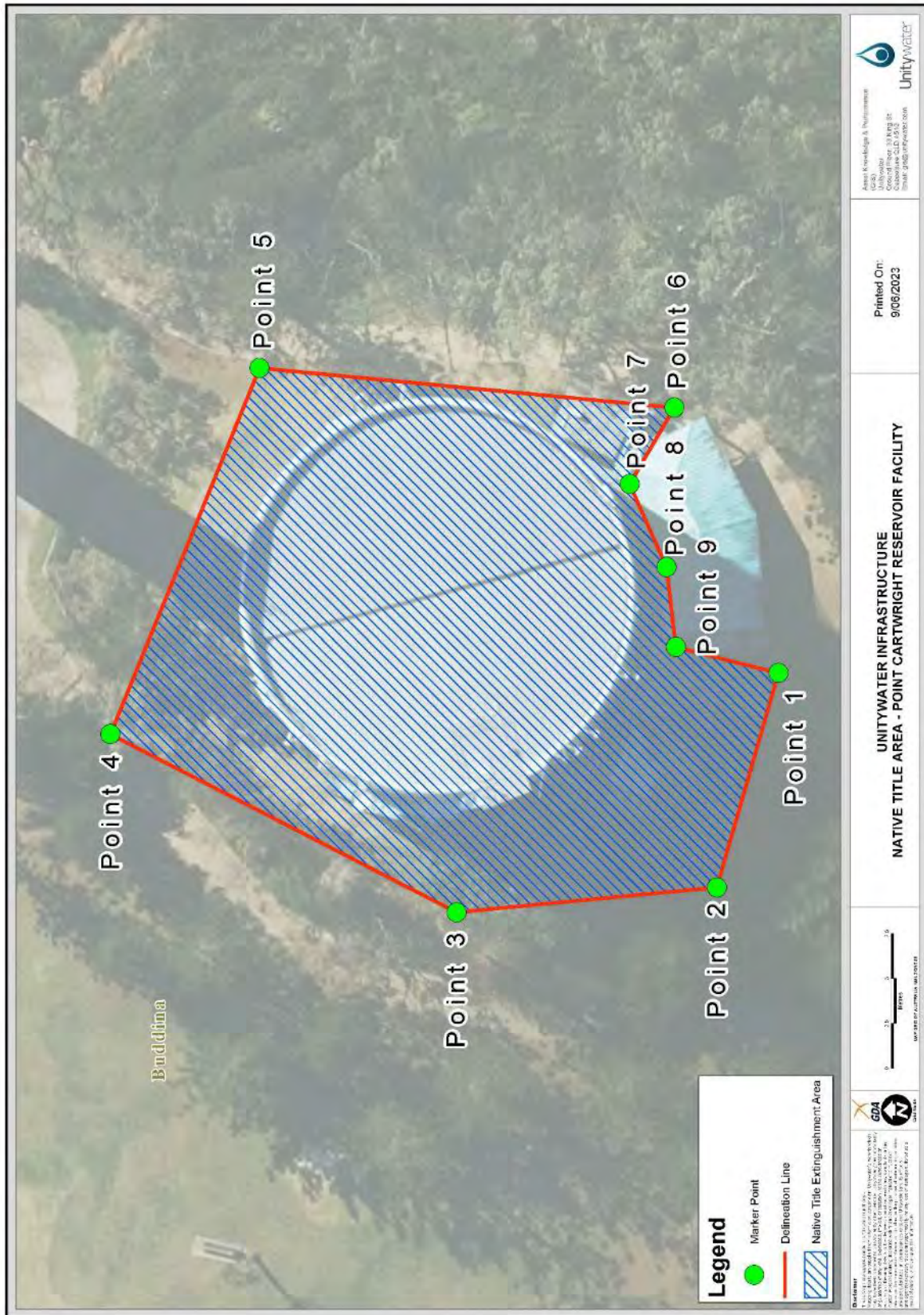
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Area Knowledge & Performance
 (07) 550 1111
 One of Five, 30 King St
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UNITYWATER INFRASTRUCTURE
NATIVE TITLE AREA - CWS RESERVOIR 1, 2 & 3 FACILITY

Printed On:
 9/06/2023



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

REASONS FOR JUDGMENT

COLLIER ACJ

- 1 Before me is a Native Title Determination Application under the *Native Title Act 1993* (Cth) (the **Native Title Act**) filed on 11 December 2018 by the Kabi Kabi First National Traditional Owners claim group (**Kabi Kabi People**). With the consent of all parties, Michael Douglas, Helena Gulash, Norman Bond, Melissa Bond, Cecilia Combo, Kerry Jones and Brian Warner (the **Applicant**) seek orders within s 225 of the Native Title Act, recognising the native title rights and interests held by the Kabi Kabi People in respect of parts of land and waters claimed by them (**determination area**).
- 2 The respondents to the determination application are:
 - (1) State of Queensland;
 - (2) Commonwealth of Australia;
 - (3) Bundaberg Regional Council;
 - (4) Gympie Regional Council;
 - (5) Moreton Bay Regional Council;
 - (6) Noosa Shire Council;
 - (7) Sunshine Coast Regional Council;
 - (8) Fraser Coast Regional Council;
 - (9) Somerset Regional Council;
 - (10) Energex Limited;
 - (11) Ergon Energy Corporation Limited;
 - (12) Australian Gas Networks (Qld) Limited;
 - (13) Northern SEQ Distributor-Retailer Authority trading as “Unitywater”;
 - (14) Telstra Corporation Limited;
 - (15) Mrs Catherine Anne Harris;
 - (16) Queensland Bulk Water Supply Authority trading as Seqwater; and
 - (17) Amplitel Pty Ltd.

3 An agreement pursuant to s 87A of the Native Title Act has been reached by relevant parties to that effect.

4 It is convenient to set out relevant background material prior to turning to key issues before the Court. In doing so I particularly have regard to the submissions of the Applicant.

THE NATIVE TITLE CLAIM

5 The Kabi Kabi People are comprised of persons who identify as and are recognised as members of the Kabi Kabi People in accordance with the system of traditional laws and customs, and are descendants (including through adoption or raising up in accordance with traditional laws and customs) of one or more of the following apical ancestors:

- (1) Maggie Cadenti/Cadente/Cantidi: "Maggie";
- (2) George Parson;
- (3) Albert Williams;
- (4) Ngimburum;
- (5) Kaloma-kuta/Galmaguda/Haloma-kuta/Kal-ma-kuta;
- (6) Willie Kina;
- (7) Susan Andy;
- (8) Jacky Ball (or Baul);
- (9) Maggie Cain/Caine;
- (10) James Crow/Crowe;
- (11) Maggie Palmer;
- (12) Emma Dunne;
- (13) William/Billy Glenbar;
- (14) Annie Laurie;
- (15) May Burnett;
- (16) Tuppernywoe/"King" Tommy of Noosa;
- (17) Dundalli;
- (18) Sarah Di:naba Moreton;
- (19) Marian/Mary Ann Thompson; or
- (20) Towcha

6 The determination area the subject of the determination application consists of approximately 10,280 square kilometres, generally from the southern extent of Bribie Island, Sandstone Point and Elimbah Creek catchment area, to Cooloola National Park, Curra State Forest, Mary River and Isis Rivers, and west to the Brisbane Range, the Burnett Range and Coast Range.

7 The external boundaries are agreed by the parties to the present s 87A Agreement as follows:

The area of land and waters commencing at the intersection of the northern boundary of Berries Road and southern bank of Oaky Creek (Edward Creek) and extending generally northerly and generally north-easterly along southern banks of that creek, and southern banks of Isis River to the western bank of the Burrum River; then easterly to the eastern bank of that river at Latitude 25.212232° South; then generally southerly along banks of that river to Latitude 25.221740° South; then south-westerly to the centreline of Cherwell River at its mouth; then generally south-westerly along the centreline of that river (passing to the north of Lot 20 on CK3227) to Latitude 25.235245° South; then generally south-westerly and generally south-easterly passing through the following co-ordinate points:

Longitude ° (East)	Latitude ° (South)
152.524182	25.264640
152.507026	25.316109
152.502329	25.332243
152.496610	25.351442
152.493547	25.369006
152.493138	25.377789
152.492934	25.385754
152.496406	25.422108
152.498857	25.435588
152.503555	25.446412
152.511316	25.453969
152.521732	25.459688
152.537255	25.463568
152.547671	25.471329
152.556453	25.476231
152.597097	25.491957
152.627528	25.497471
152.637127	25.500126
152.641621	25.502985
152.647544	25.508500
152.648987	25.510692

Then southerly to the southern bank of the Mary River, west of Maryborough, at Longitude 152.648966° East; then generally southerly along banks of that river to the centreline of Gutchy Creek; then northerly to the centreline of the Mary River at Longitude 152.520670° East, Latitude 25.768908° South; then generally westerly and generally southerly along the centreline of that river (passing to the east of Lot 62 on USL43380) to Latitude 26.069738° South, then generally easterly, generally south-

easterly, generally north-westerly and generally easterly to a point on the Lowest Astronomical Tide at Latitude 26.016775° South passing through the following coordinate points:

Longitude ° (East)	Latitude ° (South)
152.540728	26.070082
152.551252	26.068777
152.561681	26.066420
152.572600	26.062148
152.582951	26.058149
152.594555	26.050710
152.605640	26.045363
152.616250	26.040176
152.626855	26.034072
152.637767	26.028579
152.647344	26.025203
152.656885	26.022781
152.670609	26.020952
152.687551	26.022015
152.697621	26.024310
152.710867	26.027329
152.719390	26.029702
152.729950	26.032643
152.739623	26.034682
152.750286	26.039260
152.758524	26.045058
152.768275	26.049636
152.778490	26.056077
152.786275	26.062148
152.795779	26.069840
152.802408	26.075910
152.810093	26.082594
152.816575	26.089550
152.824509	26.097473

152.830175	26.103132
152.839408	26.112352
152.845302	26.118237
152.853244	26.126168
152.859529	26.133404
152.867091	26.142110
152.874534	26.150111
152.880932	26.156989
152.887975	26.164442
152.895990	26.172924
152.902370	26.179376
152.912186	26.189098
152.921646	26.196117
152.931716	26.203441
152.942072	26.207408
152.948144	26.206187
152.952994	26.203746
152.958738	26.197948
152.962658	26.192150
152.964440	26.184520
152.965296	26.174145
152.965262	26.167736
152.963073	26.156445
152.960303	26.150036
152.954480	26.141186
152.947133	26.131421
152.937967	26.122571
152.928801	26.113721
152.917500	26.103651
152.907731	26.095716
152.900462	26.088024
152.892446	26.079542

152.887240	26.072218
152.881716	26.062453
152.881446	26.056024
152.887709	26.046584
152.894669	26.040786
152.904972	26.034988
152.920140	26.029495
152.930892	26.025591
152.942900	26.022781
152.953825	26.019729
152.969307	26.016067
152.981460	26.015152
152.991310	26.014575
153.001796	26.014048
153.012475	26.013512
153.022496	26.012597
153.034629	26.011184
153.047701	26.011490
153.064120	26.012710
153.076282	26.013321
153.089051	26.013931
153.101821	26.014847
153.116412	26.015152
153.127356	26.015457
153.140429	26.016067

Then generally southerly along the Lowest Astronomical Tide to Pumicestone Channel; then south westerly across that Channel to the lowest astronomical tide of the northern coastline of Bribie Island; then generally southerly and generally westerly again along that lowest astronomical tide to the southern end of Pumicestone Channel; then north-westerly across that channel to its intersection with the Lowest Astronomical Tide and onwards to the High Water Mark of the mainland at Sandstone Point at Latitude 27.085939° South; then generally north easterly and generally north westerly along the High Water Mark of Pumicestone Channel, across Ningi Creek, to the southern bank of Elimbah Creek; then southerly to a boundary of Elimbah Creek Catchment Area at Longitude 153.084552° East, Latitude 27.030730° South; then

generally southerly and generally westerly along boundaries of that catchment to Longitude 152.961443° East; then generally south westerly passing through the following coordinate points:

Longitude ° (East)	Latitude ° (South)
152.953269	27.038824
152.948284	27.040590
152.946461	27.041499
152.943437	27.042164
152.940410	27.044176
152.938143	27.044170
152.933606	27.045504
152.928314	27.046835
152.924535	27.047497
152.922266	27.048163
152.919034	27.048236

Then westerly to a point on the western boundary of Easement A on RP105208 at Latitude 27.048578° South, a point on the eastern external boundary of Native Title Determination QUD6128/98 Jinibara People (QC98/45); then generally northerly, generally south westerly, generally southerly and generally westerly along eastern and northern external boundaries of that native title determination to a point in Lot 7 on AP23765, a point on the northern boundary of former Lot 2 on AP19208 at Longitude 152.476410° East, further described as:

Generally northerly along western boundaries of A on RP105208, B RP105540, A RP105540, B RP169368, A RP104615, A RP104616, A RP104618, A RP104360 A RP104355 and A RP104359 to a southern boundary of Alcock Road; then northerly to the southernmost south-west corner of Lot 15 RP843783, being a northern boundary of Alcock Road; then generally easterly, generally north-easterly, generally northerly and generally north-westerly along boundaries of that road, western boundaries Old Gympie Road, Beerburum Woodford Road, again Old Gympie Road and Paper Road to the eastern boundary of Mount Mellum Road; then north-easterly to the southern bank of the Mooloolah River at Longitude 152.956365° East; then generally westerly along the southern banks of that river to Longitude 152.918070° East; then generally northerly passing through the following coordinate points:

Longitude ° (East)	Latitude ° (South)
-------------------------------	-------------------------------

152.918040	26.751710
152.916245	26.748397
152.916522	26.736780
152.916522	26.718249
152.914171	26.705526
152.913756	26.700409
152.913894	26.696952
152.911405	26.686718
152.910022	26.680356
152.905043	26.673165
152.902277	26.664176
152.902001	26.663485
152.899605	26.656017
152.899512	26.650762
152.900341	26.645783
152.903384	26.639007
152.906288	26.635411
152.906979	26.630156
152.908224	26.626975
152.918596	26.617295
152.930489	26.601806
152.934223	26.594477
152.937542	26.587839
152.940723	26.582030
152.941553	26.577743
152.942244	26.572488
152.941691	26.566403
152.939340	26.561978
152.936989	26.557414

152.934223	26.550776
152.933532	26.547595
152.933670	26.546074
152.934361	26.545106
152.935468	26.542478
152.938233	26.539436
152.940584	26.537915
152.945840	26.532245

Then northerly to the western boundary of Bunya Road at Latitude 26.517695° South; then generally north-westerly and generally southerly along southern boundaries of that road, Gold Creek Road, Browns Creek Road and eastern boundaries of Anderson Road to its southernmost eastern corner; then generally southerly to a point on the northern boundary of Lot 1239 on NPW1105 at Longitude 152.887569° East passing through the following coordinate point:

Longitude ° (East)	Latitude ° (South)
152.887757	26.494490

Then westerly, generally southerly, again westerly and again generally southerly along northern and western boundaries of Lot 1239 on NPW1105, western boundary of Lot 2 on AP19232, western boundary of Lot 1239 on NPW1106, again northern boundaries of Lot 1239 on NPW1105, northern boundaries of Lot 2 on AP19232 and again Lot 1239 on NPW1105, northern and western boundaries of again Lot 2 on AP19232 to the northern boundary of Buckby Road; then generally south-easterly, generally southerly and generally westerly along southern, western and northern boundaries of again Lot 1239 on NPW1105 and western and northern boundaries of Lot 4 on AP19232 to a corner on the eastern boundary of Naranga Road at Longitude 152.836465° East, Latitude 26.522126° South; then south-westerly to again a corner of Lot 1239 on NPW1105 at Longitude 152.816277° East; then westerly, generally south-westerly, southerly and generally easterly along northern and western boundaries that lot, northern boundaries Lot 1 on AP19232 and western and southern boundaries of again Lot 1239 on NPW1105 to Longitude 152.797163° East; then southerly to a corner of the western boundary of Kidaman Creek Road at Latitude 26.654626° South passing through coordinate point:

Longitude ° (East)	Latitude ° (South)
152.795978	26.621352

Then generally southerly along western boundaries of Kidaman Creek Road,

Suicide Road, again Kidaman Creek Road and Curramore Road to an intersection with Maleny Kenilworth Road; then generally westerly along northern boundaries of that road to intersect the eastern bank of the Mary River; then generally westerly passing through the following coordinate points:

Longitude ° (East)	Latitude ° (South)
152.713548	26.728587
152.660839	26.729212
152.641728	26.730950
152.619799	26.734666

Then westerly to a point in Lot 7 on AP23765, a corner on an eastern boundary of former Lot 102 on NPW746 at Longitude 152.598821° East, Latitude 26.740418° South; then generally south westerly along southern boundaries of that former lot to its intersection with the northern boundary of Mt Kilcoy Road; then westerly along the northern boundary of that road to Longitude 152.566192° East; then generally westerly passing through Lot 7 on AP23765 along the northern boundaries of an unnamed track (Jimna Bellthorpe Road), and northern boundaries of former Lot 2 on AP19208 to Longitude 152.476410° East, being a point on the external boundary of Native Title Determination QUD6128/1998 Jinibara People.

Then northerly to the western boundaries of the Mary River Catchment Area at Latitude 26.719721° South and generally north-westerly along western boundaries of that catchment to Longitude 152.425480° East; then generally westerly and generally north-westerly passing through the following co-ordinate points:

Longitude ° (East)	Latitude ° (South)
152.417561	26.656021
152.406348	26.656821
152.398339	26.657222
152.389530	26.658423
152.381121	26.658823
152.371910	26.659624
152.366705	26.660425
152.359096	26.660825
152.351236	26.660930
152.343731	26.660880
152.336235	26.659713
152.328721	26.658535
152.323702	26.657370
152.317424	26.656192
152.312348	26.656117
152.308507	26.654920
152.302093	26.653668
152.297129	26.651410
152.292192	26.650290
152.284698	26.647999

Longitude ° (East)	Latitude ° (South)
152.275454	26.644307
152.274173	26.644283
152.246122	26.624053
152.236321	26.610710
152.226421	26.606219
152.216577	26.599510
152.201827	26.588338
152.194518	26.577218
152.137699	26.539723

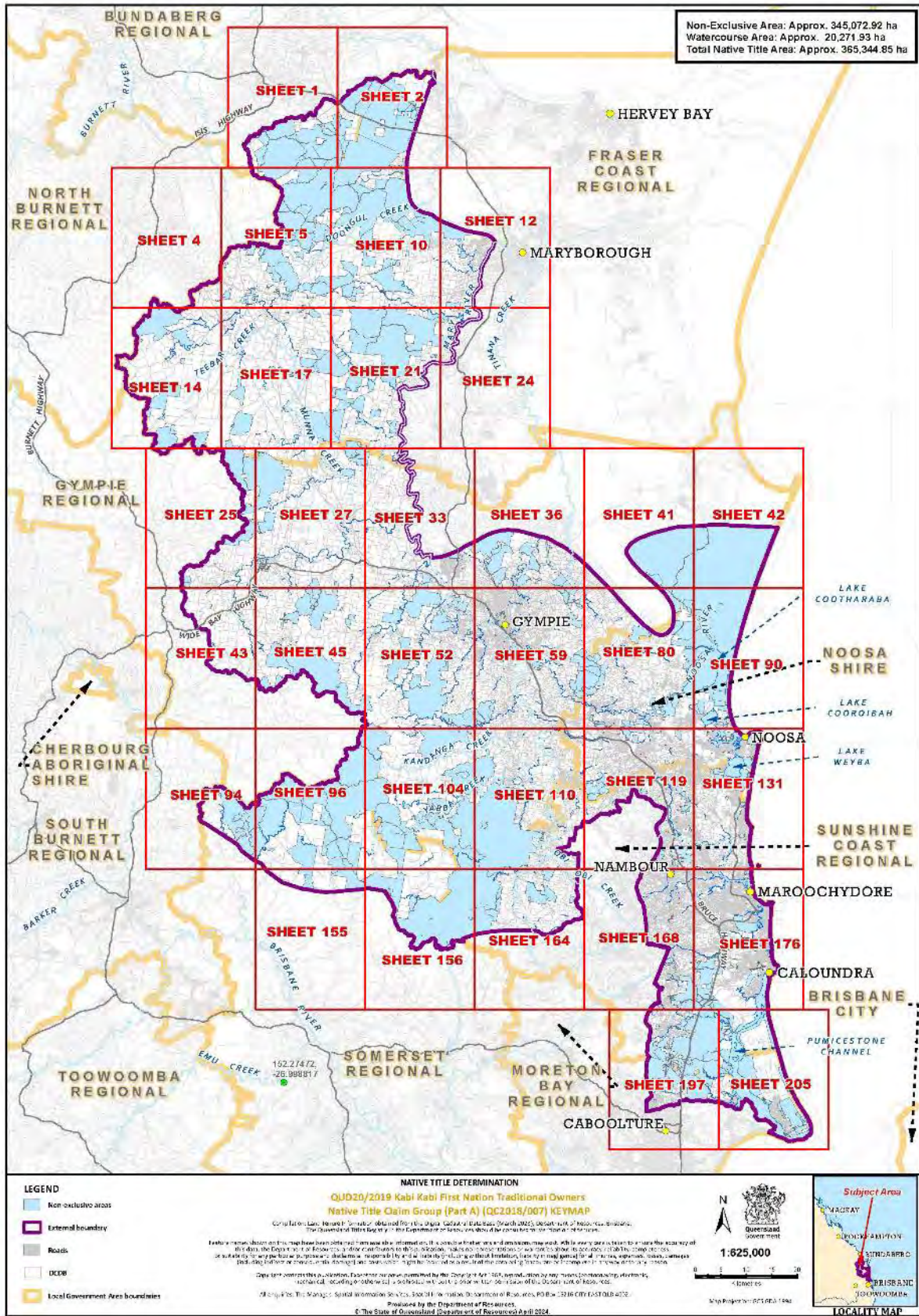
Then north westerly to a corner on a western boundary of the Somerset Regional Council at Latitude 26.537032° South, then generally northerly and generally easterly along boundaries of that regional council to a corner at Longitude 152.370763° East; then north-easterly to again a point on the boundary of the Mary River Catchment Area at Longitude 152.370974° East, Latitude 26.461615° South and generally north-easterly, generally north-westerly, generally northerly and again generally north-easterly along boundaries of that catchment area to its intersection with the southern boundary of the Fraser Coast Regional Council; then generally northerly, generally westerly, generally north-westerly and generally north-easterly along boundaries of that regional council to its intersection with the southern boundary of the Bundaberg Regional Council; then northerly and generally north-easterly along boundaries of that regional council back to the commencement point.

In addition, the Determination Area includes Mudjimba Island (Part Lot 509 on NPW594):

The determination area does not include any land and waters within the external boundaries subject to:

- Native Title Determination QUD6128/1998 Jinibara People as determined by the Federal Court 20 November 2012.
- Native Title Determination QUD460/2018 - Butchulla Land & Sea Claim #2 as determined by the Federal Court 13 December 2019.
- Native Title Determination QUD276/2019 - Wakka Wakka People #3 (Part A & B) as determined by the Federal Court 12 April 2022.
- Native Title Determination QUD277/2019 - Wakka Wakka People #4 (Part A) as determined by the Federal Court 12 April 2022.

8 The determination area is represented by the following map:



9 I note that specific areas are excluded from the determination area, including:

- any area that is or has been subject to the following:
 - (i) any Crown to Crown grant of freehold; and
 - (ii) any post 23 December 1996 grant of freehold;
- any area that is subject to the following category of leases:
 - (i) boat harbour;
 - (ii) housing lease;
 - (iii) railway lease;
 - (iv) freeholding lease;
 - (v) grazing homestead perpetual lease;
 - (vi) perpetual lease;
 - (vii) non-competitive lease; and
 - (viii) manufacturing, industrial, residential or business; and
- Those land and waters within the External Boundary on which, at the time the Application was made, public works were validly constructed, established or situated after 23 December 1996, where s 24JA of the Native Title Act applies, and which wholly extinguished native title.
- Those land and waters within the External Boundary which, at the time the Application was made, were the subject of one or more Pre-existing Rights Based Acts, within the meaning of s 24IB of the Native Title Act, which wholly extinguished native title.

PROCEDURAL HISTORY

- 10 The proceedings were originally commenced on 31 May 2013, when an application was filed in the Federal Court pursuant to ss 13(1)(a) and 61 of the Native Title Act by members of the Kabi Kabi People (**application in QUD280/2013**). On 7 August 2013, the Native Title Registrar accepted that application for registration under s 190A of the Native Title Act, and details of that application were entered on the Register of Native Title Claims.
- 11 On 20 July 2016, following the assessment of connection material provided by the Applicant to the State and the Commonwealth for the purpose of satisfying s 225 of the Native Title Act and informing the scope and expression of native title rights and interests capable of recognition pursuant to s 223 of the Native Title Act, the State advised that it was prepared to enter into substantive negotiations towards a consent determination on various conditions.

- 12 On 30 November 2016, the Applicant also filed a native title claim application in QUD908/2016 on behalf of the Kabi Kabi People, pursuant to sections 13(1)(a) and 61 of the Native Title Act, in relation to a contiguous area to the south of the application area known as Undambi (**Undambi Application**).
- 13 The Native Title Registrar accepted the Undambi Application for registration under s 190A of the Native Title Act on 30 March 2017.
- 14 On 29 November 2018, Judicial Registrar Grant ordered that the Undambi Application and application in QUD280/2013 be combined to form the present proceedings (**Combined Application**). The Combined Application was filed in the Court on 11 December 2018 by the Applicant on behalf of the Kabi Kabi People. On 8 February 2019 the Native Title Registrar registered the Combined Application on the Register of Native Title Claims.
- 15 On 10 January 2019, Registrar Soden relevantly made the following orders in the present proceedings QUD20/2019:

THE COURT NOTES:

1. The content and effect of the order made in the QUD280/2013 Alex Davidson & Ors on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group proceeding which forms Annexure 1 to this Order.

THE COURT ORDERS THAT:

1. On and from today's date, all documents filed in this proceeding will be taken to have also been filed in QUD280/2013 Alex Davidson & Ors on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group.
2. The index of the court file for QUD280/2013 Alex Davidson & Ors on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group forms Annexure 2 to this Order.

- 16 On 13 March 2020, the Commonwealth confirmed that it agreed to connection.
- 17 The Applicant and the State participated in mediation during 2022, and on 29 September 2022 the Applicant and the State agreed in relation to the native title rights and interests proposed to be recognised. Subsequently all remaining parties provided their agreement that native title exists, the nature of the rights and interests proposed to be recognised, and the area over which those rights can be recognised within the determination area.
- 18 Following my decision in *Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland* [2023] FCA 615 I ordered on 8 August 2023 that the Combined Application be partitioned into three parts as follows:

- Part A: Comprising that portion of the area in the Combined Application which is not covered by the Undambi Application, or an area in respect of which Mr Luke Barrowcliffe and Mrs Katherine Barrowcliffe were joined as respondents pursuant to that judgment (the **Disputed Area**);
- Part B: Comprising the area of the Undambi Application and which does not include Part A or Part C; and
- Part C: Comprising the Disputed Area and which does not include Part A or Part B.

19 Only Part A is proposed for determination at present.

20 On 3 November 2023 Judicial Registrar Grant granted leave for the Applicant to file a sixth further amended Form 1, which sought to rectify deficiencies in the mapping and technical descriptions in the previous iteration. The sixth further amended Form 1 was accepted for filing on 8 November 2023.

21 At a meeting held on 16 April 2023 an indigenous land use (area) agreement (**Tenure Resolution ILUA**) between the Kabi Kabi People, Kabi Kabi Peoples Aboriginal Corporation ICN 8996 (**Kabi Kabi Corporation**) and the State of Queensland was authorised by the native title group over what was originally the Part A and Part B areas prior to the partition. Following to the partitioning of the Combined Application a claim group meeting was held on 12 August 2023 to authorise the amendment of the Tenure Resolution ILUA such that it deals only with the Part A area.

22 It is common ground that the consent determination proposed by the parties would be conditional upon the registration of the Tenure Resolution ILUA, because:

- the Tenure Resolution ILUA refers to a number of parcels not included in the proposed consent determination and their surrender is intended to take effect upon registration of the Tenure Resolution ILUA; and
- the registration of the Tenure Resolution ILUA is a precondition to the determination orders taking effect.

23 The Applicant submitted that the Tenure Resolution ILUA was executed by the State, the Applicant and the Kabi Kabi Corporation on 20 May 2024, and that it was lodged with the National Native Title Tribunal for registration on 22 May 2024.

MATERIAL ON WHICH THE APPLICANT RELIES

24 The Applicant relies on the following material in support of connection (**connection material**):

- Form 1 dated 3 November 2023
- The following expert reports:
 - *Anthropological Connection Report: Sunshine Coast Region* by Anthony Redmond 27/08/2013 dated 27 August 2013;
 - *Anthropological Connection Report: Appendices* by Anthony Redmond dated 27 August 2013;
 - *Kabi Kabi First Nation Traditional Owners: Supplementary Report* by Anthony Redmond dated 30 April 2015; and
 - *Revised Anthropological Connection Report: Sunshine Coast Region [Kabi Kabi]* by Dr Anthony Redmond (the Amended Connection Report) dated 1 April 2015.
- The following affidavits:
 - Affidavit of Bessie Bond dated 10 November 2014;
 - Affidavit of Marjorie Fisher dated 10 November 2014;
 - Affidavit of Troy Fisher dated 10 November 2014;
 - Affidavit of Mischa Fisher dated 15 December 2014;
 - Affidavit of Sue Morgan dated 18 December 2014;
 - Affidavit of Nurdon Horace Serico dated 11 May 2015;
 - Affidavit of Edna Van Hemmen dated 28 May 2015;
 - Affidavit of Graham Anthony Jennings dated 15 July 2015;
 - Affidavit of Leisha Krause dated 23 July 2015;
 - Affidavit of Les Gordon Muckan dated 30 July 2015;
 - Affidavit of Sylvia Bond dated 21 July 2015;
 - Affidavit of Hope Gertrude O'Chin dated 24 July 2015;
 - Affidavit of Kerry Neill dated 31 July 2015;
 - Supplementary Affidavit of Les Gordon Muckan dated 25 November 2015;
 - Supplementary Affidavit of Leisha Krause dated 6 November 2015;

- Affidavit of Kerry Jones dated 19 September 2019;
 - Affidavit of Norman Bond dated 2 December 2019;
 - Supplementary Affidavit of Norman Bond dated 29 July 2020;
 - Affidavit of Cecilia Combo dated 5 August 2020;
 - Supplementary Affidavit of Kerry Jones 23/07/2020
 - Affidavit of Kerry Jones dated 22 February 2022;
 - Affidavit of Lyndon Davis dated 29 June 2022;
 - Affidavit of Beverly Hand dated 3 February 2022;
 - Affidavit of Brian Paul Warner dated 22 February 2022;
 - Affidavit of Cecilia Combo dated 16 June 2022;
 - Affidavit of Melissa Bond dated 4 July 2022;
 - Supplementary Affidavit of Norman Bond dated 4 July 2022;
 - Further Supplementary Affidavit of Norman Bond dated 27 July 2022;
 - Supplementary Affidavit of Brian Paul Warner dated 4 July 2022; and
 - Affidavit of Michael David Frith Allbrook dated 30 May 2024.
- Letter dated 22 May 2024 from Kabi Kabi Peoples Aboriginal Corporation to the Federal Court Registry accepting nomination as the RNTBC.

25 In particular, the Applicant relies on a summary of the connection material, Draft Consent Determination Orders attached to the section 87A Agreement, the section 87A Agreement itself filed on 7 June 2024, and Mr Allbrook's affidavit.

SUMMARY OF CONNECTION MATERIAL

26 The summary of the connection material prepared by the Applicant is as follows:

Pre-Sovereignty Society

1. In the pre-sovereignty society, the Kabi Kabi People existed as a part of a larger regional society, but rights and interests to the land were localised to the local country group level. Throughout the regional society, there were several language groups, which were differentiated from each other by a different local language term for the word "no".
2. Kabi Kabi speaking people, including several subgroups, existed to the north of the North Pine River and extended toward K'gari or Fraser Island at effective sovereignty. Early ethnographers observed that local language groups followed the river drainage systems. Local country groups were associated

with speaking a subdialect of the Kabi Kabi language, and this distinguished local country groups from their neighbours. Redmond describes recruitment into these local country groups to be “loosely patrifilial”. This means the method of recruitment maintained a bias towards patrification but also incorporated a combination of matrilineal moieties and a matrilineal system of totems.

3. The speakers of the Kabi Kabi language were united in their shared laws and customs, which included:
 - a. matrimoieties;
 - b. subsections inherited through matrification;
 - c. totemic matri-clans;
 - d. loose patrification;
 - e. language identities differentiated by the word “no”;
 - f. initiation practiced by the regional society and known as Bora/Boorool/Toara/Wandaral;
 - g. belief in the Sky-Gods and the Rainbow Serpent;
 - h. organised battles for the members of the regional society;
 - i. harvest and consumption of local foods such as bunya nuts and mullet at festivals; and
 - j. loosely patrifilial local countries that practice individual ownership of particular trees or areas along the water.
4. Redmond described the Kabi Kabi People in context of other groups, being bounded to the north by Gurang Gurang and including the catchments of Isis River and Oaky Creek and in the northeast corner by the Batjala [Butchulla] (along with two other local groups: the Ngulungbara and Dulingbara), whose local group territory consisted of K’gari and the adjacent mainland including Maryborough. To the south of Kabi Kabi are the Turrbal located south of the North Pine River. To the southwest and west of Kabi Kabi are the Jinibara and Wakka Wakka. The lower southeast Kabi Kabi group being “in the Conondale Range at the head of the Mary River and on the Mary Plains”. Kabi Kabi country came up against the Wakka Wakka area at Mount Stanley in the southwest corner and continues north occupying the eastern side of the Coast Ranges.

Contemporary Society

5. The Kabi Kabi apical ancestors listed at paragraph [43] above are those whose traditional country was, as far as can be determined from the oral and documentary evidence, within (or partly within) the claim area and whose descendants have maintained their connections to the area. Kabi Kabi People today comprise the descendants of these apical ancestors who held traditional rights and interests on the land within the claim area and were mostly born before or around the time of effective sovereignty.
6. The Kabi Kabi People and their predecessors formed part of a single regional society sharing the same system of traditional laws and customs. The concept of a wider regional society remains current amongst contemporary Kabi Kabi

People and this level of society plays a significant role in the promulgation of the claimant's body of traditional laws and customs, as was the case in the pre-sovereignty era. Within this regional society, Kabi Kabi People, through language identity, form a society united in and by their acknowledgement and observance of a body of laws and customs from which their rights and interests in land and waters arise. Kabi Kabi People today exhibit continuity of connection as an organised society and have continued their occupation, use, enjoyment and sense of rightful entitlement to Kabi Kabi country despite bureaucratic and administrative barriers that persisted throughout the most intense periods of governmental control over the lives of Aboriginal people in south-east Queensland during the 1900s.

7. Today, Kabi Kabi People retain the traditional element of perpetual filiation in recruitment to local groups associated with more or less bounded tracts of country. Rights and interests flow from the traditional right to use and occupy country flowing from filiation to the named Kabi Kabi ancestors. Contemporary Kabi Kabi People commonly refer to the authority vested in knowledgeable elders, particularly when in discussions about land and its resources but also extending to all matters pertaining to family relationships in the region. Further, Kabi Kabi People believe they have retained their traditional right to control access to and authorise the use of their country despite European land tenure laws having severely curtailed the exercise of this right.
8. In the contemporary era, there is a powerful persistence of Kabi Kabi People's beliefs in elemental powers and the presence of dangerous spirits dwelling in the earth and waters, with the adherence to a rule-based sociality seen as a protective force against dangerous spirit beings. These beliefs form part of the body of law and custom received from Kabi Kabi Peoples' predecessors and are seen to be authenticated by stories and practices derived from the "old people". The transmission of traditional stories, songs and dances has been ongoing amongst Kabi Kabi Peoples' families via their "old people". A marker of Kabi Kabi Peoples' identity as traditional owners is the continued practice of harvesting natural resources, hunting and fishing, including preparing and consuming animals, plants and other materials from the area in accordance with traditional laws and customs in relation to their land and waters. Kabi Kabi People continue to acknowledge and observe rules regarding group membership, kinship and marriage, totems, spiritual beliefs and practices, land tenure and protocols of access, gathering, hunting, fishing and other resource use and decision-making in accordance with traditional laws and customs in relation to their lands and waters.

Continuity of Law and Custom

Wider regional society

9. The Kabi Kabi People are recognised as being a part of a wider regional society. The wider regional society adhered to the cosmological belief in the Sky-God, which "...provided a lawful underpinning for human action and exerted a pressure towards conformity to established law and custom." At this level the laws and customs are expressed strongly, such as creation stories, bora sites, and access to natural resources. A system of local groupings was shared across the broader region and a region-wide system of land tenure was based upon loosely patrifilial local countries, but also allowed individual ownership of the bounty of certain trees and stretches of water within the tracts of country used and governed by local groups.

Creation stories

10. A central feature of the Kabi Kabi Peoples' belief system relate to the formation of the lands and waters by ancestral spirit beings. These stories govern many aspects of the lives of the Kabi Kabi People, including social rules and systems of land tenure. There is an inextricable link between the geographical landscape of the determination area and the creation stories which give it form.
11. To illustrate this for the purpose of these submissions, two examples are provided. Claimant **Lyndon Davis** recounts a Dreamtime story which explains the formation of landmarks and also provides the basis for social rules associated with marriage:

The Maroochy River is named after the black swan and Kabi Kabi people have a story that talks about how Mt Coolum and Mt Ninderry and Maroochy River came to be. Coolum and Maroochy were betrothed to each other and were to be married. Ninderry was from the area but he was an outcast.

One day, Ninderry came into the tribe and fell in love with Maroochy, saying that she was going to be his wife. The rest of the tribe told him that Maroochy was already betrothed to Coolum which is the marital law set by the Great Maker. Ninderry said he didn't care and that he breaks the rules all the time. Ninderry then kidnapped Maroochy and ran away with her.

Coolum took off with a group of warriors and followed Ninderry's tracks. He found Ninderry, Maroochy and the outcast tribe sleeping and realised that instead of fighting Ninderry it would be easier to just sneak away with Maroochy while they were all sleeping.

While they were sneaking away, Ninderry heard Maroochy and Coolum and set off after them. Ninderry caught up to them near Dunethin Rock. They had a big fight there and Ninderry killed Coolum by chopping off his head. Coolum's head rolled off his shoulders and where it landed formed Mudjimba / Old Woman's Island. Coolum's headless body is still able to be seen to this day at Mount Coolum. Ninderry was punished for what he had done by being turned to stone for breaking the law. He was turned into a rocky outcrop which is why Mount Ninderry is so rocky now.

Maroochy transformed into a black swan and fled up into the mountains because a lot of the tribe blamed her for what had happened to Coolum and Ninderry. For years and years she cried for all that she had lost and her tears pooled at the bottom of the mountains and formed the Maroochy River which flows out to the ocean. Even today at Dunethin Rock the water starts getting saltier because Maroochy cried so much at that location.

12. Claimant **Beverly Hand** tells the creation story of the Bunya tree and how it relates to family life:

We have this old story about Bonyee (the Bunya) and his brother named Coonoom (the Hoop pine)... What happened was Coonoom and Bonyee they fell in love with a girl, her name was Cooloola (the Cypress pine). So they went to their father (named Namada, which is

our word for the Kauri Pine) and said “We both love the same girl who can have her?” So to sort it out, the father armed them with spears and he paced them out and stood them opposite each other and he said you take turns spearing each other and whoever inflicts the most harm will get the girl. You see all the spears that Bonyee threw at Coonoom got him from his waist down and all the spears Coonoom threw at Bonyee got him from the chest up but neither inflicted more harm than the other so the father took Cooloola to be his wife. So no matter how much we fight with our siblings and say bad things to them, when you are faced with actually doing them harm it’s a different matter.

13. Kabi Kabi artists depict these traditional stories in their paintings or dances. Noted artist/dancer, **Lyndon Davis**, says: “I mainly paint about our stories from around here in Kabi Kabi country and I incorporate the patterns from this district from what I learned from my uncles and families.”
14. Applicant, **Melissa Bond**, also shares the following:

I learnt painting techniques from Morris Mickelo, who is a senior artist and a Kabi Kabi man... He encouraged me to paint bush tucker and bush medicine and special cultural places for my family, and to use stuff from that place in my artwork. Morris and I do ceramic potting together and he tells me when I should use different patterns to reflect our country and stories.

Totems

15. In the pre-sovereignty society, totems were an important way of managing the environment. Some of these practices are still carried out, such as bunya nut trees belonging to certain people. The person who “owned” the tree would harvest the bunya nuts for distribution. This is a practice that continues to this day, as illustrated by applicant **Kerry Jones**: “I have been told that my apical ancestor, Susan Andy, planted a bunya tree at Yandina. I show people that tree a lot, it is important to me and my family.”
16. People would have totems they couldn’t eat or care for certain stretches of land, and this is how they shared and regulated the exploitation of the natural resources. Applicant **Kerry Jones** recounts:

Totems are related to our kinship to the land. For example, your totem might be the kangaroo which means that you are not able to eat it. It also means that you got to look after him because it’s your animal. My totem is the “Mulloo” which is the Black Snake. ... I am not supposed to eat the Black Snake, I am supposed to protect it. If I ate a Black Snake I would not feel right for a start, I would be breaking the law.

Rights and interests

17. The rights and interests claimed in the application are based on the premise that at effective sovereignty, the Kabi Kabi People’s ancestors owned the land and waters of the claim area, in accordance with their traditional laws and customs, and that those laws and customs have continued to be acknowledged and observed by the Kabi Kabi People.
18. Contemporary Kabi Kabi People have continued their occupation, use, enjoyment and sense of rightful entitlement to Kabi Kabi country despite the many bureaucratic and administrative barriers, which presented themselves

throughout the most intense periods of governmental control over Aboriginal lives in south-east Queensland during the 20th century. The connection material demonstrates that the following rights and interests were exercised by Kabi Kabi People in the claim area in the pre-sovereignty and post-sovereignty period and continue to be exercised by Kabi Kabi People today.

Access, be present on, move about on and travel over the area

19. Contemporary Kabi Kabi People demonstrate their use and occupation of the claim area, and they manifest proprietary attitudes, which characterise their attachments to tracts of country through their activities and residing on country. This use of country continued throughout the period of most intense surveillance of the Aboriginal population on the Cherbourg settlement and the vigilant and often hostile property owners in the area.

20. As claimant and respected Kabi Kabi elder, **Alex Davidson**, explains:

Mum's born in the Mary Valley. And we've got Andrew Bolan, and the Yandina mob, the Yandina mob from up this end. One of my grandmothers, a young girl getting about, his family was the last people to be living a traditional lifestyle in the Sunshine Coast. They were the last people walking around there. They come across Maleny there, there's records of them coming through Woombye. Back down to the coast and back around. So they were still doing their seasons, you know?

21. Applicant, **Kerry Jones**, explains it in the following way:

My family has always been on Kabi Kabi country and we have had a continuous link to this country going back a long way. Even when my great-great-grandmother [Susan Andy] and her children were stolen off Kabi Kabi country in about 1917 and taken to Taroom or Deebin Creek, they came back and stayed here when they could. Her son Alfred died at Taroom of internal injuries and her son Charlie got an exemption from the Act and came back to Buderim and Mooloolah.

Camp on the area, and for that purpose, erect temporary shelters on the area

22. Kabi Kabi People continue to camp on country and to erect temporary shelters when desired.

23. As claimant, **Edna Van Hemmen**, explains:

I was born in Kingaroy and mum and dad moved to Gympie when I was about 4 years old. I grew up between Imbil and Kenilworth in a country town called Brooloo...Dad built a tin shack for us to live in....

Dad taught us everything - how to survive in the bush.

We used to go and camp for the weekend, through people's properties out from Brooloo. We walked for miles through the bush to go camping and fish ing. There were never any issues with going through people's properties because all the people knew Dad.

Take resources for the area for any purpose

24. The right to take resources for the area for any purpose is derived in the first instance from the ownership of the land and waters in accordance with the Kabi Kabi People's traditional laws and customs. Members of the claim group

regard themselves as having an entitlement, as of right, to access and take resources for any purpose they see fit.

25. **Melissa Bond** indicates that:

...if it is from my country I can use the resource forever and a day. If it's from my country then it is a part of me" and indicated that if she wished to take timber from her country to make objects for sale then "I just break it off and start carving".
26. **Cecilia Combo** says, "I can take the resources from my country and do anything I like with them, I can do that because those resources are ours. They were ours long before the whiteman came along."
27. **Brian Warner** indicates that he can, and does, take the resources from his country for a variety of purposes and expresses this as an entitlement to control that resource:

I can hunt, fish, trade and take ownership of resources, animals and things on Kabi Kabi country. I also have the right to deny or exclude others from taking, using or even entering Kabi Kabi Country. I can give people permission to take, use or enter Kabi Kabi country. This is because I am connected to the land and I am a Kabi Kabi person.
28. Claimants **Kerry Jones** and **Cecilia Combo** both express the sentiment that the natural environment of the Sunshine Coast is their "supermarket" and that they are entitled to access the resources (by hunting, fishing or collecting bush tucker) of their country for their own sustenance without seeking permission from others.
29. Claimants refer to modern restrictions that are taken into account, but the evidence shows that they feel that such restrictions do not apply to them when they exercise their native title right to take and use resources for any purpose. As **Lyndon Davis** puts it in the context of collecting bunya nuts from private property in Buderim, "I don't think I need to ask anyone permission to take those bunya nuts, me and my family own them I reckon. Earlier this year, I got hundreds of bunya nuts from that tree."
30. This sense of entitlement is also well expressed by **Beverly Hand** in the following way:

...If I see a [bunya] cone growing on freehold or private property, I will ask before going on that land - but that's because of white man's law. I have the right to those cones, so much so that when I see the cones for sale at the [Maleny] food co-op, I just grab one as I walk passed. I've told the co-op that "I'm just collecting my rent". They used to call out after me but now they don't bother. They know me now, and they know that I can take what's from my country. They know that I'm from this place.
31. Indeed, the claimants evidence demonstrates that there is no traditional rule or custom which prohibits the exercise of the right to take and use resources for any purpose, including (as an example) for commercial purposes. As **Melissa Bond** puts it:

I believe my Granny Elsie would be happy I am making use of things from our country and that I'm not letting it go to waste. She taught me that Kabi Kabi people are not people who waste things. We don't just

get things for our own personal use, it is also to trade with other tribes, for example. Granny Elsie taught me about how trade is a part of Kabi Kabi tradition, through festivals like the Bunya festival. There is no rule under Kabi Kabi law that says you can't sell things - it's the opposite. As I said above, it is part of our traditions.

Take and use the water of the area for personal, domestic and non-commercial purposes (including cultural and spiritual purposes)

32. While an exclusive right to water is not recognisable by law, the right to take and use water on Kabi Kabi country for personal, domestic and non-commercial purposes is derived from the ownership of the land and waters in accordance with the claimants' traditional laws and customs.
33. Kabi Kabi People give evidence about guardian spirits that protect water sources on Kabi Kabi country. **Norman Bond** deposes that he was taught that a carpet snake moved through the country in the Dreamtime which created the valleys, the rivers and the springs of his country.
34. **Lyndon Davis** recalls being taught the rules for looking after water as an important resource which was taught to him by his grandmother while living in Buderim as follows:

She knew from a young age that the bottom spring is where you wash your clothes and the top spring collect your water. Everyone knows that if anyone was ever caught up there playing in the top spring water then they would get flogged! That's what she would say. That was a water spring law. Nan filled me in about that law and so I still respect that law and carry out that law to this day.

35. Applicant **Norman Bond** recalls being told that permission was required to access certain water sources and that, "areas that have natural springs had cultural rules about access and who could use them or be there at specific times of the year. It's about law and rituals for both men and women – you don't go to certain places."

Participate in cultural activities on the area

36. Kabi Kabi People speak of being taught about traditional festivals (or gatherings) held on Kabi Kabi country where the claimant's ancestors congregated for the purposes of trade and ceremony with neighbouring groups. Claimants provide evidence about neighbouring groups travelling onto Kabi Kabi country along designated pathways in order to attend these festivals or ceremonial gatherings.
37. The claimant evidence consistently refers to a ceremonial gathering relating to the harvest, consumption and trade of bunya nuts whereby their ancestors would meet with neighbouring groups of people for various purposes. As claimant **Lyndon Davis** puts it:

...the main thing we learned about the bunya gathering is that people are definitely going to trade their goods... So you know you would be able to trade some of your goods and items whether it be your spears and boomerangs or whether it be your songs and dances.

38. **Cecilia Combo** describes being taught by her grandmother about the Bunya festival as follows:

...that Wakka Wakka, Kabi Kabi and Jinibara people would meet up in Kabi Kabi country and eat lots of bunya nuts and fish. It was called the Bunya Nut Festival and people would meet up to do trades, like if they had something that they got then they would trade bunya nuts and other resources. They would talk about what had been happening in the area. They would walk from all over their countries to meet and everyone would be welcomed by Kabi Kabi people.

39. The examples above in relation to the Bunya Festival is consistent with the historical record as recognised in the so-called “Bunya Proclamation” of 1842 and accords with the observations of early settlers including Tom Petrie. The current generation of Kabi Kabi People, particularly Beverly Hand, have continued the practice of convening the bunya festival for modern day purposes.

Be buried and bury Native Title Holders within the area

40. The right to be buried and bury Kabi Kabi People on Kabi Kabi country is derived in the first instance from the ownership of the land and waters in accordance with the claimants’ traditional laws and customs. When possible and deemed appropriate by a deceased person’s family, Kabi Kabi People have exercised their responsibility and right to bury deceased relatives in the locales with which those persons, and/or their ancestors, were most clearly associated through their individual life histories and in regard to their family’s connections to country. Claimants continue to exercise this right in accordance with their traditional laws and customs.

41. Applicant **Cecilia Combo** states:

My grandfather, Jack Baul, is buried on the banks of the Maroochy River. He was a skipper on a boat that would go up and down the river, and he once saved his sons from drowning in the river. Maroochy River is significant to all of our family and it's important that we educate them and show them the river and the connection to my grandfather.

42. Mourning and burial practices are still observed by Kabi Kabi People. The extended kin-network of an individual are often involved in the practices around their death, and kin offer support through visits and cleansing (smoking). Such practices as mourning for periods until the family is “satisfied”, burying the deceased relative in a significant area to the family (this confirms the family’s association to said location), and singing or performing ceremonial dances were observed after the death of an individual. Claimant **Lydon Davis** provides the following description of the contemporary practice:

I go to other families funerals all the time. Kabi Kabi people do have sorry business... It might be that you have to sacrifice your job to go pay your respects. Most Kabi Kabi people do follow this... The rest of my family always went to funerals though, particularly for Kabi Kabi elders.

I have seen smoking ceremonies at funerals...

43. Today, Kabi Kabi People continue to pass down the stories and beliefs of the ancestral spirits which may cause sickness in those who disobey the laws and customs of the group. Applicant **Norman Bond** gives the following example:

Those that don't want to listen will get sick or have bad karma come to them. Kabi Kabi are spiritual people. I have had people come to me with thigh bones that a farmer has taken from a cave on their property. I said to the farmer...that they have to leave those things were they found them. The farmer got really sick and ended up dying. Other times people start getting sick or there might be a bad run of events for certain people or families if they go to the wrong places or did not abide by what was being told to them in regards to our customary ways.

Maintain places of importance and areas of significance to the Native Title Holders under their laws and customs and protect those places and areas from physical harm

44. Kabi Kabi People continue to maintain and protect places of importance and areas of significance within the claim area in accordance with their traditional laws and customs. The existence of these rights are demonstrated through claimant group members participating in cultural heritage surveys with a special focus on bora ceremony sites with the main significance for some claimants being that they follow the precedents of journeys known to have been made by the "old people". This demonstrates the continuation of traditional laws and customs acknowledged and observed at sovereignty by Kabi Kabi People today.
45. Claimant **Lyndon Davis** puts it as follows: "Today, I try to make sure I maintain the boras, both physically and spiritually. I can do that because it's what my ancestors were doing."
46. **Kerry Jones** gives the following example of maintaining areas of importance in a contemporary context:

At Muller Park in Bli Bli there is an area that I fought hard to get fenced off. There is a shell midden on the north side of the park and for a long time people were camping on top of it, throwing refuse in it and riding their BMX bikes through it. Before the area started getting developed it was more or less easy to keep people away from that midden but over the last 15 years or so it's become harder to keep people away. Me and some other Kabi Kabi people talked to the Council and told them that the area around the midden needed to be fenced off so it could be protected. We put up a fence around it, so it is more safe now, more protected.

Teach on the area the physical and spiritual attributes of the area

47. Kabi Kabi People continue to recount their experiences of natural and supernatural events on country and to transfer knowledge to each subsequent generation. Stories relating to traditional places in the landscape have continued to be transmitted across the generations with the transmission pathway a highly valued aspect of the social ownership and use of such stories.
48. Claimant **Kerry Jones** states:

Dreaming stories are the stories talking about our ancestral beings, how things were created. They are old stories that have been passed down for a long time, generation to generation. They explain what is significant to us and to our people and how important land is and how the land was formed. They are also important because they educate our young ones who learn about Kabi Kabi country and some

important laws we got from our old people.

49. As **Norman Bond** puts it:

My Granny and Uncles taught me this and now, I like to teach others about the signs about our country that we need to take notice of. In today's world, there are a lot of distractions and I have to really remind myself that the signs are still there. When we don't take notice of the signs we can find ourselves at times in trouble. I like to share these cultural teachings as a Kabi Kabi man. I try to share as much as I can. I will even share this with people who are not Kabi Kabi, they just have to be open minded and willing to listen.

Hold meetings on the area

50. See submissions in relation to the right to participate in cultural activities on the area at paragraphs [36]-[39] above.

Light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation

51. The Kabi Kabi People have the right to light fires for cultural, spiritual or domestic purposes as a non-exclusive native title right and interest. The Kabi Kabi People light fires for multiple purposes such as ceremony, connecting to their culture, rejuvenating and healing country, cooking and in crafting. The right to burn country is permitted in accordance with the traditional laws and customs of the Kabi Kabi People and has been exercised with a view to protect, not destroy, land and waters.
52. Fire, and its use, is an important part of traditional law and custom for Kabi Kabi People and manifests in a number Kabi Kabi Dreamtime stories. **Brian Warner** and **Lyndon Davis** tell the Dreamtime story of Cooloola and Wantima. In the story, a Dreamtime ancestor used fire to cook a snake associated with the Noosa Headlands. This story, situated at an important location in the claim area tells of how Kabi Kabi people became meat-eaters. This story demonstrates the cultural importance of fire to Kabi Kabi People as a manifestation of creation myths.
53. Kabi Kabi People talk about using fire to create smoke for cultural ceremonies. **Cecilia Combo** recounts as follows:

As a Kabi Kabi elder, I get asked to do welcome to counties a lot. The councils want a Traditional Owner to welcome them and make them safe. We do this with a smoking ceremony so they are right. It is important to do a welcome to country so that we can let the spirits know its okay and to give them that welcome so they can be protected. If people aren't welcomed to country then something bad will happen to them.

- 27 I am satisfied that this summary accurately encapsulates relevant connection material.

RELEVANT LEGISLATION

- 28 Section 81 of the Native Title Act provides:

Jurisdiction of the Federal Court

The Federal Court has jurisdiction to hear and determine applications filed in the Federal Court that relate to native title and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

29 Section 87A of the Native Title Act empowers the Federal Court to make orders in relation to *part* of a claimed area. As I have noted, the agreement, and determination currently sought, concerns Part A of the claim area as previously explained. Section 87A provides:

87A Power of Federal Court to make determination for part of an area

Application

- (1) This section applies if:
- (a) there is a proceeding in relation to an application for a determination of native title;
 - (b) at any stage of the proceeding after the end of the period specified in the notice given under section 66, agreement is reached on a proposed determination of native title in relation to an area (the determination area) that is part of, but not all of, the area covered by the application; and
 - (c) all of the following are parties to the agreement:
 - (i) the applicant;
 - (ii) each registered native title claimant in relation to any part of the determination area who is a party to the proceeding at the time the agreement is made;
 - (iv) each representative Aboriginal/Torres Strait Islander body for any part of the determination area who is a party to the proceeding at the time the agreement is made;
 - (v) each person who holds an interest in relation to land or waters in any part of the determination area at the time the agreement is made, and who is a party to the proceeding at the time the agreement is made;
 - (vi) each person who claims to hold native title in relation to land or waters in the determination area and who is a party to the proceeding at the time the agreement is made;
 - (vii) the Commonwealth Minister, if the Commonwealth Minister is a party to, or is intervening in, the proceeding at the time the agreement is made;
 - (viii) if any part of the determination area is within the jurisdictional limits of a State or Territory, the State or Territory Minister for the State or Territory if the State or Territory Minister is a party to the proceeding at the time the agreement is made;
 - (ix) any local government body for any part of the determination area who is a party to the proceeding at the time the agreement is made; and

- (d) the terms of the proposed determination are in writing and signed by or on behalf of each of those parties.

Note: For agreements reached in relation to the whole of the area covered by the application, see section 87.

When a registered native title claimant is taken to be a party to the agreement

- (1A) The requirements that a registered native title claimant be a party to the agreement and sign the terms of the proposed determination are satisfied if:
 - (a) a majority of the persons who comprise the registered native title claimant are parties to the agreement and sign the terms, unless paragraph (b) applies; or
 - (b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement and sign the terms—those persons are parties to the agreement and sign the terms.
- (1B) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement and signing the terms, as mentioned in paragraph (1A)(a). A failure to comply with this subsection does not invalidate the agreement or any signature.

Proposed determination may be filed with the Court

- (2) A party to the agreement may file a copy of the terms of the proposed determination of native title with the Federal Court.

Certain parties to the proceeding to be given notice

- (3) The Federal Court Chief Executive Officer must give notice to the other parties to the proceeding that the proposed determination of native title has been filed with the Court.

Orders may be made

- (4) The Court may make an order in, or consistent with, the terms of the proposed determination of native title without holding a hearing, or if a hearing has started, without completing the hearing, if the Court considers that:
 - (a) an order in, or consistent with, the terms of the proposed determination would be within its power; and
 - (b) it would be appropriate to do so.

Note: As the Court's order involves making a determination of native title, the order needs to comply with section 94A (which deals with the requirements of native title determination orders).

- (5) Without limiting subsection (4), if the Court makes an order under that subsection, the Court may also make an order under this subsection that gives effect to terms of the agreement that involve matters other than native title if the Court considers that:
 - (a) the order would be within its power; and
 - (b) it would be appropriate to do so.
- (6) The jurisdiction conferred on the Court by this Act extends to making an order

under subsection (5).

- (7) The regulations may specify the kinds of matters other than native title that an order under subsection (5) may give effect to.

Objections

- (8) In considering whether to make an order under subsection (4) or (5), the Court must take into account any objections made by the other parties to the proceedings.

Agreed statement of facts

- (9) If some or all of the parties to the proceeding have reached agreement on a statement of facts, one of those parties may file a copy of the statement with the Court.

- (10) Within 7 days after a statement of facts agreed to by some of the parties to the proceeding is filed, the Federal Court Chief Executive Officer must give notice to the other parties to the proceeding that the statement has been filed with the Court.

- (11) In considering whether to make an order under subsection (4) or (5), the Court may accept a statement of facts that has been agreed to by some or all of the parties to the proceedings but only if those parties include:

- (a) the applicant; and
(b) the party that the Court considers was the principal government respondent in relation to the proceedings at the time the agreement was reached.

- (12) In considering whether to accept under subsection (11) a statement of facts agreed to by some of the parties to the proceedings, the Court must take into account any objections that are made by the other parties to the proceedings within 21 days after the notice is given under subsection (10).

- (13) A reference in subsections (9) to (12) to the parties to the proceeding includes a reference to the Commonwealth Minister if the Commonwealth Minister is intervening in the proceeding at the time a statement of facts is agreed.

30 Under s 87A of the Native Title Act the Court may make an order in, or consistent with, the terms of the proposed determination of native title without holding a hearing, or if a hearing has started, without completing the hearing, if the Court considers that an order in, or consistent with, the terms of the proposed determination would be within its power; and it would be appropriate to do so. Section 87A(1)(c) lists required parties to an agreement under s 87A.

ORDERS SOUGHT

31 Materially, the consent orders sought by the Kabi Kabi Applicant include the following:

1. There be a determination of native title in the terms set out below (the determination).
2. The determination will take effect upon the agreement referred to in paragraph

- 1(a) of Schedule 2 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreement referred to in order 2 is not registered on the Register of Indigenous Land Use Agreements within seven (7) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.
 4. Each party to the proceedings is to bear its own costs.
 5. The determination area is the land and waters described in Schedule 4 and depicted in the map attached to Schedule 6 to the extent those areas are within the External Boundary and not otherwise excluded by the terms of Schedule 5 (the Determination Area). To the extent of any inconsistency between the written description and the map, the written description prevails.
 6. Native title exists in the Determination Area.
 7. The native title is held by the Kabi Kabi People described in Schedule 1 (**the Native Title Holders**).
 8. Subject to orders 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 Schedule 4 are the nonexclusive rights to:
 - (a) access, be present on, move about on and travel over the area;
 - (b) camp on the area, and for that purpose, erect temporary shelters on the area;
 - (c) take resources of the area for any purpose;
 - (d) take and use the Water of the area for personal, domestic and non-commercial communal purposes (including cultural and spiritual purposes);
 - (e) participate in cultural activities on the area;
 - (f) be buried and bury Native Title Holders within the area;
 - (g) maintain places of importance and areas of significance to the Native Title Holders under their laws and customs and protect those places and areas from physical harm;
 - (h) teach on the area the physical and spiritual attributes of the area;
 - (i) hold meetings on the area; and
 - (j) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
 9. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the Laws of the State and the Commonwealth; and
 - (b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders.
 10. The native title rights and interests referred to in order 8 do not confer on the

Native Title Holders:

- (a) possession, occupation, use or enjoyment to the exclusion of all others;
 - (b) any right to access or take:
 - (i) minerals as defined in the Mineral Resources Act 1989 (Qld);
or
 - (ii) petroleum as defined in the Petroleum Act 1923 (Qld) and the Petroleum and Gas (Production and Safety) Act 2004 (Qld).
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 2 (the **Other Interests**).
13. The relationship between the native title rights and interests described in order 8 and the Other Interests described in Schedule 2 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:
- “External Boundary” means the area described in Schedule 3;
- "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;
- “Local Government Act” has the meaning given in the Local Government Act 2009 (Qld);

“Local Government Area” has the meaning given in the Local Government Act 2009 (Qld);

“Native Title Determination Application” means the Kabi Kabi People native title determination application accepted for filing on 8 November 2023 in QUD20 of 2019;

“Reserve” means a reserve dedicated or taken to be a reserve under the *Land Act 1994* (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;

“Water Infrastructure” has the same meaning as:

- (a) that phrase in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (Qld); and
- (b) “service provider’s infrastructure” in the *Water Supply (Safety and Reliability) Act 2008* (Qld); and

“Works” has the same meaning as in the *Electricity Act 1994* (Qld).

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).

32 The Applicant also sought orders that native title be held in trust, and that the Kabi Kabi Peoples Aboriginal Corporation (ICN: 8996), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth):

- (a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the Native Title Act; and
- (b) perform the functions mentioned in s 57(1) of the Native Title Act after becoming a registered native title body corporate.

POWER OF THE COURT AND APPROPRIATENESS OF ORDERS SOUGHT

33 Section 94A of the Native Title Act provides:

Order containing determination of native title

An order in which the Federal Court makes a determination of native title must set out details of the matters mentioned in section 225 (which defines *determination of native title*).

(emphasis in original)

34 Key concepts for present purposes are those set out in ss 223, 224 and 225 of the Native Title Act. These sections provide as follows :

223 Native title

Common law rights and interests

- (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
- (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
 - (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
 - (c) the rights and interests are recognised by the common law of Australia.

Hunting, gathering and fishing covered

- (2) Without limiting subsection (1), rights and interests in that subsection includes hunting, gathering, or fishing, rights and interests.

Statutory rights and interests

- (3) Subject to subsections (3A) and (4), if native title rights and interests as defined by subsection (1) are, or have been at any time in the past, compulsorily converted into, or replaced by, statutory rights and interests in relation to the same land or waters that are held by or on behalf of Aboriginal peoples or Torres Strait Islanders, those statutory rights and interests are also covered by the expression native title or native title rights and interests.

Note: Subsection (3) cannot have any operation resulting from a future act that purports to convert or replace native title rights and interests unless the act is a valid future act.

...

224 Native title holder

The expression native title holder, in relation to native title, means:

- (a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust—the prescribed body corporate; or
- (b) in any other case—the person or persons who hold the native title.

225 Determination of native title

A determination of native title is a determination whether or not native title exists in relation to a particular area (the determination area) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and

- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of non-native title interests.

35 The Kabi Kabi People assert that, under the traditional laws which they acknowledge and the traditional customs they observe, they possess rights and interests in the determination area, and further that by those laws and customs they have a connection with the determination area as native title holders.

36 I noted earlier in this judgment that a concluded agreement under s 87A of the Native Title Act has been presented to the Court by way of filing. As Moshinsky J observed in *Saltmere on behalf of the Indjalandji-Dhidhanu People v Northern Territory of Australia (Rocklands Pastoral Lease Proceeding)* [2022] FCA 1040:

22. The principles applicable to s 87 were discussed by Mortimer J in *Freddie v Northern Territory* [2017] FCA 867 at [15]- [24]. Although that discussion related to s 87 (rather than both s 87 and s 87A), I consider the principles there set out to be applicable also to s 87A. I note, in particular, the following passages of her Honour's judgment:

- 15. In order to be satisfied that the orders sought are within the power of the Court, consideration must be given to other restrictions or requirements in the Native Title Act. For example, the area covered by the orders must not overlap with any other application for determination of native title (s 67(1)); similarly, the area covered by the orders cannot have been the subject of a previously approved determination of native title (s 68). Further, the orders sought will only be within power if they set out the details of the matters required by s 225 (see s 94A) and if they concern rights and interests which the Australian common law is able to recognise (s 223(1)(c)).
- 16. The Court's function under s 87 is quite different from its function in a contested application for a determination of native title, and this difference has been confirmed in many authorities of this Court: ...
- 17. The Court's function under s 87, and its discretion, must also be understood in the context of the Native Title Act's emphasis on negotiation and alternative dispute resolution, whereby one particular object of the Native Title Act is to resolve claims to native title without

judicial determination in a contested proceeding: ...

18. The concept of “appropriateness” in s 87(1A) also recognises that the determination made by the Court is one made as against the whole world, and not just between the parties to the proceeding: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3] (French J). The rights conferred are enduring legal rights, proprietary in nature and in recognising them through a determination, the Court must be conscious of their character. The nature of the rights informs considerations such as the clarity of the terms of the determination (as to the claim area, the nature of the native title rights and interests and the manner of affectation on other proprietary interests); the need for appropriate notification and then the free and informed consent of all parties; and finally the State’s agreement that there is a credible and rational basis for the determination proposed.

...

21. Since the determination made by the Court must include the matters set out in s 225 of the *Native Title Act*, there must be some probative material against which the Court can assess whether those matters can be stated in a determination. The principal source will be the parties’ agreed position put to the Court in the proposed orders and determination setting out the matters required by s 225, together with an agreed statement of facts filed pursuant to s 87(8), joint submissions and any supporting documents such as an expert report. ...

22. In *Brown v Northern Territory of Australia* [2015] FCA 1268 at [23], Mansfield J described the task to be undertaken by the Court in the following way:

The Court is not required to embark upon an inquiry as to the merits of the claim to be itself satisfied that the orders are supported and in accordance with law: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3] per French J. However, the Court will consider evidence for the limited purpose of determining whether the State has made a rational decision and is acting in good faith: *Munn for and on behalf of the Gunggari People v State of Queensland* [2001] FCA 129; (2001) 115 FCR 109 at [29]-[30] per Emmett J.

...

24. The Court is entitled to rely on the processes established by a State (or Territory) for the assessment of claims to native title and, without abdicating its task of determining that the matters set out in s 225 are present in a particular application, is entitled to proceed on the basis the State (or Territory) has made a reasonable and rational assessment of the material to which it has access in deciding to enter into a s 87 agreement: see, in relation to a similar point with respect to s 223 of the Act, *King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v State of South Australia* [2011] FCA 1387 at [21] (Keane CJ).

Does the Court have power to make the consent determination sought?

38 It is not in dispute that the native title determination application before the Court has been properly made.

39 Nor is it in dispute that the native title determination sought is in relation to an area for which there is no approved determination of native title within the meaning of s 13(1)(a) of the Native Title Act.

40 I am satisfied that there are no other proceedings before the Court relating to native title determination applications that cover any part of the area the subject of the proposed determination which would otherwise require orders to be made under s 67(1) of the Native Title Act.

41 Finally, the form of the orders proposed complies with s 94A and s 225 of the Native Title Act.

42 I am satisfied that the Court has power to make the determination sought.

Is it appropriate that the Court make the consent determination sought?

43 Section 61 of the Native Title Act permits the making of a native title determination application by a person or persons *authorised* by all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group. I am satisfied that the applicant in this proceeding was authorised to bring the determination application, because:

- Each of Michael Douglas, Helena Gulash, Norman Bond, Melissa Bond, Cecilia Combo, Kerry Jones and Brian Warner is a member of the Kabi Kabi People claim group;
- Mr Allbrook, the lawyer representing the Applicant, deposed that he received instructions from the seven members of the applicant on behalf of the Kabi Kabi People;
- In her affidavit affirmed 26 February 2019, Ms Anna Rettke, a solicitor employed at that time as a Legal Officer by Queensland South Native Title Services Limited with day to day carriage of the Kabi Kabi application, relevantly deposed:

27. A proposed resolution regarding the appointment of an applicant to replace the current applicant ('the Replacement Applicant') was displayed on the PowerPoint. There was then discussion by the members of the Newly Described Claim Group present at Authorisation Meeting #2 and a general consensus was reached that the Replacement Applicant would be comprised

of seven members of the Newly Described Claim Group.

28. Eight members of the Newly Described Claim Group present at Authorisation Meeting 2 nominated for the seven positions as members of the Replacement Applicant. As the number of nominations exceeded the number of individual members to comprise the Replacement Applicant, a secret ballot was conducted to reduce the list to seven persons for the Newly Described Claim Group to consider authorising as the Replacement Applicant:
- (a) The name of each nominee was displayed to the meeting for the duration of the voting process.
 - (b) QSNTS staff members handed a voting slip to each person eligible to vote.
 - (c) Members of the Newly Described Claim Group cast their vote by writing up to a maximum of seven names on the voting slip and placing the voting slip into one of two ballot boxes.
 - (d) Matthew Staley and I tallied the votes with members of the Claim Group observing the vote count.
 - (e) The Chair announced and displayed the names of the seven individuals who gained the highest number of votes and would comprise the proposed group for authorisation as the Replacement Applicant.
29. After all the votes had been tallied, the Chair announced and displayed the names of the seven individuals who gained the highest number of votes and would comprise the proposed group for authorisation as the Replacement Applicant. The following resolutions were then passed by the Newly Described Claim Group:

RESOLUTION 6: AUTHORISATION OF THE REPLACEMENT APPLICANT

That this meeting authorises the following members of the Claim Group as the Applicant:

- (a) to replace the Current Applicant; and
- (b) to make the Application under section 668 of the Native Title Act 1993 (Cth) ("NT A") to replace the current Applicant.

And

From the date of this meeting, the Applicant is authorised, subject to the terms and conditions of appointment agreed to and adopted by the meeting, to deal with all matters arising in relation to the Application including making the application under section 64 of the NT A to amend the Kabi Kabi First Nation Traditional Owners claim group description in accordance with the amendments authorised at Authorisation Meeting #1 .

- 1. Brian Warner
- 2. Helena Gulash
- 3. Norman Bond
- 4. Mick Douglas

5. Kerry Jones
6. Melissa Bond
7. Cecilia Combo

("the Replacement Applicant")

which was moved by Norman Bond, seconded by Kerry Neill and passed unanimously.

30. As a result of the process set out in paragraphs 27 to 29 of this affidavit, the Newly Described Claim Group at Authorisation Meeting #2 authorised the Replacement Applicant and authorised the Replacement Applicant to make an application under section 668 of the Native Title Act 1993 (Cth) ('the NT A') to replace the current applicant and to seek leave to amend the Application pursuant to section 64 of the NTA.

Proposed second further amended application

31. Annexed to this affidavit and marked 'APR-8' is a proposed second further amended application. The proposed second further amended application incorporates the following amendments as authorised at both Authorisation Meeting #1 and Authorisation Meeting #2 on 16 December 2018.
 - (a) Name of the Applicant(s) has been amended to reflect changes to the Applicant.
 - (b) Part A - 2 has been amended in light of the authorisation meeting held on 16 December 2018 at which the Replacement Applicant was Authorised to replace the current Applicant.
 - (c) Schedule A has been amended to provide the amended description of the claim group as authorised on 16 December 2018.
 - (d) Schedule F - Attachment F has been amended to exclude references to connection information that is no longer relevant due to authorised amendments to the claim group description and to reference the most up to date connection material.
 - (e) Schedule M - Attachment F has been amended to detail the traditional physical connection of the Kabi Kabi First Nation Traditional Owners as supported by up to date connection material.
 - (f) Schedule R - has been amended in light of Authorisation Meeting #1 held on 16 December 2018.
 - (g) Schedule S - has been amended to list the amendments to the amended application contained in the proposed second further amended application.

44 I have set out the summary of the connection material before the Court, which demonstrates that the agreement of the parties to the making of the determination in this proceeding is “rooted in reality” and has a credible basis: see Robertson J in *Clancy on behalf of the Auburn Hawkwood People and State of Queensland* [2019] FCA 1908 at [26].

45 I am satisfied that proper processes have been followed whereby the connection material adduced by the Applicant has been put to the State and other parties.

46 I am satisfied that the State has taken steps to satisfy itself that there is a credible basis for the present native title application, and is satisfied as to the cogency of the evidence upon which applicants rely: *Western Bundjalung People v Attorney General of New South Wales* [2017] FCA 992 at [21], *Clancy on behalf of the Auburn Hawkwood People and State of Queensland* [2019] FCA 1908 at [9]; *Ross on behalf of the Cape York United #1 Claim Group v State of Queensland (No 2) (Kuuku Ya'u determination)* [2021] FCA 1464 at [92].

47 The Applicant submitted that apart from the State and the Commonwealth, no other respondent parties sought to independently assess the connection material prepared by the Applicant. I am however satisfied, given the length of time during which this proceeding has been on foot, that the other respondent parties have had the opportunity to do so.

PRESCRIBED BODY CORPORATE

48 Pursuant to s 56 of the Native Title Act, the Applicant nominated a prescribed body corporate for the determination area to hold native title in trust, namely Kabi Kabi Peoples Aboriginal Corporation (ICN: 8996). In this respect I note evidence of Mr Allbrook in his affidavit including the following:

15. This affidavit outlines the decisions made by the Kabi Kabi First Nation Traditional Owners claim group (**Kabi Kabi People**) in relation to the establishment and nomination of a Prescribed Body Corporate (**PBC**) on their behalf.

Authorisation of PBC

4. On 5 February 2019 the Kabi Kabi Peoples Aboriginal Corporation (**Kabi Kabi Corporation**) was registered under the *Corporations (Aboriginal Torres Strait Islander) Act 2006* (Cth). Attached to this affidavit at annexure MA-01 is a true copy of the certificate of registration signed by James Rose, Delegate of the Registrar of Aboriginaland Torres Strait Islander Corporations.
5. On 16 April 2023, two authorisation meetings were held at Oaks Resort, Caloundra, for the Kabi Kabi People to consider a number of decisions relating to the Kabi Kabi Claim. The first authorisation meeting (**Authorisation Meeting**) related to the consideration and authorisation of a draft section 87 A agreement with proposed orders for a determination of native title to be made by consent. Further, the Kabi Kabi People were asked to appoint a representative to nominate a PBC to hold native title on trust pursuant to the *Native Title Act 1993* (Cth) (**NTA**).
6. Notice of the Authorisation Meeting was made via public notice, letters, email and text messages to the Kabi Kabi People. The public notice was advertised in the Koori Mail on 22 March 2023. Copies of the tear sheet from the above

publication advertising the public notice is annexed to this affidavit at MA-02.

...

9. I confirm that I was present at and present through the entirety of the Authorisation Meeting and the information sessions which preceded it. I attended the Authorisation Meeting as the solicitor on the record for the Kabi Kabi Claim and I provided legal advice in relation to aspects of the proposed decisions, including the functions of a PBC under the NTA.
10. After the Kabi Kabi People discussed the purpose of a PBC, the Chairperson of the Authorisation Meeting, Mr Darryl Pearce, read a resolution to the Kabi Kabi People. Following the reading of the resolution, the resolution was moved and seconded. A vote was conducted and the Kabi Kabi People passed a resolution to nominate the Kabi Kabi Corporation as the PBC to hold on trust the native title rights and interests of the Kabi Kabi People. Annexed to my affidavit and marked MA-03 is a true and correct copy of the resolution passed by the claim group at the Authorisation Meeting held on 16 April 2023.
11. The Kabi Kabi People appointed Mr Norman Bond to be their representative to indicate to the Federal Court of Australia (Court) that they intended to have their native title rights and interests held on trust by the Kabi Kabi Corporation. Mr Bond is known to me as a member of the Kabi Kabi People as a descendant of two apical ancestors of the Kabi Kabi People identified in the proposed minute of consent determination:
 - (a) Albert Williams; and
 - (b) Maggie Cadenti/Cadente/Cantidi: "Maggie".
12. In addition, Mr Bond is well known to me as a member of the Kabi Kabi applicant and he is one of seven persons from whom I receive instructions on behalf of the wider group.

Nomination of PBC

13. In a letter dated 22 May 2024, Mr Bond formally nominated, in writing to the Court, Kabi Kabi Corporation to be determined under section 56 of NTA as the trustee PBC to perform the functions specified in section 57(1) of the NTA upon determination of native title. Annexed to my affidavit and marked MA-04 is a true copy of Mr Bond's formal nomination to the Court and covering email.
14. It is my understanding that on 22 May 2024, the members of Kabi Kabi Corporation met and resolved to accept the nomination of the Kabi Kabi People to be its trustee PBC upon determination. Annexed to my affidavit and marked MA-05 is a true copy of the Kabi Kabi Corporations' written consent and confirmation of its acceptance of the nomination as PBC and covering email.
15. Annexed to my affidavit and marked MA-06 is the current Rule Book of the Kabi Kabi Corporation. Kabi Kabi Corporation has received legal advice to ensure that the Rule Book is compliant with the specific requirements for it to operate as a PBC.

CONCLUSION

50 In conclusion, I am satisfied that the proposed consent determination satisfies the requirements of ss 94A and 225 of the Native Title Act because:

- the persons holding the common or group rights comprising the native title are properly identified;
- the nature and extent of the native title rights and interests in relation to the proposed determination area are properly described;
- the nature and extent of other interests in relation in the determination area are properly described, and are set out in Schedule 2 of the section 87A Agreement;
- the relationship between the rights asserted and interests claimed is appropriately addressed; and
- the proposed consent determination states that the native title rights and interests do not confer possession, occupation, use and enjoyment of the land or waters on the native title holders to the exclusion of all others.

51 Accordingly, I am satisfied that the consent orders proposed by the parties:

- are in pursuance of an agreement under s 87A of the Native Title Act which has been freely made by the parties on an informed basis; and
- are within the power of the Court to make; and
- are appropriate for the Court to make.

I certify that the preceding fifty-one (51) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Acting Chief Justice Collier.

Associate:

Dated: 17 June 2024

SCHEDULE OF PARTIES

QUD 20 of 2019

Applicants

Second Applicant:	HELENA GULASH
Third Applicant:	CECILIA COMBO
Fourth Applicant:	MELISSA BOND
Fifth Applicant:	NORMAN BOND
Sixth Applicant:	KERRY JONES
Seventh Applicant:	BRIAN WARNER

Respondents

Fourth Respondent:	GYMPIE REGIONAL COUNCIL
Fifth Respondent:	MORETON BAY REGIONAL COUNCIL
Sixth Respondent:	NOOSA SHIRE COUNCIL
Seventh Respondent:	SUNSHINE COAST REGIONAL COUNCIL
Eighth Respondent:	FRASER COAST REGIONAL COUNCIL
Ninth Respondent:	SOMERSET REGIONAL COUNCIL
Tenth Respondent:	ENERGEX LIMITED ABN 40 078 849 055
Eleventh Respondent:	ERGON ENERGY CORPORATION LIMITED ACN 087 646 062
Twelfth Respondent:	AUSTRALIAN GAS NETWORKS (QLD) LIMITED ACN 009 760 883
Thirteenth Respondent:	NORTHERN SEQ DISTRIBUTER-RETAILER AUTHORITY TRADING AS UNITYWATER
Fourteenth Respondent:	TELSTRA CORPORATION LIMITED ACN 051 775 556
Fifteenth Respondent:	CATHERINE ANNE HARRIS
Sixteenth Respondent:	QUEENSLAND BULK WATER SUPPLY AUTHORITY TRAADING AS SEQWATER