

# Registration Decision

<b>Application name</b>	Florence Bell & Ors on behalf of the Wakka Wakka People #3 and State of Queensland & Ors ( <b>Wakka Wakka People #3</b> )
<b>Name of applicant</b>	Ms Florence Bell; Mr Michael Bond Snr; Mr Gary Cobbo; Mr Kevin Doolan; Mr Robert Lacey; Ms Lauren Gilson; Mr Winston Mimi; Mr Stephen Pickering; Mr Carl Simpson; Ms Cheryl Smith; Ms Judith Conlon; Mr James Chapman; Ms Marissa Cobbo; Mr Sidney Smith; Ms Katrina Watson
<b>Federal Court of Australia No.</b>	QUD276/2019
<b>NNTT No.</b>	QC2016/003
<b>Date of Decision</b>	29 January 2021

## Claim accepted for registration

I have decided the claim in the Wakka Wakka People #3 application satisfies all the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).<sup>1</sup> Therefore the claim must be accepted for registration and will remain on the Register of Native Title Claims.

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Katy Woods<sup>2</sup>

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

<sup>2</sup> Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Native Title Act.

## Reasons for Decision

### Cases Cited

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

*Northern Territory of Australia v Doepel* [2003] FCA 1384 (**Doepel**)

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

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

### Background

- [1] The claim in this application is made on behalf of the Wakka Wakka native title claim group (**claim group**). It covers approximately 9,393 sq km in southeast Queensland, north of Brisbane and west of Gympie (**application area**).
- [2] On 26 March 2016, the Federal Court of Australia (**Court**) made orders to combine two existing applications: QUD621/2011 Wakka Wakka People #3 (QC2011/010) and QUD93/2012 Wakka Wakka People #5 (QC2012/004). The combined application was filed on 29 April 2016 and on 2 June 2016 the claim was accepted for registration and entered onto the Register of Native Title Claims (**Register**). The combined application is referred to as ‘Wakka Wakka People #3’.
- [3] On 26 July 2019, an amended Wakka Wakka People #3 application was filed (**amended application**). On 29 July 2019 the Registrar of the Court gave a copy of the amended application to the Native Title Registrar (**Registrar**) pursuant to s 64(4). The amended application was given a new reference number by the Court, QUD276/2019, but retained its NNTT reference number, QC2016/003. On 6 September 2019, in my capacity as delegate of the Registrar, I decided the amended application passed all the conditions in ss 190B–190C of the Native Title Act (**registration test**) and thus the claim remained on the Register.
- [4] On 3 February 2020, an amended application was filed which was provided to the Registrar pursuant to s 64(4) on 4 February 2020 (**further amended application**). On 28 February 2020, I decided that the further amended application passed all the conditions of the registration test and so the claim remained on the Register.
- [5] On 15 December 2020, an amended application was filed which was provided to the Registrar that same day, pursuant to s 64(4). This is the application currently before me. Because of the history of the combination and amendments, this application is described in the Form 1 as the ‘Sixth Further Amended Claimant Application’. For convenience, I will refer to it as **the application** in my reasons below.
- [6] The granting of leave by the Court to amend the application was not made pursuant to s 87A, and so the circumstance described in s 190A(1A) does not arise. The amendments to the application include changes to the information about the authorisation of the applicant. As that type of amendment is not contemplated under s 190A(6A), I consider that provision does not apply. Therefore, in accordance with s 190A(6), I must accept the claim for registration if it satisfies all the conditions in ss 190B–190C.

- [7] As discussed in my reasons below, I consider that the claim in the application satisfies all of the conditions in ss 190B–190C and therefore it must be accepted for registration.<sup>3</sup> Attachment A contains information that will be included in the Register.

## Procedural fairness

- [8] On 17 December 2020, a senior officer of the Tribunal wrote to the relevant minister of the Queensland government (**State**) advising that I would be considering the information in the application in my decision, and should the State wish to supply any information or make any submissions, it should do so by 24 December 2020. On 17 December 2020, the State's representative advised that the State would not be making submissions in relation to the application.
- [9] Also on 17 December 2020, the senior officer wrote to the applicant's representative to advise that any further information to which the applicant wished me to have regard, should be received by 24 December 2020.
- [10] The outline of the factual basis of the claim included in Schedule F and Attachment 'F & M' has not been amended. In these circumstances, I considered it appropriate to have regard to the additional factual basis material the applicant previously provided in support of the claim, specifically:
- (a) Anthropologist's Report, Kingsley Palmer, March 2010 (**anthropologist's report**).
- [11] I also considered it appropriate to have regard to the public notice of the authorisation meeting of the claim group advertised on 20 November 2019 described in Attachment R and available to me on the website of the Koori Mail newspaper (**meeting notice**).
- [12] Because I considered it was appropriate to have regard to the anthropologist's report and meeting notice, on 7 January 2021 the senior officer wrote to the State to advise that I would be considering those documents in my decision, and any comment the State may wish to make about them should be provided by 15 January 2021.
- [13] No submissions or comments were received from either the State or the applicant, and so this concluded the procedural fairness process.

## Information considered

- [14] In accordance with s 190A(3)(a), I have considered the information in the application and the anthropologist's report previously supplied by the applicant directly to the Registrar, as described above.
- [15] There is no information before me obtained by the Registrar as a result of any searches of registers of Commonwealth, State or Territory interests that I must have regard to pursuant to s 190A(3)(b).
- [16] As noted above, the State has not supplied any information about the application of the registration test which I must consider, where relevant, pursuant to s 190A(3)(c).
- [17] Section 190A(3) also provides that I may have regard to such other information considered appropriate. I have had regard to the following information:

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

- (a) the public notice of the authorisation meeting, as described above; and
- (b) information contained in a geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services dated 22 December 2020 (**geospatial report**);
- (c) information available through the Tribunal's geospatial database; and
- (d) information available in the Register.

[18] I have had regard to the further amended application, being the version of the application which I most recently tested for registration on 28 February 2020. Having compared the further amended application with the application currently before me, I am satisfied that the substantive content of the two applications is identical, save for:

- (a) The removal of Elsie Prince as a member of the applicant;
- (b) The addition of updated information about relevant s 29 notices in Schedule I;
- (c) The addition of a paragraph in Attachment R regarding the resignation of Elsie Prince as a member of the applicant; and
- (d) a section previously missing from the s 62 affidavit of Michael Bond has been reinserted.

[19] I have considered the statements of law which I included in the reasons I prepared for my decision of 28 February 2020 to accept the further amended application for registration (**2020 reasons**). I have also considered the statements of law which I included in the reasons I prepared for my decision of 6 September 2019 to accept the amended application for registration (**2019 reasons**), which I also relied upon at some conditions when I considered the further amended application for registration on 28 February 2020.

[20] I am of the view that the statements of law in both my 2019 reasons and 2020 reasons remain accurate and were correctly applied, and so I refer to and rely on those statements of law at particular conditions in my reasons below. I also consider that I correctly applied the facts to the law in both my 2019 and 2020 reasons. I have considered the application before me against each registration condition afresh, however, in the interests of brevity, I refer to and rely on my 2019 reasons and my 2020 reasons at particular conditions, where it is appropriate and convenient to do so.

## Section 190C: conditions about procedures and other matters

### **Information etc. required by ss 61–2 – s 190C(2): condition met**

[21] To meet s 190C(2), the Registrar must be satisfied the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61–2. I am not required to undertake a merit assessment of the material at this condition.<sup>4</sup> I have not addressed s 61(5) as I consider the matters covered by that condition are matters for the Court.

[22] The application contains the details specified in s 61:

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<sup>4</sup> *Doepel* [16], [35]–[39].

Section	Details	Information	Result
s 61(1)	Native title claim group have authorised the applicant	Part A, Schedule A, s 62 affidavits	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

[23] The application contains the information specified in s 62:

Section	Details	Information	Result
s 62(1)(a)	Affidavits in prescribed form	Section 62 affidavits	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B; Attachment B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F, Attachment F & M	Met
s 62(2)(f)	Activities	Schedule G	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Schedule I	Met

## Conclusion

[24] As the application contains all the details and information required by ss 61–2, s 190C(2) is met.

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

[25] To meet s 190C(3), the Registrar must be satisfied that no person included in the claim group for the current application was a member of a native title claim group for any previous application. To be a ‘previous application’:

- (a) the application must overlap the current application in whole or part;
- (b) there must be an entry for the claim in the previous application on the Register when the current application was made; and
- (c) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

[26] The geospatial report states and my own searches confirm there are no applications which overlap the current application, as required by s 190C(3)(a). Therefore, there are no applications which meet the definition of a ‘previous application’ under s 190C(3).

## Conclusion

[27] I am satisfied that no person in the claim group was a member of a native title claim group for any previous application, and so s 190C(3) is met.

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

[28] To meet s 190C(4), the Registrar must be satisfied:

- (a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application; or
- (b) the applicant is a member of the claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the claim group.

[29] Schedule R refers to Attachment R, which is a document titled 'Authorisation' and as no certificate from an Aboriginal/Torres Strait Islander body accompanies the application, I understand I must assess the application against the requirements of s 190C(4)(b). As Attachment R has been amended, I do not rely on my 2019 or 2020 reasons at this condition.

[30] In addition to Attachment R, the information before me which is relevant to this condition is found in:

- (a) The s 62 affidavits; and
- (b) The meeting notice.

[31] I understand from the meeting notice and Attachment R that the meeting of the claim group to authorise the applicant to make the application was held on 8 December 2019 (**authorisation meeting**).

### What is required to meet s 190C(4)(b)?

[32] Section 190C(4)(b) requires two issues to be addressed:

- (a) that the applicant be a member of the claim group; and
- (b) that the applicant is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the claim group.

[33] Section 190C(5) states that if the application has not been certified under s 190C(4)(a), the Registrar cannot be satisfied that the condition in s 190C(4) has been satisfied unless the application:

- (a) includes a statement to the effect that the requirement in s 190C(4)(b) has been met; and
- (b) briefly sets out the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) has been met.

[34] Therefore, in order to satisfy s 190C(4)(b), an application must also satisfy s 190C(5).

### Does the application satisfy s 190C(5)?

[35] Paragraph 1 of Attachment R states that each member of the applicant is a member of the claim group and is authorised to make the application and deal with matters arising in relation to it, by all other persons in the claim group. I consider this statement is sufficient for the purposes of s 190C(5)(a).

[36] Attachment R also sets out the grounds on which the Registrar should consider that s 190C(4)(b) has been met, namely that the applicant has been authorised as a result of

substantial research leading up to the authorisation meeting, the notice and the conduct of that meeting, including the decision-making process which was agreed to and adopted by the claim group.<sup>5</sup>

[37] I understand that the use of the word ‘briefly’ in s 190C(5)(b) ‘suggests that the legislature was not concerned to require any detailed explanation of the process by which authorisation is obtained’.<sup>6</sup> I therefore consider the information in Attachment R about the authorisation of the applicant is sufficient for the purposes of s 190C(5)(b). This means s 190C(5) is met.

**Does the application satisfy s 190C(4)(b)?**

***Is the applicant a member of the native title claim group?***

[38] Section 190C(4)(b) requires that all the persons comprising the applicant must be members of the claim group.

[39] In each of the s 62 affidavits, the persons who comprise the applicant depose that they are members of the claim group.<sup>7</sup> I have not been provided with any information that contradicts those statements. It follows that I am satisfied that the members of the applicant are all members of the claim group.

***Is the applicant authorised to make the application by all the other persons in the native title claim group?***

[40] In order to determine whether the applicant is authorised to make the application, it is necessary to identify the decision-making process utilised by the claim group. Section 251B identifies two distinct decision-making processes by which an applicant can be authorised: a process which is mandated by traditional laws and customs, or one which has been agreed to and adopted by the claim group. Section 190C(4)(b) also requires information to show that the claim group have authorised the applicant such that I can be satisfied of the ‘fact of authorisation’.<sup>8</sup> I have summarised the information before me which I consider is relevant to this condition below.

*Decision-making process*

[41] Attachment R states that at the authorisation meeting, the claim group confirmed they have no traditional decision-making process, and agreed to and adopted a decision-making process of majority vote by a show of hands of members of the claim group present who were at least 18 years old.<sup>9</sup> The application therefore identifies the type of decision-making process provided for in s 251B(b).

*Notice of authorisation meeting*

[42] Attachment R states that Queensland South Native Title Services (**QSNTS**) gave notice of the authorisation meeting in the following ways:

(a) Public notice in the *Koori Mail* on 20 November 2019;

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<sup>5</sup> Attachment R, [4]–[16], [35]–[51].

<sup>6</sup> *Strickland* [57].

<sup>7</sup> Section 62 affidavits [1].

<sup>8</sup> *Doepel* [78].

<sup>9</sup> Attachment R [27].

- (b) Public notice in the *Courier Mail* on 16 November 2019;
- (c) Personal notice by mail to 527 members of the claim group for whom QSNTS had postal addresses, on 15 November 2019;
- (d) Public notice to six local governments, for display on their notice boards, on 22 November 2019;
- (e) Personal notice by telephone to 296 members of the claim group in the two weeks prior to the authorisation meeting;
- (f) Personal notice by text message to 357 members of the claim group on 5 December 2019; and
- (g) Public notice on the QSNTS website and Facebook page from 25 November 2019.

[43] The meeting notice is titled 'Wakka Wakka People #3 and Wakka Wakka People #4 Native Title Authorisation Meetings'. It includes a map with the respective application areas labelled, along with a number of towns and cities and the Bruce and Burnett Highways. It includes the previous description of the claim group and invites all members to attend the authorisation meeting. The date, venue and start time of the meeting are clearly set out.

[44] The meeting notice sets out two meetings for 8 December 2019, the purposes of which were:

- (a) **Meeting #1:** To authorise amendments of the claim group description to the wording which now appears in Schedule A (in summary, adding a criterion of connection to the application area, and removing the criterion of self-identification as a Wakka Wakka person); and
- (b) **Meeting #2:** To authorise persons to be, or continue to be, the applicant.

[45] The notice explains that if the claim group authorises the amendments to the claim group description in Meeting #1, then all members of the 'amended' claim group are invited to attend Meeting #2 to authorise the applicant.

[46] The notice provides a freecall number, a contact name for registration and details of a chartered bus service departing from Cherbourg for the day of the authorisation meeting.

#### *Conduct of authorisation meeting*

[47] Attachment R provides the following information about the conduct of the authorisation meeting:

- (a) It was attended by 83 members of the claim group.
- (b) Attendees were registered according to their relevant apical ancestor and given a coloured wrist band.
- (c) At Meeting #1:
  - i. Information was provided about anthropological research which supported the amendment to the claim group description, and legal advice was provided about the requirements of s 251B;
  - ii. Following the provision of the s 251B legal advice, the attendees resolved by Motion #4 that there is no traditional decision-making process which must be



complied with, and agreed to and adopted the decision-making process summarised above;

- iii. Using the agreed to and adopted decision-making process, the attendees resolved to amend the claim group description to that which now appears in Schedule A.

(d) At Meeting #2:

- i. No additional members joined the authorisation meeting following the amendment of the claim group description in Meeting #1;
- ii. Using the agreed to and adopted decision-making process, the attendees resolved by majority vote to authorise the members of the applicant to make the application and deal with all matters arising in relation to it, subject to the following terms and conditions:

If one or more members of the persons comprising the Applicant is incapable, unable or unwilling to continue to act as a member of the Applicant whether as a result of death, ill-health or any other reason, the remaining Applicants may continue to act as the Applicant and may file an application to amend the Applications [being this application and the Wakka Wakka People #4 application] to remove those persons' names from the list of persons comprising the Applicant, without the need to convene an authorisation meeting.<sup>10</sup>

[48] The s 62 affidavits contain the same information about the authorisation meeting and the adoption of an agreed to decision-making process by the claim group.<sup>11</sup>

[49] Attachment R provides that on 21 September 2020, Elsie Prince confirmed in writing to the claim group's solicitor that she was no longer willing to continue as a member of the applicant.<sup>12</sup>

### **Consideration**

[50] I consider the notice of the meeting was sufficiently clear as to enable the details and purpose of the authorisation meeting to be understood. I also consider the notice of the authorisation meeting was broad as various media and a mix of personal and public notices were employed.

[51] In my view, Attachment R provides sufficient detail of the conduct of the authorisation meeting, including the details of resolutions passed. Details of the registration of attendees and voting procedures are also included, which demonstrates that the resolutions were undertaken in line with the agreed and adopted decision-making process of the claim group. This includes the decision to authorise the applicant to make the application and deal with matters arising in relation to it, subject to the terms and conditions which permit taking steps to amend the application to remove any member who is incapable, unable or unwilling to continue to act as a member.

[52] I note O'Loughlin J's theoretical questions about the meeting at which the applicant was authorised in the circumstances of the case of *Ward v Northern Territory*, the substance of which His Honour held must be addressed:

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<sup>10</sup> Attachment R [46], [52].

<sup>11</sup> Section 62 affidavits [6]–[10].

<sup>12</sup> Attachment R [53].

Who convened it and why was it convened? To whom was notice given and how 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? 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>13</sup>

[53] In my view, there is sufficient information to address the substance of all of those questions, such that I can be satisfied of the ‘fact of authorisation’.<sup>14</sup>

[54] With regard to the removal of Elsie Prince as a member of the applicant, this appears to have occurred in accordance with the terms and conditions agreed to by the claim group at the authorisation meeting, and so I do not consider her removal has affected the authorisation of the other applicant members to make the application and deal with matters arising in relation to it.

## Conclusion

[55] As I consider the requirements of s 190C(5) and all the components of s 190C(4)(b) are met, including that the material addresses s 251B(b), I am satisfied s 190C(4) is met.

## Section 190B: conditions about merits of the claim

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

[56] At paragraphs [47]–[48] of my 2019 reasons, I set out my understanding of the Registrar’s task at this condition. I am satisfied that the law has not changed and that my understanding remains correct. I consider that I correctly applied the facts to the law in my 2019 reasons at this condition. The geospatial report advises that the description and map have not been amended. Having considered the description and map, I agree with that assessment. In these circumstances I therefore consider it appropriate to adopt my 2019 reasons at this condition.

#### Does the information about the external boundary meet this condition?

[57] At paragraphs [49]–[52] of my 2019 reasons, I was satisfied that the written description in Schedule B and the map in Attachment C were consistent and enabled identification of the external boundary of the application area with reasonable certainty. Having considered Schedule B and Attachment C afresh, I remain of that view.

#### Does the information about excluded areas meet this condition?

[58] At paragraphs [53]–[56] of my 2019 reasons, I was satisfied that the information about the exclusions from the application area found in Schedule B and Attachment B were sufficient to meet the requirements of this condition. I have considered afresh the information in Schedule B and Attachment B and remain of that view.

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<sup>13</sup> *Ward v Northern Territory* [25]–[26].

<sup>14</sup> *Doepel* [78].

## Conclusion

[59] For the same reasons as set out in my 2019 reasons, I consider that both the external boundary and the excluded areas of the application can be identified from the map and description with reasonable certainty. I am therefore satisfied that s 190B(2) is met.

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

[60] At paragraphs [53]–[54] of my 2020 reasons, I set out my understanding of the Registrar’s task at this condition. I am satisfied that the law has not changed and that my understanding remains correct. I consider that I correctly applied the facts to the law in my 2020 reasons at this condition. I have considered Schedule A in the application before me and am satisfied it has not been amended. I therefore consider it appropriate to adopt my 2020 reasons at this condition.

### Is the description sufficient to ascertain the members of the claim group?

[61] At paragraphs [58]–[62] of my 2020 reasons, I considered that the description of the claim group in Schedule A was sufficient to ascertain whether a person was a member of the claim group. I have considered the information in Schedule A afresh and remain of that view.

## Conclusion

[62] For the same reasons as set out in my 2020 reasons, I am satisfied the application describes the persons in the claim group sufficiently clearly such that it can be ascertained whether any particular person is a member of the group as required by s 190B(3)(b). This means s 190B(3) is met.

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

[63] At paragraph [64] of my 2020 reasons, I set out my understanding of the Registrar’s task at this condition. I am satisfied that the law has not changed and that my understanding remains correct. I consider that I correctly applied the facts to the law in my 2020 reasons at this condition. I have considered the information in Schedule E of the application before me and am satisfied it has not been amended. I therefore consider it appropriate to adopt my 2020 reasons at this condition.

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

[64] At paragraphs [66]–[70] of my 2020 reasons, I considered that the description in Schedule E was sufficient to allow the claimed rights and interests to be identified. I remain of that view, having again considered the information in Schedule E.

## Conclusion

[65] For the same reasons as set out in my 2020 reasons, I am satisfied the description is sufficient to understand and identify all the claimed rights and interests, which means s 190B(4) is met.

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

[66] To meet s 190B(5), the Registrar must be satisfied there is sufficient factual basis to support the assertion that the claimed native title rights and interests exist. In particular, the factual basis must support the following assertions:

- (a) that the claim group have, and their predecessors had, an association with the application area; and
- (b) that there exist traditional laws acknowledged and traditional customs observed by the claim group that give rise to their claimed native title rights and interests; and
- (c) that the claim group have continued to hold the native title in accordance with those traditional laws and customs.

[67] In paragraph [73] of my 2019 reasons, I set out my understanding of the overall task of the Registrar at s 190B(5). I consider that the law has not changed in this regard and that my understanding was correct.

### **What is required to meet s 190B(5)(a)?**

[68] In paragraph [74] of my 2019 reasons, I set out my understanding of the Registrar's task at s 190B(5)(a). I am satisfied that the law has not changed and that my understanding remains correct.

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

[69] In my 2019 reasons, I considered the information provided in support of the assertion of s 190B(5)(a) was found in Schedule F, Attachment F & M, and in the anthropologist's report. I set out the relevant information at paragraph [75] of my 2019 reasons. I have read the information in the application before me and am satisfied it has not been amended and contains the same factual basis information at Schedule F and Attachment F & M. As discussed above, the anthropologist's report speaks to the application area and I remain of the view that it is appropriate for me to have regard to it.

[70] In addition to considering the information before me, I have also reviewed my 2019 reasons. I consider that I correctly applied the facts to the law in order to be satisfied that s 190B(5)(a) was met. I therefore consider it is appropriate to adopt my 2019 reasons in relation to this fresh consideration of the condition of s 190B(5)(a).

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

[71] At paragraphs [76]–[86] of my 2019 reasons, I considered that the factual basis was sufficient to support the assertion at s 190B(5)(a). In reaching that view I considered the factual basis supported:

- (a) an association between the claim group and the area at sovereignty and since that time;
- (b) an association between the claim group and the area currently; and
- (c) an association, both past and present, with the whole area claimed.

### ***Conclusion - s 190B(5)(a)***

[72] I have reviewed the information afresh and remain satisfied, for the same reasons set out in my 2019 reasons, that there is sufficient factual basis to support an assertion of both a physical and a spiritual association of the claim group to the whole application area, which means s 190B(5)(a) is met.

### What is required to meet s 190B(5)(b)?

[73] In paragraphs [88]–[91] of my 2019 reasons I set out my understanding of the Registrar’s task at s 190B(5)(b). I note that since finalising my 2019 reasons, the Full Court has made observations on the meaning of ‘native title rights and interests’ in s 223.<sup>15</sup> However, I consider those observations have not changed the law or the Registrar’s task at s 190B(5)(b), and I am satisfied that my understanding of the law, as set out in my 2019 reasons, remains correct.

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

[74] In my 2019 reasons, I considered that the information provided in support of the assertion of s 190B(5)(b) was primarily found in the anthropologist’s report. I summarised that information at paragraphs [92]–[95] of my 2019 reasons.

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

[75] I consider it appropriate to adopt my 2019 reasons in relation to s 190B(5)(b) for the same reasons identified in relation to s 190B(5)(a) above, noting in particular that the same factual basis is relied upon. I have also reviewed my 2019 reasons and consider that I correctly applied the facts to the law at s 190B(5)(b).

[76] At paragraphs [96]–[99] of my 2019 reasons, I considered there was sufficient information to:

- (a) address the identity of a pre-sovereignty society for the area;
- (b) address the link between the pre-sovereignty society, the apical ancestors and the claim group; and
- (c) support the assertion of the existence of ‘traditional laws and customs’.

#### ***Conclusion – s 190B(5)(b)***

[77] I have reviewed the information before me and my 2019 reasons. I remain satisfied that the factual basis is sufficient to support an assertion that there exist traditional laws acknowledged, and traditional customs observed by the native title claim group, for the same reasons as set out in my 2019 reasons. This means s 190B(5)(b) is met.

### What is required to meet s 190B(5)(c)?

[78] In paragraph [101] of my 2019 reasons I set out my understanding of the Registrar’s task at s 190B(5)(c). I am satisfied that the law has not changed and that my understanding remains correct.

#### ***Is the factual basis sufficient to support the assertion of the continuity of traditional laws and customs?***

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<sup>15</sup> *Warrie* [105], [107].

[79] At paragraph [102] of my 2019 reasons, I considered that the relevant factual basis material for s 190B(5)(c) was the same as that which I considered relevant for ss 190B(5)(a)–(b). I also considered there was sufficient information to support the assertion of continuity of traditional laws and customs. I have reviewed the information before me as well as my 2019 reasons. I am of the view that I correctly applied the facts to the law and therefore consider it is appropriate to adopt my 2019 reasons in my fresh consideration of this condition.

**Conclusion – s 190B(5)(c)**

[80] For the same reasons as set out in my 2019 reasons, I remain satisfied that the factual basis is sufficient to support the assertion that the claim group have continued to hold their native title rights in accordance with traditional laws and customs since settlement in the application area. This means s 190B(5)(c) is met.

**Conclusion**

[81] As I consider the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the three assertions of ss 190B(5)(a)–(c), I am satisfied s 190B(5) is met.

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

[82] At paragraphs [87]–[90] of my 2020 reasons, I set out my understanding of the Registrar’s task at this condition. I consider that that the law has not changed and my understanding remains correct. I have reviewed my 2020 reasons and consider that I correctly applied the facts to the law in my reasoning at this condition. As the rights and interests described in Schedule E have not been amended, and as the same factual basis material is relied upon, I consider it is appropriate to rely on my 2020 reasons in relation to my fresh consideration of s 190B(6).

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

[83] At paragraphs [91]–[112] of my 2020 reasons, I considered that all of the claimed rights were established on a prima facie basis. I also considered that the claimed rights could be considered ‘native title rights and interests’ held pursuant to the claim group’s traditional laws and customs. Having undertaken a fresh consideration of the information in the application and the factual basis material, I remain of that view.

**Conclusion**

[84] I am satisfied the application contains sufficient information about all of the rights claimed such that they can be said to be established on a prima facie basis as ‘native title rights and interests’, for the same reasons as set out in my 2020 reasons. This means s 190B(6) is met.

**Traditional physical connection – s 190B(7): condition met**

[85] In paragraphs [132]–[133] of my 2019 reasons I set out my understanding of the Registrar’s task at s 190B(7). I am satisfied that the law has not changed and that my understanding remains correct.

Is there evidence that at least one member of the claim group has or had a traditional physical connection?

[86] At paragraphs [134]–[135] of my 2019 reasons, I considered that at least one claim group member has or had a physical connection to the application area. I also considered the claim group members’ connection with the application area is ‘traditional’ in the sense required by s 190B(7). I have reviewed my application of the facts to the law at this condition in my 2019 reasons and consider that it was correct. Given the factual basis for this application is the same as that previously considered, I consider it is appropriate to adopt my 2019 reasons in this fresh consideration of s 190B(7).

### Conclusion

[87] I have reviewed the information before me and my 2019 reasons and I remain satisfied, for the same reasons as set out in my 2019 reasons, at least one member of the native title claim group currently has or had a traditional physical connection with a part of the application area as required by s 190B(7)(a), and so s 190B(7) is met.

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

[88] At paragraph [137] of my 2019 reasons, I considered that the application complied with the provisions of ss 61A(1)–(3), and thus met the requirements of s 190B(8). I have reviewed the application before me and my 2019 reasons, and consider it is appropriate to adopt my conclusions at this condition, as the content of the relevant Schedules is identical in the application currently before me. I have reached this view because I consider that my understanding of the Registrar’s task was correct in my 2019 reasons and the law has not changed. I also consider that my application of the facts to the law at this condition in my 2019 reasons was correct. In addition, the geospatial report states, and I have verified, there has been no determination over any part of the application area, which is relevant to this fresh consideration of s 61A(1). For the same reasons as set out in my 2019 reasons, I am satisfied that the application meets the requirements of s 190B(7).

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

[89] At paragraph [138] of my 2019 reasons, I considered that the application met the requirements of s 190B(9). I consider that my understanding of the Registrar’s task was correct and the law has not changed. I consider my application of the facts to the law at this condition in my 2019 reasons was correct. Having reviewed my 2019 reasons and the information before me, I consider it is appropriate to adopt my 2019 reasons at this condition, as the content of the relevant Schedules is identical. For the same reasons as set out in my 2019 reasons, I am satisfied that the application meets the requirements of s 190B(9).

*End of reasons*

## Attachment A

### Information to be included on the Register of Native Title Claims

Application name	Wakka Wakka People #3
NNTT No.	QC2016/003
Federal Court of Australia No.	QUD276/2019
Date of Registration Decision	29 January 2021

#### Section 186(1): Mandatory information

In accordance with ss 186, 190A(1) of the *Native Title Act 1993* (Cth), the following is to be entered on the Register of Native Title Claims for the above application.

#### Application filed/lodged with:

Federal Court of Australia

#### Date application filed/lodged:

29 April 2016

#### Date application entered on Register:

2 June 2016

#### Applicant:

As per Register

#### Applicant's address for service:

As per Register

#### Area covered by application:

As per Register

#### Persons claiming to hold native title:

As per Register

#### Registered native title rights and interests:

As per Register

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Katy Woods

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Native Title Act.