



## Registration Decision

<b>Application name</b>	Ted Williams & Ors on behalf of the Danggan Balun (Five Rivers) People and the State of Queensland
<b>Name of applicant</b>	Gordon 'Ted' Williams, Rose Page, Louisa Bonner, Shaun Davies, Israel Bundjuri, Germaine Paulson and Anthony Dillon
<b>Federal Court of Australia No.</b>	QUD331/2017
<b>NNTT No.</b>	QC2017/007
<b>Date of Decision</b>	28 August 2020

### Claim accepted for registration

I have decided that the claim in the application does satisfy all of the conditions in ss 190B and 190C of the *Native Title Act 1993* (Cth).<sup>1</sup> Therefore the claim must be accepted for registration.

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Radhika Prasad

*Delegate of the Native Title Registrar*<sup>2</sup>

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<sup>1</sup> All legislative sections are from the *Native Title Act 1993* (Cth) (the Act), unless stated otherwise.

<sup>2</sup> Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Act

# Reasons for Decision

## Cases Cited

*Anderson on behalf of the Numbahjng Clan within the Bundjalung Nation v Registrar of the National Native Title Tribunal* [2012] FCA 1215 (*Anderson*)

*Aplin on behalf of the Waanyi Peoples v State of Queensland* [2010] FCA 625 (*Aplin*)

*Corunna v Native Title Registrar* [2013] FCA 372 (*Corunna*)

*Evans v Native Title Registrar* [2004] FCA 1070 (*Evans*)

*Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People* [2019] FCAFC 177 (*Warrie*)

*Griffiths v Northern Territory of Australia* [2007] FCAFC 178 (*Griffiths*)

*Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*)

*Gudjala People #2 v Native Title Registrar* (2008) 171 FCR 317; [2008] FCAFC 157 (*Gudjala FC*)

*Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*)

*Harrington-Smith on behalf of the Wongatha People v State of Western Australia (No 9)* [2007] FCA 31 (*Harrington-Smith (No 9)*)

*Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and Water Conservation for the State of New South Wales* [2002] FCA 1517 (*Lawson*)

*Martin v Native Title Registrar* [2001] FCA 16 (*Martin*)

*Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta*)

*Northern Territory of Australia v Alyawarr, Kaytetye, Wurumunga, Wakaya Native Title Claim Group* [2005] FCAFC 135 (*Alyawarr*)

*Northern Territory of Australia v Doepel* (2003) 133 FCR 112; [2003] FCA 1384 (*Doepel*)

*Risk v National Native Title Tribunal* [2000] FCA 1589 (*Risk*)

*Sampi on behalf of the Bardi and Jawi People v State of Western Australia* [2010] FCAFC 26 (*Sampi FC*)

*State of Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*)

*Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*)

*Ward v Northern Territory* [2002] FCA 171 (*Ward*)

*Weribone on behalf of the Mandandanji People v State of Queensland* [2013] FCA 255 (*Weribone*)

*Western Australia v Ward* [2002] HCA 28 (*Ward HC*)

*Western Australia v Native Title Registrar* (1999) 95 FCR 93; [1999] FCA 1591 (*WA v NTR*)

*Wiri People v Native Title Registrar* [2008] FCA 574 (*Wiri People*)

## Background

- [1] The amended claimant application has been made on behalf of the Danggan Balun (Five Rivers) People. It covers land and waters extending inland from Tweed Heads following the Queensland and New South Wales border and north through Beaudesert, to Woodridge.

- [2] The original application was made on 27 June 2017 when it was filed in the Federal Court of Australia (the Court). The application was accepted for registration pursuant to s 190A(6) and details of the application were entered on the Register of Native Title Claims (the Register).
- [3] On 8 November 2018, the Court made orders pursuant to s 66B of the Act to replace the applicant. The application was amended to reflect the s 66B orders and the Register was amended to update the persons who comprise the applicant pursuant to s 66B(4).
- [4] On 7 July 2020, further s 66B orders to replace the applicant were made and leave was granted to amend the application. On 14 July 2020, the amended application was filed with the Court. On 15 July 2020, a copy was given to the Native Title Registrar (the Registrar) pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the amended application under s 190A of the Act.
- [5] As the amendments to the application include changes to the claim group description and information about authorisation, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.
- [6] As discussed in my reasons below, I consider that the claim in the application satisfies all of the conditions in ss 190B and 190C and therefore it must be accepted for registration.<sup>3</sup>

### Information considered

- [7] In reaching this decision, I have considered s 190A(3) which directs me to have regard to certain information when testing an application for registration. I understand this provision to stipulate that the application and information in any other document provided by the applicant is the primary source of information for the decision I make. Accordingly, I have taken into account the following material:
- the information contained in the application and accompanying documents;
  - the geospatial assessment prepared by the Tribunal's Geospatial Services on 17 July 2020; and
  - the results of my own searches using the Tribunal's registers and mapping database.

### Procedural fairness process

- [8] As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness. Those rules seek to ensure that decisions are made in a fair, just and unbiased way. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication.<sup>4</sup> The steps undertaken to ensure procedural fairness is observed are as follows:
- On 16 July 2020, the senior officer for this matter sent a letter to the State of Queensland (the State) informing the State that any submission in relation to the registration of this

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<sup>3</sup> Section 190A(6).

<sup>4</sup> *Hazelbane v Doepel* [23] – [31].

claim should be provided by 24 July 2020. The State advised that day that the State will not be making a submission.

- The senior officer, also on 16 July 2020, wrote to inform the applicant that any information additional to the application should be provided by 24 July 2020. No additional material was received from the applicant.

## Procedural and other matters (s 190C)—Conditions met

### Information etc. required by sections 61 and 62 – s 190C(2): condition met

[9] The application satisfies the condition of s 190C(2), because it contains all of the details and other information and documents required by ss 61 and 62, as set out in the reasons below.

#### ***What is required to meet this condition?***

[10] In coming to the above conclusion, I understand that the condition in s 190C(2) is procedural only and simply requires me to be satisfied that the application contains the information and details, and is accompanied by the documents prescribed by ss 61 and 62. This condition does not require me to go beyond the information in the application itself nor undertake any merit or qualitative assessment of the material for the purposes of s 190C(2).<sup>5</sup> Accordingly, the application must contain the prescribed details and other information in order to satisfy the requirements of s 190C(2).

[11] It is also my view that I need only consider those parts of ss 61 and 62 which impose requirements relating to the application containing certain details and information or being accompanied by any affidavit or other document (as specified in s 190C(2)). I therefore do not consider the requirements of ss 61(2) and (5), as those subsections either impose no obligations of this nature in relation to the application or are already tested where required by those parts of ss 61 and 62.

#### ***Does the claim contain the prescribed information and is it accompanied by prescribed documents?***

[12] The claim meets this condition because it does contain the prescribed details and other information and is accompanied by the prescribed affidavits, as set out below.

#### ***Applications that may be made: s 61(1)***

[13] Schedule A of the application provides a description of the native title claim group and the s 62 affidavits indicate that the persons comprising the applicant are included in the native title claim group.<sup>6</sup> There is nothing on the face of the application that causes me to conclude that the requirements of this provision, under s 190C(2), have not been met.

#### ***Applicant's name and address for service: s 61(3)***

[14] Part B of the application contains the name and address for service of the applicant's representative.

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<sup>5</sup> *Doepel* [16], [35] – [37] and [39].

<sup>6</sup> Section 62 affidavits [1].

*Applications authorised by persons: s 61(4)*

[15] I consider that Schedule A of the application contains a description of the persons in the native title claim group that appears to meet the requirements of the Act.

*Affidavits in prescribed form: s 62(1)(a)*

[16] The application is accompanied by affidavits affirmed by each of the persons who comprise the applicant. The affidavits contain the statements required by s 62(1)(a)(i) to (v).

*Information about the boundaries of the area covered by the application and any areas within those boundaries not covered and map showing the boundaries: s 62(2)(a) & (b)*

[17] Attachment B contains information that allows for the identification of the boundaries of the area covered by the application. That Attachment and Schedule B contain information of areas within those boundaries that are not covered by the application.

[18] Attachment C contains a map showing the external boundary of the application area.

*Searches of any non-native title rights and interests carried out: s 62(2)(c)*

[19] Schedule D provides that no searches have been carried out by the applicant to determine the existence of non-native title rights and interests in relation to the land or waters in the area covered by the application.

*Description of native title rights and interests claimed in relation to particular land or waters: s 62(2)(d)*

[20] Schedule E contains a description of the native title rights and interests claimed by the native title claim group in relation to the land and waters of the application area. The description does not consist only of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

*General description of factual basis for assertion that native title exists: s 62(2)(e)*

[21] Attachment F contains information pertaining to the factual basis on which it is asserted that the rights and interests claimed exist. I note that there may also be other information within the application that is relevant to the factual basis.

*Activities: s 62(2)(f)*

[22] Schedule G contains details of the activities currently undertaken by members of the claim group on the land and waters of the application area.

*Other applications: s 62(2)(g)*

[23] Schedule H provides that the applicant is not aware of any other applications that have been made in relation to the whole or part of the application area.

*Future act notices: ss 62(2)(ga) and (h)*

[24] Schedule HA provides that the applicant is not aware of any notifications given in accordance with paragraph 24MD(6B)(c) that fall within the external boundary of the application.

[25] Schedule I provides that the applicant is not aware of any notifications given under s 29 which fall within the external boundary of the application.

## No previous overlapping claim group – s 190C(3): condition met

- [26] As indicated in my reasons below, the application satisfies the condition of s 190C(3).
- [27] In my view, this condition requires that the Registrar be satisfied that there are no common claimants where there is a previous application that comes within the terms of subsections (a) to (c).<sup>7</sup>
- [28] Although the text of this provision reads in the past tense, I consider the proper approach would be to interpret s 190C(3) in the present tense as to do otherwise would be contrary to its purpose. The explanatory memorandum that accompanied the *Native Title Amendment Bill 1997* provides that the ‘Registrar must be satisfied that no member of the claim group for the application ... is a member of the claim group for a registered claim which was made before the claim under consideration, which is overlapped by the claim under consideration and which itself has passed the registration test’.<sup>8</sup> The explanatory memorandum further discusses the general discouragement of overlapping claims by members of the same claim group and encouragement of consolidation of such multiple claims into one application.<sup>9</sup>
- [29] I understand from the above that s 190C(3) was enacted to prevent overlapping claims by members of the same native title claim group from being on the Register at the same time. That purpose is achieved by preventing a claim from being registered where it has members in common with an overlapping claim that is on the Register when the registration test is applied. I consider that this approach, rather than a literal approach, more accurately reflects the intention of the legislature.
- [30] I note that in assessing this requirement, I am able to address information which does not form part of the application.<sup>10</sup>
- [31] I also note that in reaching my view, I understand the nature of the Registrar’s task here is not to find ‘in all respects the real facts on the balance of probabilities, or on some other basis’ or ‘to supplant the role of the Court when adjudicating upon the application for determination of native title, or generally to undertake a preliminary hearing of the application’.<sup>11</sup>
- [32] I have undertaken a search of the Tribunal’s mapping database, which shows that the NSD876/2020 Tweed River Bundjalung People partly overlaps the are covered by the current application. However, this application was only made on 4 August 2020 and has not been considered for registration, and therefore an entry relating to the claim in the Tweed River Bundjalung People application was not on the Register when the current application was made.
- [33] The Tweed River Bundjalung People application therefore does not meet the criteria for a ‘previous application’ stipulated by s 190C(3).
- [34] I am therefore satisfied that there is no previous application to which ss 190C(3)(a) to (c) apply. Accordingly, I do not need to consider the requirements of s 190C(3) further.

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<sup>7</sup> *Strickland FC* [9].

<sup>8</sup> Explanatory Memorandum 29.25, emphasis added.

<sup>9</sup> *Ibid* 35.38.

<sup>10</sup> *Doepel* [16].

<sup>11</sup> *Doepel* [16]; *Dann* [21].

## Identity of claimed native title holders – s 190C(4): condition met

[35] For the reasons set out below, I am satisfied that the requirements set out in s 190C(4)(b) are met.

### **What is required to meet this condition?**

[36] I must be satisfied that either the certification or authorisation requirements set out in ss 190C(4)(a) or (b) respectively are met, in order for the condition of s 190C(4) to be satisfied.

[37] Schedule R indicates that the application has not been certified. I must therefore consider whether the requirements of s 190C(4)(b) are met.

### **Does the application contain the information specified in s 190C(5)?**

[38] Section 190C(5) contains a threshold test that must be met before the Registrar may be satisfied that the applicant is authorised in the way described in s 190C(4)(b). Section 190C(5) provides that the application must include a statement to the effect that the requirement set out in s 190C(4)(b) has been met and briefly set out the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) has been met.

[39] In my view, Attachment R includes a statement to the effect that the requirement in s 190C(4)(b) has been met and an outline of the grounds on which the applicant considers the Registrar should be satisfied in this regard.<sup>12</sup> I assess whether the material provided addresses those requirements below.

### **What is required to meet the condition at s 190C(4)(b)?**

[40] I understand that s 190C(4)(b):

- requires the Registrar to be satisfied that the applicant has been authorised by all members of the native title claim group, which ‘clearly ... involves some inquiry through the material available ... to see if the necessary authorisation has been given’;<sup>13</sup>
- requires the Registrar to be satisfied as to the identity of the claimed native title holders, including the applicant, and that the applicant needs to be authorised by all the other persons in the native title claim group;<sup>14</sup>
- is not ‘to be met by formulaic statements in or in support of applications’;<sup>15</sup>
- does not permit a claim group to choose between the two decision making processes described in s 251B, and therefore if there is a traditionally mandated process, then that process must be followed to authorise the applicant otherwise the process utilised for authorisation must be one that has been agreed to and adopted by the native title claim group.<sup>16</sup>

### **What information has been provided in support of this condition?**

[41] Attachment R provides the following information about the authorisation meeting:

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<sup>12</sup> Attachment R [1] and [7] – [48].

<sup>13</sup> *Doepel* [78].

<sup>14</sup> *Wiri People* [21], [29] and [35]; *Risk* [60].

<sup>15</sup> *Strickland* [57].

<sup>16</sup> *Harrington-Smith (No 9)* [1230]; *Evans* [7].

- Two authorisation meetings were held consecutively on 15 February 2020 in Beaudesert.<sup>17</sup>
- The meetings were advertised in the Gold Coast Bulletin on 24 January 2020, and the Koori Mail and Beaudesert Times on 29 January 2020.<sup>18</sup>
- Details of the meetings were published on the Queensland South Native Title Services (QSNTS) website providing a link to the public notice from 24 January 2020 until at least the date of the meetings.<sup>19</sup>
- QSNTS maintain a database of names and contact details of the persons it is aware are members of the claim group, and on 29 January 2020, an invitation to the meetings, enclosing a copy of the notice, was posted to 305 members for whom QSNTS held postal addresses in the database.<sup>20</sup>
- In the two weeks prior to the meetings, QSNTS staff called 278 claimants for whom QSNTS holds phone numbers to confirm their attendance and on 14 February 2020, QSNTS sent 205 text messages to members of the claim group for whom QSNTS holds mobile phone numbers, reminding the members of the date, time and venue of the meetings.<sup>21</sup>
- The purpose of meeting 1 was to consider amendments to the claim group description, and the purpose of meeting 2 was to consider, among other things, whether to authorise replacement of the persons comprising the applicant.<sup>22</sup>
- An information session was convened by QSNTS on 14 December 2019 at Beaudesert, to assist the claim group to prepare for and make informed decisions at meeting 1.<sup>23</sup> The session was attended by 56 claim group members.<sup>24</sup> An anthropologist presented anthropological material, information and advice regarding proposed amendments to the claim group description and answered any questions.<sup>25</sup> The claim group also received legal advice from solicitors about the proposed amendments to the claim group description.<sup>26</sup> The claim group members present were able to ask questions and discuss matters among themselves, and with the anthropologist and solicitors.<sup>27</sup>
- The registration process for meeting 1 was supervised by QSNTS research staff with knowledge of the claim group and research materials, who confirmed that those registering were members of the current native title claim group (being the claim group described in the earlier claim) and gave a wristband to those who completed the registration sheet correctly.<sup>28</sup> Visitors and spouses were also asked to register and were

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<sup>17</sup> Attachment R [7].

<sup>18</sup> Ibid [10].

<sup>19</sup> Ibid [11].

<sup>20</sup> Ibid [12] – [13].

<sup>21</sup> Ibid [14] – [15].

<sup>22</sup> Ibid [8] – [9].

<sup>23</sup> Ibid [16].

<sup>24</sup> Ibid [17].

<sup>25</sup> Ibid [18].

<sup>26</sup> Ibid [19].

<sup>27</sup> Ibid [20].

<sup>28</sup> Ibid [21] – [22].



given different coloured wristbands.<sup>29</sup> Any person who was not a member of the current claim group or were not a visitor or spouse who registered, was asked to wait outside until the close of meeting 1.<sup>30</sup>

- Meeting 1 was attended by 92 members of the claim group, representing 16 of the 19 apical ancestors, with two apical ancestors having no known descendants.<sup>31</sup>
- The meeting was chaired by an independent facilitator.<sup>32</sup> Solicitors who were present provided legal advice and information relevant to the matters to be decided, including requirements of s 251B.<sup>33</sup>
- The claim group confirmed by resolutions that:
  - Decisions made at meeting 1 are binding on all members of the claim group and only those persons who are members of the current claim group are entitled to participate and make decisions at meeting 1;<sup>34</sup>
  - Sufficient notice was given to enable authoritative decisions to be made during the meeting about the application;<sup>35</sup>
  - The meeting is sufficiently representative of the current claim group to make authoritative decisions about the application.<sup>36</sup>
- Following legal advice about s 251B requirements and discussion among those present about whether a traditional decision making process must be used, the current claim group passed a resolution confirming there was no traditional decision making process that must be used in making decisions of the kind relating to authorising amendments to the application, and confirmed that the agreed to and adopted process of decision making for the meeting would be as follows:
  - a. *the decision to be made must be presented in the form of a clearly worded written motion which must be displayed and read out to the meeting;*
  - b. *the motion must be moved and seconded by members of the Claim Group present at the meeting before it is decided on;*
  - c. *the motion must be voted upon by a show of hands of the members of the Claim Group present at the meeting who are at least 18 years of age;*
  - d. *the motion will pass only if the number of votes in favour are more than the number of votes against the motion, and abstentions do not count as a vote for or against.*<sup>37</sup>
- The voting process for each motion involved:
  - Chair read out the motion;

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<sup>29</sup> Ibid [22].

<sup>30</sup> Ibid [23].

<sup>31</sup> Ibid [24].

<sup>32</sup> Ibid [25].

<sup>33</sup> Ibid [28] – [29].

<sup>34</sup> Ibid [26].

<sup>35</sup> Ibid [27].

<sup>36</sup> Ibid [27].

<sup>37</sup> Ibid [30].

- Solicitors answered questions;
  - Discussion among claim group members;
  - Chair sought speakers for and against the motion, a mover and a seconder;
  - Motions were voted by show of hands by those eligible to vote;
  - QSNTS counted votes and where there was an overwhelming majority in favour of a motion, only votes against and abstentions were precisely counted;
  - Chair confirmed number of votes for, against and any abstentions with details recorded; and
  - Chair declared outcome of the vote.<sup>38</sup>
- Resolutions were passed to authorise amendments to the claim group description, and to confirm that those present received legal advice and there was reasonable opportunity for informed discussions about the motions.<sup>39</sup>
  - The newly described claim group were invited to register to attend meeting 2 using the same process used for meeting 1.<sup>40</sup>
  - Meeting 2 was attended by 92 members of the claim group, representing 17 of 23 apical ancestor groups, with two apical ancestors having no known living descendants.<sup>41</sup>
  - Those present at meeting 2 confirmed by resolution that:
    - The decisions made were binding on all members of the newly described claim group and only those members were entitled to participate and make decisions;<sup>42</sup>
    - Sufficient notice was given to enable authoritative decisions to be made during the meeting about the application;<sup>43</sup>
    - The meeting is sufficiently representative of the newly described claim group to make authoritative decisions about the application.<sup>44</sup>
  - Legal advice was provided regarding the requirements of s 251B and a resolution was passed confirming there was no traditional decision making process that must be used in making decisions regarding the application, and that the agreed to and adopted process of decision making for the meeting would be the same as used in meeting 1.<sup>45</sup>
  - The voting process for each motion proceeded in the same manner as meeting 1.<sup>46</sup>
  - Resolutions were passed, including authorising the persons comprising the current applicant for this application, to be the replacement applicant to make the application

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<sup>38</sup> Ibid [31].

<sup>39</sup> Ibid [32] – [33].

<sup>40</sup> Ibid [34].

<sup>41</sup> Ibid [35].

<sup>42</sup> Ibid [37].

<sup>43</sup> Ibid [38].

<sup>44</sup> Ibid [38].

<sup>45</sup> Ibid [39] – [40].

<sup>46</sup> Ibid [41].

and deal with all matters arising under the Act in relation to the application, and confirming that those present received legal advice and there was a reasonable opportunity for informed discussion about the motions.<sup>47</sup>

[42] The affidavits of the persons comprising the applicant provide further details confirming some of the above information. I also note that the Court considered details of the authorisation meetings and proceeded to make orders to replace the applicant with the persons authorised to be the replacement applicant and to grant leave for the replacement applicant to file the amended application.<sup>48</sup>

***Have the requirements of s 190C(4)(b) been met?***

[43] I note that the first limb of s 190C(4)(b) requires that all the persons comprising the applicant must be members of the native title claim group.

[44] In each of their affidavits, the persons who jointly comprise the applicant depose that they are members of the native title claim group.<sup>49</sup> I have not been provided with any material that contradicts those statements and information. It follows that I am satisfied that the persons who comprise the applicant are all members of the native title claim group.

[45] In respect of the second limb of s 190C(4)(b), namely that the persons who jointly comprise the applicant are authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it, the decision making process utilised at the authorisation meeting must be identified.<sup>50</sup>

[46] Section 251B identifies two distinct decision making processes, namely a process that is mandated by traditional laws and customs and one that has been agreed to and adopted by the native title claim group. Attachment R indicates that the claim group does not have a decision making process that is traditionally mandated and therefore an agreed and adopted process was used during the authorisation meetings. Given this information, I have considered the applicant's material in light of the requirements of s 251B(b).

[47] I understand that the 'effect of the section is to give the word "all" [in s 190C(4)(b)] a more limited meaning than it might otherwise have' and that it 'is sufficient if a decision is made once the members of the claim group are given every reasonable opportunity to participate in the decision-making process'.<sup>51</sup>

[48] I also understand that the following questions are required to be addressed about the authorisation process although it is not required they be answered in any formal way as long as the substance of these questions is addressed:

Who convened it and why was it convened? To whom was notice given and why was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so by whom and when? Was the list verified by a second person?

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<sup>47</sup> Ibid [44] – [47].

<sup>48</sup> *Danggan Balun* [16] – [25].

<sup>49</sup> Section 62 affidavits [1].

<sup>50</sup> *Doepel* [78]; *Wiri People* [21], [29] and [35].

<sup>51</sup> *Lawson* [25].

What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?<sup>52</sup>

[49] In my view, the substance of those questions has been addressed in the material provided. The information reveals the reasons for the authorisation meetings and who it was convened by. It indicates that reasonable steps were taken to advise members of the native title claim group about the authorisation meeting, which included by public notice, letters, phone calls and text messages, and an information session was held two months prior to the authorisation meetings to provide current anthropological information and legal advice to assist the group to make informed decisions. The information shows each meeting was chaired by an independent facilitator, identifies who attended each meeting, and indicates that the persons who were present were given a reasonable opportunity to participate in the decision making process at each meeting. In my view, the conduct of each meeting is such that those present agreed to use the adopted decision making process, and the actual process is indicative that it was inclusive allowing those present an opportunity to participate and have their votes counted. For instance, the claim group members who were present were able to receive advice, ask questions, participate through discussion, and vote by show of hands. Each meeting is said to have been sufficiently representative of the claim group to make authoritative decisions. A number of resolutions were passed, including to authorise the persons comprising the current applicant to make the application and to deal with matters arising in relation to it.

#### **Decision**

[50] In my view, the process adopted ensured that the persons who jointly comprise the applicant are authorised by all the other members of the claim group to make the application and to deal with matters arising in relation to it. It follows that, I am satisfied that the condition of s 190C(4)(b) is met.

### Merits of the claim (s 190B) – Conditions met

#### Identification of area subject to native title – s 190B(2) condition met

[51] For the reasons set out below, the application satisfies the condition of s 190B(2).

#### **What is needed to meet this condition?**

[52] For the purposes of s 190B(2), I must be satisfied that the information and map contained in the application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

#### **What information has been provided about the boundaries of the application area?**

[53] Attachment B describes the external boundary of the application area referencing the high water mark, native title determinations, catchment and sub basin catchment areas, casements, land parcels and coordinate points, specifically including the area landward of the high water mark of Woogoompah Island, Sovereign Island and Coomera Island. Attachment B specifically excludes:

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<sup>52</sup> *Ward* [24], cited in *Lawson* [26].

- NSD6019/1998 The Githabul People, QUD346/2006 Gold Coast Native Title Group, QUD6196/1998, QUD586/2011 Yugara/Yugarapul People and Turrbal People native title determinations;
- QUD126/2017 Quandamooka Coast Claim and QUD213/2017 Yuggera Ugarapul applications;
- QUD66/2008 Githabul People #2 application, which has been discontinued.

[54] Schedule B lists general exclusions.

[55] Attachment C is a map prepared by QSNTS, titled 'Danggan Balun (Five Rivers)' and is dated 23 May 2017. The map shows the application area depicted by a bold blue outline, surrounding native title determinations, native title determination applications, the discontinued Githabul People #2 application, catchment and sub-basin catchment areas, states, topographic imagery, scalebar, northpoint, coordinates, and notes relating to the source and datum of data used to prepare the maps.

### **Decision**

[56] The geospatial assessment states that the application area has not been amended and does not include any areas that have not previously been claimed. The assessment concludes that the description and map of the application area are consistent and identify the application area with reasonable certainty. I agree with this assessment.

[57] In light of the above information, I am satisfied that the description and the map of the application area, as required by ss 62(2)(a) and (b), are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular land or waters.

### **Identification of the native title claim group – s 190B(3) condition met**

[58] For the reasons set out below, the application satisfies the condition of s 190B(3).

#### **What is needed to meet this condition?**

[59] I must be satisfied that either the persons in the native title claim group are named in the application (s 190B(3)(a)) or described sufficiently clearly so that it can be ascertained whether any particular person is in that group (s 190B(3)(b)).

[60] When assessing the requirements of this provision, I understand that:

- I am required to address only the content of the application;<sup>53</sup>
- section 190B(3) 'requires only that the members of the claim group be identified, not that there be a cogent explanation of the basis upon which they qualify for such identification';<sup>54</sup>
- where a claim group description contains a number of paragraphs, the paragraphs should be read 'as part of one discrete passage, and in such a way as to secure consistency between them, if such an approach is reasonably open';<sup>55</sup>

<sup>53</sup> *Doepel* [51]; *Gudjala 2007* [30].

<sup>54</sup> *Gudjala 2007* [33].

- to determine whether the conditions (or rules) specified in the application has a sufficiently clear description of the native title claim group, '[i]t may be necessary, on occasions, to engage in some factual inquiry when ascertaining whether any particular person is in the group as described'.<sup>56</sup>

***Does the description of the persons in the native title claim group meet this condition?***

- [61] Schedule A describes the native title claim group as those persons who are descended from a list of apical ancestors and who identify and are recognised under the traditional laws and customs of the native title claim group as being affiliated (including by adoption) to country within the application area.
- [62] It follows from the description that the condition of s 190B(3)(b) is applicable to this assessment. Thus, I am required to be satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.
- [63] Although there are a number of elements to the claim group description, I am of the view that this description is to be read as a discrete whole.<sup>57</sup>
- [64] I will discuss each criterion below before deciding whether I am satisfied that the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

*Descent*

- [65] I understand this part of the description to include those persons who are the descendants, including by adoption, of the apical ancestors listed. I note that the Court has accepted the approach of identifying members of the native title claim group by descendants, including by adoption, of named people without any qualification indicating whether the method of adoption of persons was according to traditional laws and customs.<sup>58</sup>
- [66] I consider that requiring a member to show descent from an identified ancestor provides a clear starting or external reference point to commence an inquiry about whether a person is a member of the native title claim group.
- [67] I am of the view that with some factual inquiry it will be possible to identify the persons who fit this part of the description of the native title claim group.

*Recognition and Identification*

- [68] I note that a description of membership containing qualifiers of recognition and identification is not one with an external and objective point of reference from which to commence an inquiry.
- [69] The case law demonstrates that membership of a claim group is based on group acceptance and indicates that it is the claim group that must determine its own composition.<sup>59</sup> In *Aplin*, the Court noted that '[i]t is not necessary that all of the members of the claim group be

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<sup>55</sup> *Gudjala 2007* [34].

<sup>56</sup> *WA v NTR* [67].

<sup>57</sup> *Gudjala 2007* [34].

<sup>58</sup> *WA v NTR* [67].

<sup>59</sup> *Aplin* [256] and [260].

identified in the application’, however it is ‘necessary that such identification be possible at any future point in time’.<sup>60</sup> The High Court in *Yorta Yorta* found that the existence of a society depended upon mutual recognition within the group.<sup>61</sup> In *Sampi FC*, the Full Court noted that ‘in determining whether a group constitutes a society in the *Yorta Yorta* sense is the internal view of the members of the group ... [t]he unity among members of the group required by *Yorta Yorta* means that they must identify as people together who are bound by the one set of laws and customs or normative system’.<sup>62</sup>

[70] Having regard to the information contained in Attachment F, it is my view that identification and recognition as a Danggan Balun person is linked to their descent from an apical ancestor and their connection to country.<sup>63</sup>

[71] In light of this, I am satisfied this part of the description is described sufficiently clearly in order to ascertain whether any particular person is a member of the group.

### **Decision**

[72] In my view, the description of the native title claim group contained in the application is such that, on a practical level, it can be ascertained whether any particular person is a member of the group. Accordingly, focusing only upon the adequacy of the description of the native title claim group, I am satisfied of its sufficiency for the purpose of s 190B(3)(b).

[73] The application satisfies the condition of s 190B(3).

### **Identification of claimed native title – s 190B(4) condition met**

[74] For the reasons set out below, the application satisfies the condition of s 190B(4).

#### ***What is needed to meet this condition?***

[75] The task at s 190B(4) is to assess whether the description of the native title rights and interests claimed is sufficient to allow the rights and interests to be readily identified. In my opinion, that description must be understandable and have meaning.<sup>64</sup>

[76] The description referred to in s 190B(4), and as required by s 62(2)(d) is ‘a description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law’.

[77] I will consider whether the claimed rights and interests can be prima facie established as native title rights and interests, as defined in s 223, when considering the claim under s 190B(6) of the Act. For the purposes of s 190B(4), I will focus only on whether the rights and interests as claimed are ‘readily identifiable’. While undertaking this task, I consider that a

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<sup>60</sup> Ibid [256].

<sup>61</sup> *Yorta Yorta* [108].

<sup>62</sup> *Sampi FC* [45].

<sup>63</sup> Attachment F [4] – [6] and [61].

<sup>64</sup> *Doepel* [91], [92], [95], [98] to [101] and [123].

description of a native title right and interest that is broadly asserted 'does not mean that the rights broadly described cannot readily be identified within the meaning of s 190B(4)'.<sup>65</sup>

[78] I understand that in order to assess the requirements of this provision, I am confined to the material contained in the application itself.<sup>66</sup>

***Does the description of the native title rights and interests meet this condition?***

[79] Schedule E contains a description of the claimed native title rights and interests. I am satisfied that it is understandable and has meaning.

[80] I have considered the description of the native title rights and interests claimed and find that each right and interest is sufficient to fall within the scope of s 223 and is readily identifiable as a native title right and interest.

**Factual basis for claimed native title – s 190B(5) condition met**

[81] I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion. In particular, there is a sufficient factual basis for the three assertions of subsections 190B(5)(a), (b) and (c).

***What is needed to meet this condition?***

[82] While assessing the requirements of this provision, I understand that I must treat the asserted facts as true and consider whether those facts can support the existence of the native title rights and interests that have been identified.<sup>67</sup>

[83] Although the facts asserted are not required to be proven by the applicant, I consider the factual basis must provide sufficient detail to enable a 'genuine assessment' of whether the particularised assertions outlined in subsections (a), (b) and (c) are supported by the claimants' factual basis material.<sup>68</sup>

[84] I also understand that the applicant's material must be 'more than assertions at a high level of generality' and must not merely restate or be an alternate way of expressing the claim.<sup>69</sup>

[85] I am therefore of the opinion that the test at s 190B(5) requires adequate specificity of particular and relevant facts within the claimants' factual basis material going to each of the assertions, before the Registrar can be satisfied of its sufficiency for the purpose of s 190B(5).

[86] The factual basis material is primarily contained in Attachment F and Attachment M.

[87] I proceed with my assessment of the sufficiency of this material by addressing each assertion set out in s 190B(5) below. I note that I will discuss only those aspects of the material that in my view are most relevant to my consideration without referring to all the relevant information.

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<sup>65</sup> *Strickland* [60]; *Strickland FC* [80] to [87], where the Full Court cited the observations of French J in *Strickland* with approval.

<sup>66</sup> *Doepel* [16].

<sup>67</sup> *Doepel* [17]; *Gudjala FC* [57], [83] and [91].

<sup>68</sup> *Gudjala FC* [92].

<sup>69</sup> *Gudjala 2009* [28] and [29]; *Anderson* [43] and [48].



***What is needed to provide a sufficient factual basis for s 190B(5)(a)?***

[88] I understand that s 190B(5)(a) requires sufficient factual material to support the assertion:

- that there is ‘an association between the whole group and the area’, although not ‘all members must have such association at all times’;<sup>70</sup>
- that the predecessors of the group were associated with the area over the period since sovereignty;<sup>71</sup> and
- that there is an association with the entire claim area, rather than an association with part of it or ‘very broad statements’, which for instance have no ‘geographical particularity’.<sup>72</sup>

***What information has been provided in support of the assertion at s 190B(5)(a)?***

[89] The factual basis contains the following relevant information about the association of members of the native title claim group, and that of their predecessors, with the application area:

- The claimants regard their traditional country as extending in the north to include the Logan River catchment, south to the Queensland and New South Wales border, west to the Upper and Lower Teviot Brook catchments and including towns such as Beaudesert, Beenleigh, Coomera and Coolangatta.<sup>73</sup> I have referred to places by reference to the general area they are located within the external boundary shown in Attachment C.
- The claim group comprises of a number of landholding groups who identify as either saltwater or freshwater people.<sup>74</sup> The members of the claim group believe in ancestral beings who connect and unite the freshwater and saltwater people to one another.<sup>75</sup> The Five Rivers (Danggan Balun) that flow through the claim area connect the localised countries and therefore link the freshwater people from the inland and western parts of the claim area, with the saltwater people on the coast.<sup>76</sup>
- The first written accounts of the predecessors in the southeastern part of the claim area were in the 1770s where ‘people and smoke in several places on the shore’ were noted.<sup>77</sup>
- Effective sovereignty in the application area occurred between mid-1840s in the inland parts and as late as the 1860s to 1870s in some parts of the coastal sections.<sup>78</sup>
- At the time of first European contact, the application area and surrounding areas were heavily populated by Aboriginal people and their lives were documented by early maritime explorers, convicts, soldiers, explorers and land surveyors.<sup>79</sup> Their descriptions

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<sup>70</sup> *Gudjala 2007* [52].

<sup>71</sup> *Gudjala 2007* [52].

<sup>72</sup> *Martin* [26]; *Corunna* [39] and [45].

<sup>73</sup> Attachment F [3].

<sup>74</sup> *Ibid* [4].

<sup>75</sup> *Ibid* [5].

<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid* [11]

<sup>78</sup> *Ibid* [7].

<sup>79</sup> *Ibid* [8] – [31].

of the predecessors are largely consistent with those made later by early squatters.<sup>80</sup> These written accounts of Aboriginal people in the southeast Queensland region describe their use of nets, canoes, spears, other implements and techniques to hunt and gather food, their construction of dwellings and gatherings for ceremony, feasts and trade.<sup>81</sup>

- The predecessors worked on stations and farms in the application area, allowing them to maintain long-term associations with particular stations and mission settlements and continue to acknowledge and practice their laws and customs, visit and socialise with family and kin, and participate in a distinctly Aboriginal social and cultural world.<sup>82</sup>
- Of relevance to the association of some of the apical ancestors identified in Schedule A and their descendants, the factual basis includes the following information:
  - Sarah *Warri/Warru* Clarke was born around 1830 in the central region of the application area, living near the rivers there. She is buried in or around the mid-eastern region of the claim area. Her descendants continue to have close connection with the central and mid-eastern areas. Her first husband was George *Daramlee* Drumley who was born around 1830 and was from the mid-southern region.
  - Jack Slab/Slabb Snr was from around the eastern region and was born around 1873. His children were born around the early 1900s near the northwestern region.
  - One of Kitty Blow's children was born around the southeastern region and she and her children lived around the mid-eastern region. Another son was said to have been from the mid-eastern region. Her descendants have resided around or within the mid-eastern, central and southeastern regions of the claim area.
  - *Bilin Bilin* aka Bilinba Jackey aka Jackey Jackey aka John 'Johnny' Logan was born around 1830 and was 'King of the Logan and the Pimpama', located in and around the northern region of the claim area, where he reportedly maintained a camp at the river there. He was also described as one of the local elders for an area in the south. His daughter was married in the 1870s to the son of William Williams (Snr) from the central region. *Bilin Bilin* was buried around 1901 in the northern region. His daughter passed away in 1929 in the central region.
  - Kipper Tommy Andrews was born before or around 1868 and had a connection with the mid-eastern region of the claim area where he and his wife were buried. His daughter was born in the area around 1881 and passed away in the central region.
  - Julia Sandy was from the mid-eastern region, being born around 1864 in the central region and married in 1883 in the mid-eastern region. Her children were born in or near the mid-eastern, central and southeastern regions. She died in 1896 and was buried near the northwestern boundary.
  - Kitty Sandy is said to have been traditionally associated with areas south of the application area and likely had rights and interests extending into the claim area. She worked for pastoralists during the 1860s. Her son is said to have been associated with

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid [9].

<sup>82</sup> Ibid [36] – [37].

the mid-eastern and central regions. He married his first wife in the mid-eastern region in 1883 and their children were born in or near the mid-eastern, central and southern regions. Her son married his second wife in the mid-eastern region and their children were born there or near the southeastern region.

- Mary Ann Sandy nee Mitchell was born around 1848 and was from the central region. Her children were born in the central and mid-eastern regions. She was married in 1913 within the central region where her husband and children lived. She also died and was buried in 1925 in that area. Her children were married, died and/or were buried in the central region. Her grandchildren were born in the central and southwestern regions. Her descendants maintain a connection to the central region.
  - William 'Billy' Mitchell was listed as an elder in the southeastern region in the early years of settlement. His wife was from the central region. He and his wife worked at a station in the southeastern region. He died in 1911 within the central region and is buried there. His wife died in 1925 around the mid-western region.
  - Unnamed mother of Matilda 'Mittie' Fogarty (nee Sandy) and Lizzie was born around 1800-1820 and she, her daughters, and some of her descendants were born, lived and/or died in the central region.
  - *Coolum* was born around 1837 and died in 1906. He is said to have been the head of a clan in the central region in the 1870s. His wife was from that area and she was also buried there. Their children were born in this area and his descendants maintain a connection to the central region.
  - Yarry was born around the 1840s and his son was born around 1863 within the central region. His grandchildren were also born there. The family was recorded as living near the northwestern region in 1894 and Yarry's son was noted as living within the southwestern region for 40 to 50 years where his sons went to school. Yarry's son died in 1936 in the central region and was buried there. Yarry's descendants continue to have strong connection to the central region.
  - Jim Edwards Snr is recorded as being from around the western region.
  - John 'Johnny' Bungaree/Bungary was connected to the southeastern and central regions of the claim area. He was born in the late 1840s or late 1850s and died near the southeastern region in 1943. He was married around 1882 near the mid-eastern region and his sons were born there in around 1883. His sons were married in the central region in 1911 and 1912. One son died in the central region in 1958 and the other son was buried there around 1959. A particular family group who are descendants of this apical ancestor, has continued strong connection to the central region making them an important family in the region.<sup>83</sup>
- A current claimant who is the descendant of the unnamed mother of Matilda 'Mittie' Fogarty and Lizzie, *Coolum*, and the unnamed mother of Nancy Cullham (nee Coolwell), was born in the central region in the 1940s and has maintained continuous spiritual and physical association to the claim area by living, working and visiting family and friends

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<sup>83</sup> Ibid [40].

within parts of the claim area.<sup>84</sup> She lived with her parents and siblings within the claim area where her parents and grandparents told stories and taught about country.<sup>85</sup> Her uncles lived within the mid-western region in the 1970s.<sup>86</sup> She says her paternal grandmother came from the southern region.<sup>87</sup> She and her siblings, as children, would live out in the bush, camping on the creek beds in the southern region or paddocks where her parents would be working.<sup>88</sup> Her father would hunt carpet snakes, goannas, porcupine, turtle and eels and the family would fish in the creeks for catfish.<sup>89</sup> Her paternal grandfather was born in the 1860s in the mid-western region where he lived, and passed language to her father who in turn passed some words down to her and her siblings.<sup>90</sup> Her father would also tell them stories about spiritual beings in the southern region.<sup>91</sup> He took her to a special place where there was also a lagoon and a burial cave. She says there are sacred places in the central/southern regions which she is not allowed to visit.<sup>92</sup>

- Other claimants speak of visiting, hunting and fishing in parts of the northern region of the claim area and of sacred places in the southeastern region.<sup>93</sup>

***Is the factual basis sufficient to support the assertion at s 190B(5)(a)?***

[90] For the purposes of this condition, I understand that the Registrar is required ‘to address the relationship which all members claim to have in common in connection with the relevant land’<sup>94</sup>. In my view, this criterion relates to the ‘alleged facts [supporting] the claim that the identified claim group (and not some other group) held the identified rights and interests (and not some other rights and interests)’.<sup>95</sup> I consider that these principles are relevant in assessing the sufficiency of the claimant’s factual basis for the purpose of the assertion at s 190B(5)(a) as they elicit the need for the factual basis material to provide information pertaining to the identity of the native title claim group, the predecessors of the group and the nature of the association with the area covered by the application. In that regard, I consider that the factual basis material clearly identifies the native title claim group and acknowledges the relationship the group has with their country, which is both of a physical and spiritual nature. The factual basis reflects the knowledge members have of their traditional land and waters including the boundaries of their claims, the ancestral creation stories and the five rivers that connect the localised landholding groups to one another, and locations of sacred places such as where spiritual beings are located, lagoons and burial caves.

[91] There is also, in my view, a factual basis that goes to showing the history of the association that members of the claim group have, and that their predecessors had, with the application

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<sup>84</sup> Ibid [42].

<sup>85</sup> Ibid [43].

<sup>86</sup> Ibid [48].

<sup>87</sup> Ibid [51].

<sup>88</sup> Ibid [44] and [49].

<sup>89</sup> Ibid [45].

<sup>90</sup> Ibid [47].

<sup>91</sup> Ibid [52].

<sup>92</sup> Ibid [53].

<sup>93</sup> Ibid Comparative Table.

<sup>94</sup> *Gudjala 2007* [40].

<sup>95</sup> Ibid [39].

area.<sup>96</sup> The factual basis indicates that Aboriginal people were recorded to be present in the application area from as early as the 1770s and that the area was heavily populated by Aboriginal people at the time of first European contact. Effective sovereignty in the area occurred between the mid-1840s in the inland parts and as late as the 1860s to 1870s in some parts of the coastal sections. Many of the apical ancestors or their predecessors were living within the application area at this time. For example, *Coolum* was born around 1837 and was the head of a clan in the central region in the 1870s. His wife was also from that area, where their children were born and where his wife was buried. His descendants maintain a connection to the central region. One of his descendants describes being born there in the 1940s and maintaining a strong spiritual and physical association to the claim area by living there, visiting family and friends, camping, hunting, and fishing.

[92] For the purposes of s 190B(5)(a), I must also be satisfied that there is sufficient factual material to support the assertion of an association between the group and the whole area. The asserted facts indicate that Aboriginal people were observed in the 1770s near the southeastern region of the claim area. The apical ancestors, their children and grandchildren were either born, lived, married, had children, died, were buried or were otherwise connected to areas around the northern, northwestern, central, mid-western, mid-eastern, southwestern, southern or southeastern parts of the external boundary of the claim area. Some of their descendants continue to have strong connections to those areas where they live, camp, hunt, fish, and do other traditional activities. They also know of sacred places within the claim area and the five rivers that flow throughout the country that connect the landholding groups.

[93] From the above information, I consider that the factual basis is sufficient to support the assertion of an association, both physical and spiritual, 'between the whole group and the area'.<sup>97</sup> In my view, the factual basis material provides sufficient examples and facts of the necessary geographical particularity to support the assertion of an association between the whole group and the whole area.

[94] Given the information before me, I am satisfied that the factual basis provided is sufficient to support the assertion described by s 190B(5)(a).

***What is needed to provide a sufficient factual basis for s 190B(5)(b)?***

[95] The definition of 'native title rights and interests' in s 223(1)(a) provides that those rights and interests must be 'possessed under the traditional laws acknowledged, and traditional customs observed,' by the native title holders. Noting the similar wording between this provision and the assertion at s 190B(5)(b), I consider that it is appropriate to apply s 190B(5)(b) in light of the case law regarding the definition of 'native title rights and interests' in s 223(1). In that regard, I have taken into consideration the observations of the High Court in *Yorta Yorta* about the meaning of the word 'traditional'.<sup>98</sup>

[96] In light of *Yorta Yorta*, I consider that a law or custom is 'traditional' where:

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<sup>96</sup> Ibid [51].

<sup>97</sup> Ibid [52].

<sup>98</sup> Ibid [26] and [62] to [66].

- ‘the origins of the content of the law or custom concerned are to be found in the normative rules’ of a society that existed prior to sovereignty, where the society consists of a body of persons united in and by its acknowledgement and observance of a body of law and customs;<sup>99</sup>
- the ‘normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a continuous existence and vitality since sovereignty’;<sup>100</sup>
- the law or custom has been passed from generation to generation of a society, but not merely by word of mouth;<sup>101</sup>
- those laws and customs have been acknowledged and observed without substantial interruption since sovereignty, having been passed down the generations to the claim group.<sup>102</sup>

[97] I note that in *Gudjala 2009*, Dowsett J also discussed some of the factors that may guide the Registrar, or her delegate, in assessing the asserted factual basis, including:

- that the factual basis demonstrates the existence of a pre-sovereignty society and identifies the persons who acknowledged and observed the laws and customs of the pre-sovereignty society;<sup>103</sup>
- that if descent from named ancestors is the basis of membership to the group, the factual basis demonstrates some relationship between those ancestral persons and the pre-sovereignty society from which the laws and customs are derived;<sup>104</sup> and
- that the factual basis contains an explanation as to how the current laws and customs of the claim group are traditional (that is, laws and customs of a pre-sovereignty society relating to rights and interests in land and waters). Further, the mere assertion that current laws and customs of a native title claim group are traditional because they derive from a pre-sovereignty society from which the claim group is said to be descended, is not a sufficient factual basis for the purposes of s 190B(5)(b).<sup>105</sup>

[98] In *Warrie*, the Full Federal Court observed that while ‘a claim group must establish that the traditional law and custom which gives rise to their rights and interests in that land and waters stems from rules that have a normative character’, the Act does not ‘require establishment of some overarching “society” that can only be described in one way and with which members of a claim group are forever fixed in relation to any other land and waters over which they assert native title’.<sup>106</sup>

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<sup>99</sup> *Yorta Yorta* [46] and [49].

<sup>100</sup> *Ibid* [47].

<sup>101</sup> *Ibid* [46] and [79].

<sup>102</sup> *Ibid* [87].

<sup>103</sup> *Gudjala 2009* [37] and [52].

<sup>104</sup> *Ibid* [40].

<sup>105</sup> *Ibid* [29], [54] and [69].

<sup>106</sup> *Warrie* [107]; *Alyawarr* [78].

***What information has been provided in support of the assertion at s 190B(5)(b)?***

[99] I consider the following asserted facts to be relevant to my consideration of whether the factual basis is sufficient to support the existence of a pre-sovereignty society or a society that existed prior to effective sovereignty of the application, and the traditional laws and customs of the native title claim group:

- The Danggan Balun People comprise an aggregation of localised landholding groups whose members identify at various level from clan/estate-named groups to dialect-named groups (Yugambeh or Yugambeh-Bundjalung), and are either freshwater or saltwater people.<sup>107</sup>
- The Danggan Balun People acknowledge traditional laws and customs that involve beliefs, values and practices concerning their relationship with the land and waters of their country.<sup>108</sup> The laws and customs were handed down to the current claimants by their ancestors.
- The laws and customs acknowledged and observed by the localised groups represent a common set of practices and institutions, which are shared with their neighbours in the north, the Kabi-Waka-Yagarabal regional societies.<sup>109</sup> While the groups observe a regional body of laws and customs, there are local variations which distinguish the claim group from its northern neighbours.<sup>110</sup>
- The distribution of rights and interests in country and its associated resources consisted of a multi-layered pattering of regional language-group and local estate group interest and individual rights and interests.<sup>111</sup> While the laws and customs from which rights and interests in land arise are held at a regional as well as a local level, the members of the wider regional society do not hold in common, equal and identical rights and interests across the whole of the claim area.<sup>112</sup> Significantly, more localised groups speak for and manage particular areas of country that are distinguished at the language or dialect group level.
- Despite the more localised rights and responsibilities to particular tracts of country, the landholding groups are connected and united through commonalities in their laws and customs which include the following features:
  - The foundation of the traditional belief systems centres on a major cosmological being. The creation stories and identification of land and language, through the travels of ancestral beings, are shared locally and regionally. The sharing of experiences with the ancestral spirit world plays an important role in the maintenance of normative social order. In particular, a story about a particular ancestral being carries with it rules for social behaviour and territorial protocols.

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<sup>107</sup> Attachment F [3] and [6].

<sup>108</sup> Ibid [56].

<sup>109</sup> Ibid [57].

<sup>110</sup> Ibid [59].

<sup>111</sup> Ibid [58].

<sup>112</sup> Ibid [60].

- Belief there are spiritual beings in the landscape underpinning ownership, rituals or places used by the old people. A claimant says he sings out in language to the old people to let them know who he is, where he is from and what he is doing on country so that he 'is not sneaking up on them and to protect him while on country'. Another claimant says she gets a feeling from the country's spirits and this feeling guides her in determining whether she should camp on a particular site.
- Shared respect for ceremonial traditions, such as bora ceremonies and mortuary rituals, and the maintenance of associated sites. Claimants continue to participate in ceremonies on sacred places and in the repatriation of their predecessors' remains to country. Particular claimants are responsible for managing sacred places.
- Descent criteria for the membership of localised landholding groups, as well as inheritance and succession to local estate groups. Kinship classification and marriage networks, and the resulting rights and obligations, connect members of different localised groups. Claimants are taught from an early age about the particular clan/estate/dialect groups and the boundaries of their particular localised country, which they can speak for and must look after.
- Requirement to respect country and seek permission to access country, otherwise trespassers or those who behave inappropriately on country are exposed to spiritual dangers. Current claimants speak of their right to invite and refuse people access to country.
- Use and sharing of natural resources and knowledge of hunting and fishing protocols. Claimants hunt and fish for carpet snakes, goannas, porcupine, kangaroo, echidnas, turtles, eels, yabbies, shrimp and catfish. They speak of the rules associated with hunting which focuses on respect for the land and say you should only take what you need so the species can continue to increase. The claimants make boomerangs from special trees and are told where and how to find bush tucker and medicine. 113
- The laws and customs are shared by the Danggan Balun People through their observation of culture, song, dance, stories and ceremony.<sup>114</sup> A claimant says he was chosen by his elders to receive important knowledge about his laws and customs, country and culture, and to be the custodian of this information, which involves passing knowledge to younger generations at the appropriate time. Another claimant says she was taught the significance of country, about spiritual beings, the related stories, and sacred places including sites of avoidance, from her father who was the grandson of apical ancestor Matilda aka 'Mittie' Fogarty (nee Sandy). Her father also taught her some language he learnt from his own father, which she has taught her children and grandchildren. Her grandfather also had initiation scars.

[100] I note that the information extracted at s 190B(5)(a) is also relevant to my consideration of the assertions at s 190B(5)(b).

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<sup>113</sup> Ibid [61] and Comparative Table; Attachment M.

<sup>114</sup> Attachment F [61] and Comparative Table.



***Is the factual basis sufficient for the assertion of s 190B(5)(b)?***

- [101] My understanding of the factual basis material is that the pre-sovereignty society comprises of members who were part of clan/estate-named or dialect-named groups, and were either freshwater or saltwater people. The localised landholding groups acknowledged and observed laws and customs representing a common set of practices and institutions, which they shared with neighbouring groups but with some differences. The laws and customs involved beliefs, values and practices about their relationship with country. While rights and interests in land arose at the regional and local level, members of the wider society do not hold common, equal or identical rights across the claim area. A feature of the society involved cosmological and spiritual beliefs, which governed social behaviour, territorial protocols and responsibility to country, and knowledge of creation beings and their travels, rituals associated with initiation and death, and spiritual presence on country. The members exploited the natural resources for food, medicine, and to make implements.
- [102] The factual basis reveals that the laws and customs currently observed and acknowledged by the claim group are based on a form of social organisation involving a land tenure system, spiritual observance and practice, and observance of laws relating to traditional usage of the resources of their land and waters. The content of the traditional laws and customs is said to have been passed down to the current members of the native title claim group through the preceding generations.
- [103] In my view, the factual basis demonstrates that the ancestors were living on, or were among the generation born to those who were living on, the application area at the time of effective sovereignty. In this sense, I understand that the information supports the assertion that the apical ancestors were born into the claim group of the society that existed at and prior to effective sovereignty.<sup>115</sup> From the factual basis, I understand the current claim members are the descendants of these ancestors.<sup>116</sup>
- [104] I am of the view that there is information contained within the factual basis material from which the current laws and customs can be compared with those that are asserted to have existed at effective sovereignty. The native title claim group observe a landholding system where rights and interests to land are based on descent and particular tracts of land belong to particular clan/estate/dialect groups. The claimants continue to protect country and its resources such as through protecting sacred sites, and managing who is permitted on to their country and those who act inappropriately on country.
- [105] The factual basis contains some information which speaks to the way the members of the claim group continue to perform traditional practices such as rituals, camping, hunting, gathering resources for bush food, medicine or to make traditional items like boomerangs and still use traditional techniques or follow particular protocols. This in my view demonstrates that the laws and customs currently observed are relatively unchanged from those acknowledged and observed by their predecessors, and that they have been passed down the generations to the claimants today.

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<sup>115</sup> *Gudjala 2009* [55]; see also my reasons at s 190B(5)(a) above.

<sup>116</sup> Attachment F [40].

[106] The factual basis also contains references to current observance and acknowledgement of laws and customs of a spiritual nature. The claimants have a spiritual relationship to country and continue to have knowledge of creation beings and spirits on country and the related stories, beliefs or sites.

[107] The factual basis, in my view, is sufficient to support the assertion that the relevant laws and customs, acknowledged and observed by this society, have been passed down through the generations, by observation of culture, song, dance, stories and ceremony, to the current members of the claim group, and have been acknowledged by them without substantial interruption. The asserted facts state, for instance, that claimants have knowledge of creation beings, other spiritual beings, sacred sites, protocols or techniques to hunt, fish or make artefacts like boomerangs. Given the laws and customs have been passed between a few generations from the apical ancestors to the current claimants, and the fact the husband of ancestor Matilda aka 'Mittie' Fogarty (nee Sandy) taught his son language who then passed words and stories to current claimants, and they have passed these to their children and grandchildren, I infer the apical ancestors would have also practiced these modes of teachings. It follows, in my view, that the laws and customs currently observed and acknowledged are 'traditional' in the *Yorta Yorta* sense as they derive from a society that existed at the time of effective sovereignty.

[108] I am satisfied that the factual basis provided is sufficient to support the assertion described by s 190B(5)(b).

***What is needed to provide a sufficient factual basis for s 190B(5)(c)?***

[109] This condition is concerned with whether the factual basis is sufficient to support the assertion that the native title claim group has continued to hold the native title rights and interests claimed in accordance with their traditional laws and customs.

[110] Meeting the requirements of this condition relies on whether there is a sufficient factual basis to support the assertion at s 190B(5)(b) that there exist traditional laws and customs which give rise to the claimed native title rights and interests.<sup>117</sup> In my view, this assertion relates to the continued holding of native title through the continued observance of the traditional laws and customs of the group.

[111] I also understand that if the factual basis relied upon the drawing of inferences, that '[c]lear evidence of a pre-sovereignty society and its laws and customs, of genealogical links between that society and the claim group, and an apparent similarity of laws and customs may justify an inference of continuity'.<sup>118</sup>

***Is the factual basis sufficient for the assertion of s 190B(5)(c)?***

[112] There is, in my view, information within the factual basis material that goes to explaining the transmission and continuity of the native title rights and interests held in the application area in accordance with relevant traditional laws and customs.

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<sup>117</sup> *Martin* [29].

<sup>118</sup> *Gudjala 2009* [33].

[113] The factual basis indicates that the native title claim group learn from their immediate predecessors, such as their parents and grandparents, about the laws and customs.<sup>119</sup> For instance, they learn stories about creation beings and other spiritual beings, their particular country and how to protect it, and how to hunt, fish and gather resources for food, medicine and to make artefacts like boomerangs. The claimants say they are the custodians of information and pass knowledge to the younger generation at the appropriate time. A current claimant says he was told by his grandmother, great aunt, aunts, uncles and other family members about his tribe/local group and his particular country, other places in the application area, where and how to find bush tucker and bush medicines, the location of important sites, and rules of behaviour relating to specific areas.<sup>120</sup>

[114] In reaching my view in relation to this requirement, I have also considered my reasons in relation to s 190B(5)(b) and in particular that:

- the relevant pre-sovereignty society has been identified and some facts in relation to that society have been set out;
- there is some information pertaining to the acknowledgement and observance of laws and customs by previous generations of the native title claim group in relation to the application area;
- examples of the claim group's current acknowledgement and observance of laws and customs in relation to the application area have been provided.

[115] I am satisfied that the factual basis provided is sufficient to support the assertion described by s 190B(5)(c).

### **Prima facie case – s 190B(6): condition met**

[116] As set out below, I consider that some of the claimed rights and interests have been established on a prima facie basis. Therefore, the claim satisfies the condition of s 190B(6).

#### ***What is needed to meet this condition?***

[117] The requirements of this section are concerned with whether the native title rights and interests, identified and claimed in this application, can be prima facie established. Thus, 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis'.<sup>121</sup> Nonetheless, it does involve some 'measure' and 'weighing' of the factual basis and imposes 'a more onerous test to be applied to the individual rights and interests claimed'.<sup>122</sup>

[118] I note that this section is one that permits consideration of material that is beyond the parameters of the application.<sup>123</sup>

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<sup>119</sup> Attachment F Comparative Table.

<sup>120</sup> Attachment M [6] – [8].

<sup>121</sup> *Doepel* [135].

<sup>122</sup> *Ibid* [126], [127] and [132].

<sup>123</sup> *Ibid* [16].

[119] I understand that the requirements of s 190B(6) are to be considered in light of the definition of ‘native title rights and interests’ at s 223(1).<sup>124</sup> I must, therefore, consider whether, prima facie, the individual rights and interests claimed:

- exist under traditional laws and customs in relation to any of the land or waters in the application area;
- are native title rights and interests in relation to land or waters; and
- have not been extinguished over the whole of the application area.

[120] I also understand that a claimed native title right or interest can be prima facie established if the factual basis is sufficient to demonstrate that it is possessed pursuant to the traditional laws and customs of the native title claim group.<sup>125</sup>

[121] I note that the ‘critical threshold question’ for recognition of a native title right or interest under the Act ‘is whether it is a right or interest “in relation to” land or waters’.<sup>126</sup> I also note that the phrase ‘in relation to’ is ‘of wide import’.<sup>127</sup> Having examined the native title rights and interests set out in Schedule E of the application they are, prima facie, rights or interests ‘in relation to land or waters.’

[122] I also note that I consider that paragraph 6 of Schedule B of the application sufficiently addresses any issue of extinguishment, for the purpose of the test at s 190B(6).

[123] Before I consider the rights and interests claimed, I note that my reasons at s 190B(6) should be considered in conjunction with, and in addition to, my reasons and the material outlined at s 190B(5).

***Which of the claimed native title rights and interests can be established on a prima facie basis?***

*1. Where exclusive native title can be recognised (such as areas where there has been no prior extinguishment of native title or where s.238 and/or ss.47, 47A and 47B apply), the native title claimants as defined in this application, claim the right to possession, occupation, use and enjoyment of the lands and waters of the application area to the exclusion of all others subject to the valid laws of the Commonwealth and the State of Queensland.*

[124] The majority of the High Court in *Ward HC* considered that ‘[t]he expression “possession, occupation, use and enjoyment ... to the exclusion of all others” is a composite expression directed to describing a particular measure of *control over access to land*’.<sup>128</sup> The High Court further noted that the expression, collectively, conveys ‘the assertion of rights of control over the land’, which necessarily flow ‘from that aspect of the relationship with land which is encapsulated in the assertion of a right to speak for country’.<sup>129</sup>

[125] In *Griffiths*, the Full Court, while exploring the relevant requirements to proving that such exclusive rights are vested in a native title claim group, stated that:

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<sup>124</sup> *Gudjala* 2007 [85].

<sup>125</sup> *Yorta Yorta* [86]; *Gudjala* 2007 [86]

<sup>126</sup> *Ward HC* [577].

<sup>127</sup> *Alyawarr* [93].

<sup>128</sup> *Ward HC* [93], emphasis added.

<sup>129</sup> *Ibid* [93].

the question whether the native title rights of a given native title claim group include the right to exclude others from the land the subject of their application does not depend upon any formal classification of such rights as usufructuary or proprietary. *It depends rather on the consideration of what the evidence discloses about their content under traditional law and custom.*<sup>130</sup>

[126] I also note the Full Court's observations in relation to control of access to country that:

[i]f control of access to country flows from spiritual necessity because of the harm that "the country" will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a "spiritual affair". It is also important to bear in mind that traditional law and custom, so far as it bore upon relationships with persons outside the relevant community at the time of sovereignty, would have been framed by reference to relations with indigenous people. The question of exclusivity depends upon the ability of the [native title holders] effectively to exclude from their country people not of their community. If, according to their traditional law and custom, spiritual sanctions are visited upon unauthorised entry and if they are the gatekeepers for the purpose of preventing such harm and avoiding injury to the country, then they have ... an exclusive right of possession, use and occupation.<sup>131</sup>

[127] In examining whether the claimants' material prima facie establishes its existence, I am of the view that this right materialises from traditional laws and customs that permit the native title claim group to exhibit control over all others in relation to access to the land and waters.

[128] The factual basis provides that the members of the claim group as owners of their country, in accordance with traditional laws and customs, require people who wish to enter their country to seek permission before entering country.<sup>132</sup> Failure to do so exposes that person to dangers from the spiritual beings on country. Failure to show respect and act in a proper and appropriate manner will also expose the person to danger from the spiritual beings. Current claimants say that people cannot trespass on their country and must seek permission or give notice that they are coming over, otherwise they would be excluded from their country. They speak of having the right to invite people to their country, as well as refusing, restricting access and enforcing their laws and customs if needed against those who do wrong on their country. The claimants can speak for their own country and I understand they also have the responsibility to manage their country.<sup>133</sup>

[129] I am of the view that the factual basis material asserts that current members of the native title group maintain knowledge of their country. The knowledge of the laws and customs of the current members, as owners of their traditional land and waters, elicit that they have a 'spiritual affair' with their country and have the right to exclude other people from it. In my view, such control flows from a right to speak for country and a spiritual necessity to protect country from harm and injury and from country harming others. I understand this symbolic ownership encompasses the right to speak for country and the right to exclude.

[130] I consider that this right is prima facie established.

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<sup>130</sup> *Griffiths* [71], emphasis added.

<sup>131</sup> *Ibid* [127].

<sup>132</sup> Attachment F Comparative Table.

<sup>133</sup> *Ibid* [60].

2. Where exclusive native title cannot be recognised, the native title claimants as defined in this application, claim the following non-exclusive rights and interests including the right to conduct activities necessary to give effect to them:

(a) the right to access the application area;

(b) the right to use and enjoy the application area;

(c) the right to move about the application area;

(d) the right to camp on the application area;

(e) the right to erect shelters and other structures on the application area;

(f) the right to enter and remain on the application area;

(h) the right to hunt on the application area;

(i) the right to fish in the application area;

(j) the right to have access to and use the natural water resources of the application area;

(k) the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well as materials for fabricating tools, hunting, implements, making artwork and musical instruments);

(l) the right to share and exchange resources derived from the land and waters within the application area;

[131] I understand these rights are being claimed where only non-exclusive rights can exist and are not exercised with any degree of exclusivity and control.

[132] The factual basis indicates that the claimants continue to access their country to travel across, live in dwellings such as gunyahs, visit family and friends, camp, fish and hunt such as for catfish, turtles, kangaroos, echidna, carpet snakes, goannas and porcupines.<sup>134</sup> They take resources from the land and waters for food, medicine, to make artefacts like boomerangs, and while observing other customs such as camping or ceremony.<sup>135</sup> The asserted facts indicate that the predecessors also observed these rights, including travelling, visiting sites, hunting, fishing, constructing dwellings, making implements, as well as shared the natural resources for trade and gatherings such as for bunya feasts with neighbouring groups.<sup>136</sup> I infer such sharing and exchange of resources still occurs between families, the local groups or during ceremonies or other gatherings.

[133] It is my view that the factual basis material prima facie establishes that these rights are possessed pursuant to the traditional laws and customs of the native title claim group.

(g) the right to hold meetings on the application area;

(m) the right to participate in cultural and spiritual activities on the application area;

(n) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;

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<sup>134</sup> Ibid [45], [49] and Comparative Table.

<sup>135</sup> Ibid [46] and Comparative Table.

<sup>136</sup> Ibid [9], [61] and Comparative Table.

(o) the right to conduct ceremonies and rituals on the application area;

(p) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area.

[134] Claim group members are told by their immediate predecessors about the boundary of their country and the significant sites within it.<sup>137</sup> The claimants speak of an obligation to protect sites of importance and participate in ceremonies and gatherings in their own country.

[135] It is my view that the factual basis material prima facie establishes that these rights are possessed under the traditional laws and customs of the native title claim group.

### Physical connection – s 190B(7): condition met

[136] For the reasons set out below, the application satisfies the condition of s 190B(7).

#### **What is needed to meet this condition?**

[137] This condition requires that I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters, but for certain things done.

[138] The Courts have observed that it ‘seems likely that [the traditional physical] connection must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs’.<sup>138</sup> In interpreting connection in the ‘traditional’ sense as required by s 223 of the Act, the members of the joint judgment in *Yorta Yorta* felt that ‘the connection which the peoples concerned have with the land or waters must be shown to be a connection by their traditional laws and customs ... “traditional” in this context must be understood to refer to the body of law and customs acknowledged and observed by the ancestors of the claimants at the time of sovereignty’.<sup>139</sup>

[139] I consider that for the purposes of s 190B(7), I must be satisfied of a particular fact or facts, from the material provided, that at least one member of the claim group has or had the necessary traditional *physical* association with the application area.<sup>140</sup>

#### **Is there evidence that a member of the claim group has or had a traditional physical connection?**

[140] I refer to the information above in relation to s 190B(5) of these reasons, which provides a sufficient factual basis supporting the assertion that the native title claim group acknowledges and observes the traditional laws and customs of the pre-sovereignty society.

[141] The factual basis contains relevant information that describe a traditional physical association of members of the claim group with the application area, including accessing and living on country, visiting sites, camping, hunting, fishing and performing other practices within the application area.<sup>141</sup>

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<sup>137</sup> Ibid Comparative Table.

<sup>138</sup> *Gudjala 2009* [84].

<sup>139</sup> *Yorta Yorta* [86].

<sup>140</sup> *Doepel* [18].

<sup>141</sup> Attachment F Comparative Table; Attachment M.

[142] Given the above, and considering all of the information provided with the application, I am satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with the land or waters within the application area.

#### **No failure to comply with s 61A – s 190B(8): condition met**

[143] As set out in my reasons below, in my view the application does not offend any of the provisions of ss 61A(1), (2) and (3) and therefore the application satisfies the condition of s 190B(8).

[144] Section 190B(8) requires that the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

[145] I understand s 61A(4) specifically provides that s 61A(2) or (3) does not apply to an application in circumstances where the application states that ss 47, 47A or 47B applies to it.

[146] In the reasons below, I look at each part of s 61A against what is contained in the application and accompanying documents and in any other information before me as to whether the application should not have been made.

#### *No native title determination application if approved determination of native title (s 61A(1))*

[147] The geospatial assessment states that no determinations of native title fall within the external boundaries of the application area. The results of my own search of the Tribunal's mapping database confirm this. It follows that the application is not made in relation to an area for which there is an approved determination of native title.

#### *Claimant application not to be made covering previous exclusive possession over areas (s 61A(2))*

[148] Paragraphs 1 and 2 of Schedule B provides that any area in relation to which a previous exclusive possession act is done is excluded from the application, except to the extent provisions such as ss 47, 47A or 47B may apply.<sup>142</sup>

#### *Claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas (s 61A(3))*

[149] Paragraph 3 of Schedule B states that exclusive possession is not claimed over areas which are subject to valid previous non-exclusive acts done by the Commonwealth or the State, except to the extent provisions such as ss 47, 47A or 47B may apply.<sup>143</sup>

#### **No extinguishment etc. of claimed native title – s 190B(9): condition met**

[150] The application satisfies the condition of s 190B(9), because it meets all three subconditions, as set out in the reasons below.

[151] Section 190B(9) provides that the application and accompanying documents must not disclose, and the Registrar must not be aware of the matters set out in subparagraphs (a) to (c), including a claim to ownership of minerals, petroleum gas wholly owned by the Crown,

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<sup>142</sup> Schedule B [4] – [5]; Schedule L.

<sup>143</sup> Ibid.



exclusive possession of an offshore place, or extinguishment of the native title rights and interests.

*No claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown (s 190B(9)(a))*

[152] Schedule Q provides that the application does not make any claim to ownership of minerals, petroleum or gas that are wholly owned by the Crown.

*Exclusive possession is not claimed over all or part of waters in an offshore place (s 190B(9)(b))*

[153] Schedule P provides that the application does not include a claim by the native title claim group to exclusive possession of all or part of an offshore place.

*Native title rights and interests in the application area have otherwise not been extinguished (s 190B(9)(c))*

[154] Paragraph 6 of Schedule B provides that the area covered by the application excludes land or waters where the native title rights and interests claimed have been otherwise extinguished.

[155] There is no other information before me to indicate, that the native title rights and interests claimed have otherwise been extinguished.

*End of reasons*