



Registration Decision

Application name	Yuggera Ugarapul People
Name of applicant	Kevin Fernando, Samantha Lee Carr, David John Conlon, Wade Scott Thompson, Tamala Coolwell, Shannon (Ben) Thompson, Tanya-Dee Bonner, Kruze Summers, Craig Egert, Teresa Watterson
Federal Court of Australia No.	QUD213/2017
NNTT No.	QC2017/005
Date of Decision	8 December 2023

Claim accepted for registration

I have decided that the claim in the Yuggera Ugarapul People application satisfies all of the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).¹ Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims.

Michael Raine

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 19 May 2021 and made pursuant to s 99 of the Act.

¹A section reference is to the *Native Title Act 1993* (Cth) (the Act), unless otherwise specified.

Reasons for Decision

CASES CITED

Anderson on behalf of the Numbahjing Clan within the Bundjalung Nation v Registrar of the National Native Title Tribunal [2012] FCA 1215 (2012) 297 ALR 660 ('Anderson')

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

Burrabungba on behalf of the Wangan and Jagalingou People v Queensland [2017] FCA 373 ('Burrabungba')

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

Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People [2019] FCAFC 177; (2019) 273 FCR 350 ('Warrie')

Griffiths v Northern Territory of Australia [2007] FCAFC 178; (2007) 165 FCR 391 ('Griffiths')

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

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

Gudjala People #2 v Native Title Registrar [2009] FCA 1572; (2009) 182 FCR 63 ('Gudjala 2009')

Harrington-Smith on behalf of the Wongatha People v State of Western Australia (No 9) [2007] FCA 31; (2007) 238 ALR 1 ('Harrington-Smith')

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] HCA 58; (2002) 214 CLR 422 ('Yorta Yorta')

North Ganalanja Aboriginal Corporation v Queensland [1996] HCA 2; (1996) 185 CLR 595 ('Waanyi')

Northern Territory of Australia v Alyawarr, Kaytetye, Wurumunga, Wakaya Native Title Claim Group [2005] FCAFC 135; (2005) 145 FCR 442 ('Alyawarr')

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

Sampi v Western Australia [2005] FCA 777 ('Sampi')

Sampi on behalf of the Bardi and Jawi People v Western Australia [2010] FCAFC 26; (2010) 266 ALR 537 ('Sampi FC')

State of Western Australia v Strickland [2000] FCA 652; (2000) 99 FCR 33 ('Strickland FC')

Strickland v Native Title Registrar [1999] FCA 1530; (1999) 168 ALR 242 ('Strickland')

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

Ward v Registrar, National Native Title Tribunal [1999] FCA 1732 ('Ward v Registrar')

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

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

Western Australia v Ward [2002] HCA 28; (2002) 213 CLR 1 ('Ward HC')

Wiri People v Native Title Registrar [2008] FCA 574; (2008) 168 FCR 187 ('Wiri People')

BACKGROUND

- [1] This is an amended application filed on 8 September 2023 on behalf of the Yuggera Ugarapul People native title claim group ('claim group'). It covers land and waters over approximately 6,150 square kilometres immediately to the south-west of Brisbane.
- [2] The Registrar of the Federal Court ('Court') gave a copy of the amended application and accompanying affidavits to the Native Title Registrar ('Registrar') on 17 October 2023 pursuant to s 64(4) of the Act. This has triggered the Registrar's duty to consider the claim made in the application for registration in accordance with s 190A.²

Registration conditions

- [3] Sections 190A(1A), (6), (6A) and (6B) set out the decisions available to the Registrar under s 190A. Section 190A(1A) provides for exemption from the registration test for certain amended applications and s 190A(6A) provides that the Registrar must accept a claim (in an amended application) when it meets certain conditions. Section 190A(6) provides that the Registrar must accept the claim for registration if it satisfies all of the conditions of s 190B (which the Act refers to as conditions about the merits of the claim) and s 190C (which the Act refers to as conditions about procedural and other matters). Section 190A(6B) provides that the Registrar must not accept the claim for registration if it does not satisfy all of the conditions of ss 190B–190C.
- [4] I am satisfied that neither s 190A(1A) nor s 190A(6A) apply to the claim made in this amended application. The granting of leave by the Court to amend the application was not made pursuant to s 87A, and thus the circumstance described in s 190A(1A) does not arise. The amendments to the application include changes to the named applicant, the details relating to the authorisation of the applicant, the description of the native title claim group and other minor amendments. The amendments are not of a type contemplated in s 190A(6A) and do not therefore meet the requirements of that condition.
- [5] I have decided that the claim in the application must be accepted for registration and this document sets out my reasons for that decision.

Information considered

- [6] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar 'may have regard to such other information as he or she considers appropriate'.
- [7] I have had regard to information in the application. I have also considered the following documents provided by the applicant directly to the Registrar on 2 November 2023:³
- Applicant's submissions dated 2 November 2023
 - Affidavit of Timothy Wishart affirmed on 4 August 2023
 - Statement of [claim group member 1] dated 5 July 2017

² Section 190A(1).

³ Section 190A(3)(a).

- Supplementary table on further supporting connection evidence dated 28 June 2017

[8] The applicant’s submissions dated 2 November 2023 also referred to the affidavit of Wade Thompson affirmed on 29 March 2017. This affidavit is included at Attachment M of the amended application and so forms part of the amended application.

[9] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.⁴

[10] The State of Queensland (‘State’) has not provided any submissions in relation to the application of the registration test.⁵

[11] I have also considered information contained in a geospatial assessment and overlap analysis prepared by the Tribunal’s Geospatial Services in relation to the area covered by the application, dated 31 October 2023 (‘geospatial assessment’).

Procedural fairness

[12] As noted above, I have considered the additional material provided by the applicant on 2 November 2023. On 6 November 2023, the Tribunal wrote to the State advising that I would be relying on this information in my consideration of the registration test and that should the State wish to make any submissions, they should do so by 20 November 2023.

[13] The State did not provide any comments or submissions in relation to the amended application or the additional material.

[14] This concluded the procedural fairness process.

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

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

[15] I have examined the amended application and am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

What is required to meet this condition?

[16] To meet s 190C(2), the Registrar must be satisfied that 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. This condition does not require any merit or qualitative assessment of the material to be undertaken.⁶

[17] In my view, s 190C(2) relates only to those parts of ss 61 and 62 that impose requirements relating to documents and information to be included in the application and accompanying documents. I note that s 61(2) provides that the persons authorised to make the application are jointly the applicant. I consider that this subsection does not impose any requirement for

⁴ Section 190A(3)(b).

⁵ Section 190A(3)(c).

⁶ *Doepel* [16], [35]–[39].

documents and information to be contained in the application or accompanying documents within the meaning of s 190C(2).

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

[18] The application meets this condition because it contains the prescribed information and is accompanied by the prescribed documents, as set out below.

Applications that may be made: s 61(1)

[19] In accordance with s 61(1), an application for determination of native title may be made by persons authorised by the native title claim group, provided those persons are also members of the native title claim group.

[20] Schedule A of the amended application contains a description of the native title claim group and paragraph 2 of each of the affidavits accompanying the application for the purpose of s 62 indicate that the persons comprising the applicant are all members of the native title claim group and have been authorised by the claim group to make the application.

[21] I am satisfied that the amended application has been made in accordance with s 61(1).

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

[22] Section 61(3) requires an application to state the name and address for service of the applicant. I am satisfied that the amended application meets this requirement as the names of the persons comprising the applicant are included in the amended application and Part B of the application contains the address for service.

Applications authorised by persons: s 61(4)

[23] Section 61(4) requires an application to name or otherwise describe the persons comprising the native title claim group who authorised the applicant. I consider that Schedule A contains a description of the native title claim group that is sufficient to meet this requirement.

Prescribed form filed in the Federal Court: s 61(5)

[24] Section 61(5) provides that the application must be filed in the Federal Court in a manner as prescribed and be accompanied by any prescribed fee. I consider this to be a matter for the Federal Court, but note that the amended application is made on a completed Form 1 (the prescribed form) and was accepted for filing in the Federal Court.

Affidavits containing specified details: s 62(1)(a) and (1A)

[25] Section 62(1)(a) requires an application to be accompanied by affidavits that state the matters contained in sub-s (1A). This requirement is met as the amended application is accompanied by affidavits that contain the statements required by s 62(1A).

Section 47C agreement: s 62(1)(d)

[26] Section 62(1)(d) applies where an agreement has been entered into under s 47C and requires a copy of any relevant agreement to accompany the application. There is no indication from

Schedule L of the amended application or elsewhere in the application that any relevant agreement has been entered into such that s 62(1)(d) applies to the amended application.

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)

[27] Sections 62(2)(a) and (b) provide that an application must contain a description and map of the area covered by the application. Schedule B and Attachment B of the amended application contain a written description of the boundaries of the area covered by the application, as well as those areas not covered by the application. Attachment C comprises a map showing the external boundaries. As such the amended application includes the details and information required by ss 62(2)(a) and (b).

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

[28] Section 62(2)(c) requires an application to include details and results of any searches relating to non-native title interests. The amended application complies with this requirement as Schedule D provides that the applicant has not conducted any searches to determine the existence of any 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: s 62(2)(d)

[29] Section 62(2)(d) requires an application to contain a description of the native title rights claimed that does not consist merely of a statement that the native title rights and interests are all that may exist or have not been extinguished. Schedule E contains a description of the native title rights and interests claimed in the amended application that meets the requirements of the subsection.

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

[30] Section 62(2)(e) requires an application to contain a general description of the factual basis on which it is asserted that the native title rights and interests are claimed to exist. Schedule F and Attachment F contain information about the factual basis, and as such this requirement is met.

Activities: s 62(2)(f)

[31] Section 62(2)(f) requires an application to include details of activities in relation to the land or waters. This requirement is met as Schedule G lists the activities currently being undertaken by members of the native title claim group in the area covered by the amended application.

Other applications: s 62(2)(g)

[32] Section 62(2)(g) requires an application to include details of any other relevant court applications seeking a determination of native title. Schedule H states that at the time of filing the applicant is not aware of any other applications made in relation to the whole or a part of the area covered by the amended application, and as such this requirement is met.

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

[33] Sections 62(2)(ga) and (h) require an application to include details of any notices under ss 24MD(6B)(c) or 29.

[34] Schedule HA states that the applicant is not aware of any notifications under s 24MD(6B)(c) that have been given and relate to the whole or part of the area covered by the amended application. Schedule I states that the applicant is not aware of any notifications under s 29 that have been given and relate to the whole or part of the area covered by the amended application.

[35] As such, the amended application contains the details required by ss 62(2)(ga) and (h).

Any conditions: s 62(2)(i)

[36] If there are any conditions under s 251BA on the authority of the applicant to make the application and deal with matters arising in relation to it, s 62(2)(i) requires an application to contain details of those conditions. As noted in Schedule IA, information about the conditions under s 251BA on the authority of the applicant to make the application and deal with matters arising in relation to it are annexed to each of the affidavits provided under s 62 and accompanying the application. As such the application contains the details required by s 62(2)(i).

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

[37] This condition requires the Registrar to be satisfied that there are no common claimants with any previously made overlapping claim. However, this requirement only arises where there is a previous application that meets the conditions set out in sub-ss (a) to (c).⁷ These conditions are that any previous claim covers at least some of the same area and was accepted for registration under s 190A and is registered on the Register of Native Title Claims.

[38] The Explanatory Memorandum to the amendments made in 1998 which inserted s 190C(3) indicates that the purpose of this section is served if it is interpreted in the present tense, such 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’.⁸

[39] As such, I understand that the purpose of s 190C(3) is to prevent overlapping claims by members of the same native title claim group from being on the Register at the same time. This purpose is achieved by preventing a claim from being registered if it includes members in common with an overlapping claim that is on the Register when the registration test is applied. I consider that taking this approach more accurately reflects the intention of the legislature, rather than a more literal reading of s 190C(3).

[40] I understand that in assessing this requirement I may have regard to information which does not form part of the application and accompanying documents.⁹

[41] The geospatial assessment indicates that there is no previous claim overlapping any of the area covered by the Yuggera Ugarapul People’s claim. I have undertaken my own searches of the Tribunal’s mapping database which have confirmed this.

⁷ *Strickland FC* [9].

⁸ Explanatory Memorandum 29.25, emphasis added.

⁹ *Doepel* [16].

[42] As there is no previous overlapping application which meets the conditions set out in ss 190C(3)(a)–(c), the amended application does not contravene this requirement.

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

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

What is required to meet this condition?

[44] In order for the condition in s 190C(4) to be met, I must be satisfied that either the amended application has been certified in accordance with s 190C(4)(a) or has met the authorisation requirements under s 190C(4)(b).

[45] Schedule R of the amended application indicates that the application has not been certified. I must therefore consider whether the requirements of s 190C(4)(b) have been met. That subsection provides that the Registrar must be satisfied that the following requirements referred to in subsection (4AA) have been met:

- the applicant is a member of the native title claim group;
- the applicant is authorised to make the application and deal with matters arising in relation to it by all the other persons in the native title claim group; and
- any conditions under s 251BA on the authority to make the application have been satisfied.

[46] Section 190C(5) then provides that the Registrar cannot be satisfied that this condition has been met unless the application includes a statement to the effect that the requirements mentioned in subsection (4AA) have been met and briefly sets out the grounds on which the Registrar should be satisfied that these requirements have been met.

[47] I will first consider s 190C(5) before turning to the requirements of s 190C(4AA).

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

[48] Schedule R of the amended application refers to the affidavit of Timothy Wishart dated 4 August 2023 and states that the requirements of s 190C(4)(b) have been met because ‘an acceptable authorisation process has been followed to ensure that all persons in the native title claim group have authorised the making of the amended application’.

[49] The affidavit of Timothy Wishart dated 4 August 2023 was filed in the Federal Court on 4 August 2023. I note that the Registrar may have regard to affidavit material in consideration of the requirements of ss 190C(4)(b) and (5).¹⁰

[50] Read together, I am satisfied that Schedule R, the affidavits accompanying the amended application for the purpose of s 62 and the affidavit of Timothy Wishart include the statement and brief grounds as required by s 190C(5).

[51] I will consider whether the material provided meets the requirements of s 190C(4AA) below.

¹⁰ *Strickland* [57], approved on appeal in *Strickland FC* [78].

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

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

[52] My understanding is that the condition at s 190C(4)(b):

- requires the Registrar to be satisfied ‘of the fact of authorisation by all members of the native title claim group’ by way of ‘inquiry through the material available ... to see if the necessary authorisation has been given’;¹¹
- requires the Registrar to be satisfied as to the identity of the claimed native title holders, including the applicant;¹²
- is not ‘to be met by formulaic statements in or in support of applications’;¹³
- does not permit a claim group to choose between the two decision-making processes set out in s 251B, as where there is a traditionally mandated process, that process must be followed to authorise the applicant, and where there is no mandated traditional process, the process must be that which has been agreed and adopted by the native title claim group.¹⁴

What information has been provided in support of this condition?

[53] The applicant’s submissions in relation to the requirement at s 190C(4) dated 2 November 2023 refer to the s 62 affidavits and the affidavit of Timothy Wishart affirmed on 4 August 2023.¹⁵

[54] The following information is contained in the affidavit of Timothy Wishart dated 4 August 2023:

- Queensland South Native Title Services Ltd (‘QSNTS’), the legal representative of the applicant, maintains a database of persons it understands to be members of the Yuggera Ugarapul native title claim group.¹⁶
- On 4 March 2023, ‘Family Group Meetings’ were held at Inala.¹⁷ The purpose of these meetings was to discuss the potential inclusion of apical ancestors in the claim group description.¹⁸
- On 18 June 2023 an ‘Information Meeting’ was held at Ipswich.¹⁹ The purpose of this meeting was to provide information about the outcomes of anthropological research, the authorisation requirements and processes, and provide recommendations about making the amended application.²⁰

¹¹ *Doepel* [78].

¹² *Wiri People* [29].

¹³ *Strickland* [57].

¹⁴ *Harrington-Smith* [1230].

¹⁵ Applicant’s submissions dated 2 November 2023 [56], [59].

¹⁶ Affidavit of Timothy Wishart dated 4 August 2023 [7(a)].

¹⁷ *Ibid* [4(a)].

¹⁸ *Ibid*, Annexure TJW-1.

¹⁹ *Ibid* [4(b)].

²⁰ *Ibid*, Annexure TJW-2.

- The notice for the information session stated that it was open to all members of the proposed expanded native title claim group, including those descendants of ancestors proposed to be included in the claim group description.²¹
- The authorisation meetings were held on 25 June 2023 at Ipswich.²²
- Notice of the authorisation meetings was published in the Koori Mail on 17 May 2023.²³ The notice was also sent by post on 18 May 2023 to those members of the claim group on the QSNTS database.²⁴ Further information, including the proposed draft resolutions and draft terms and conditions of appointment of the applicant were then sent by post to those members of the claim group on the database on 2, 5 and 6 June 2023.²⁵ Revised versions of these were then provided to attendees at the information session on 18 June and the authorisation meetings on 25 June 2023.²⁶
- Consultant anthropologist Dr Kim de Rijke gave a presentation to the claim group members at the information session on 18 June 2023 and spoke about the reasons for the recommendation that additional apical ancestors be included in the claim group description.²⁷
- An attendance register was maintained by two QSNTS staff at the authorisation meeting, with all attendees required to provide their name and indicate their apical ancestor or ancestors from a list of those included in the proposed amended claim group description.²⁸ The attendance register indicated that 114 members of the claim group attended, comprising descendants of six of the seven apical ancestors of the former claim group and 11 of the 13 apical ancestors of the claim group for the proposed amended claim group.²⁹
- With the agreement of the attendees, the authorisation meetings were chaired by an independent facilitator, Murradoo Yanner, who had also facilitated the earlier family group and information sessions.³⁰ The agenda, draft proposed resolutions and draft terms and conditions of appointment of the applicant were handed to attendees.³¹
- Resolutions to the following effect were passed by the originally composed claim group at ‘Authorisation Meeting #2’:
 - the initially composed native title claim group considered the amendment of the claim group description (Resolution 1);

²¹ Ibid.

²² Ibid [3].

²³ Ibid [6].

²⁴ Ibid [7(a)].

²⁵ Ibid [7(b)].

²⁶ Ibid [8].

²⁷ Ibid [7(d)].

²⁸ Ibid [12]–[15].

²⁹ Ibid [16].

³⁰ Ibid [17].

³¹ Ibid [8]–[9].

- sufficient notice was given of the authorisation meeting and the attendees were sufficiently representative of the claim group to allow authoritative decisions to be made (Resolutions 2 and 3);
 - there is no traditional decision-making process, and a decision-making process was agreed and adopted (Resolutions 4 and 5); and
 - the claim group description was amended to include those apical ancestors as set out in the amended application (Resolution 6).³²
- Resolutions to the following effect were then made by members of the claim group as amended by Resolution 6 of the second authorisation meeting at ‘Authorisation Meeting #3’:
 - the newly composed native title claim group considered the authorisation of the applicant for the amended application (Resolution 1);
 - sufficient notice was given of the authorisation meeting and the attendees were sufficiently representative of the claim group to allow authoritative decisions to be made (Resolutions 2 and 3);
 - the authority of the persons making up the applicant in the proposed amended claim are subject to the terms and conditions as tabled (Resolution 4).³³
 - A ballot was then taken for the nomination of those persons proposed to comprise the applicant.³⁴
 - The ten persons making up the applicant in the amended application were then authorised to make the application and deal with matters arising in relation to it (Resolution 5).³⁵

[55] The affidavits provided by each member making up the applicant for the purpose of s 62 refer to the authorisation meetings on 25 June 2023. The affidavits also refer to and attach the conditions on authority, and state that these conditions have been satisfied by ensuring that all decisions and actions relating to the making of the application are taken after receiving legal advice and in accordance with those conditions.³⁶

Consideration

[56] As mentioned above, in order to satisfy the condition at s 190C(4)(b), the requirements of s 190C(4AA) must be met.

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

[57] The first requirement set out in s 190C(4AA)(a) is that the applicant must be a member of the native title claim group.

³² Ibid [29]–[30].

³³ Ibid [34].

³⁴ Ibid [36]–[39].

³⁵ Ibid [40].

³⁶ Section 62 affidavits [7]–[10].

[58] Each of the affidavits of the persons making up the applicant provided for the purpose of s 62 state that they are a member of the claim group and identify the relevant apical ancestor(s).³⁷ I have not been provided with any information that contradicts these statements. I have reviewed each of the affidavits and am satisfied that each person making up the applicant is a member of the native title claim group.

Is the applicant authorised by all the other members of the claim group?

[59] The second requirement set out in s 190C(4AA)(a) is that the native title claim group has authorised the applicant to make the application and deal with matters arising in relation to it by all the other persons in the claim group. In order to meet this requirement the material must identify the decision-making process that was utilised at the authorisation meeting and consider how that process was applied.³⁸

[60] Section 251B sets out two distinct decision-making processes for authorising the making of applications, being a mandated traditional process where one exists, and a process that is agreed to and adopted by the native title claim group. In this amended application, Resolutions 4 and 5 of the second authorisation meeting confirmed that there is no mandated traditional decision-making process, and that a process was agreed to and adopted. This process involved the putting of a clearly worded motion, that motion being moved and seconded and a vote being conducted by show of hands, with a majority vote carrying the motion.³⁹ This decision-making process was invoked for the third authorisation meeting at which the applicant was authorised.⁴⁰

[61] I understand that one of the principles arising from the case law with respect to s 251B is that the effect is to give the word “all” as used in s 190C(4AA) a more limited meaning, 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’.⁴¹

[62] The process of giving notice of the relevant authorisation meeting will inform whether a reasonable opportunity is provided for members of the native title claim group to participate in the decision-making process. In *Weribone*, Rares J held that the ‘notice must be sufficient to enable the persons ... to judge for themselves whether to attend the meeting and vote for or against a proposal’ and that ‘fair notice of the business to be dealt with at the meeting’ must be given.⁴² In *Burragubba*, Reeves J commented that ‘it is necessary that all members be offered a reasonable opportunity to decide whether to attend’.⁴³

[63] With respect to the conduct of an authorisation meeting, O’Loughlin J listed a number of questions in *Ward*, which do not need to be answered in any formal way, but the substance of which must be addressed,⁴⁴ as follows:

³⁷ Ibid [2].

³⁸ *Doepel* [78]; *Wiri People* [21], [29], [35].

³⁹ Affidavit of Timothy Wishart dated 4 August 2023 [30(d)–(e)].

⁴⁰ Ibid [34].

⁴¹ *Lawson v Minister for Land and Water Conservation for New South Wales* [2002] FCA 1517 [25].

⁴² *Weribone* [40]–[41].

⁴³ *Burragubba* [31].

⁴⁴ *Ward* [24]–[25].

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? 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?⁴⁵

[64] In my view the material as set out above addresses the substance of the questions referred to in *Ward*. The notice was published in a special-interest Aboriginal and Torres Strait Islander newspaper as well as provided by post to known members of the claim group. The notice clearly set out the matters to be addressed at the authorisation meetings and afforded a sufficient opportunity for members of the claim group to attend the meeting. The agenda for the meeting was provided to attendees. Registration was managed by more than one person. The meeting was chaired by an agreed independent facilitator. The proposed resolutions were clearly available to attendees. The affidavit of Timothy Wishart dated 4 August 2023 includes the names of those persons who moved and seconded the relevant resolutions, as well as the voting results.

[65] I am satisfied that the native title claim group has authorised the applicant to make the application and deal with matters arising in relation to it by all the other persons in the claim group within the meaning of s 190C(4AA)(a).

Have any conditions been satisfied?

[66] Section 190C(4AA)(b) requires that any conditions imposed under s 251BA on the authority that relate to the making of the application have been satisfied.

[67] Each of the affidavits accompanying the amended application for the purpose of s 62 attach a document comprising the s 251BA conditions, titled 'Terms and conditions of appointment of the Yuggera Ugarapul Applicant' and dated 25 June 2023. The applicant's submissions dated 2 November 2023 note that 'each member of the applicant has agreed to be bound by the Terms of Appointment'.⁴⁶ Clause 2 of this document relates to the role, responsibilities and powers of the members of the applicant for the purposes of the amended application. The responsibilities set out in clause 2.2 are that the applicant must:

- a) remain informed about and engaged in progressing the Claim at all times;
- b) provide timely and informed instructions, as necessary, to the Claim Group's solicitor in relation to the Claim;
- c) do all things necessary to implement resolutions of the Claim Group in relation to the Claim;
- d) not act inconsistently with any resolution passed by the Claim Group;
- e) not execute an agreement that has the effect of extinguishing or confirming the extinguishment of native title within the external boundary of the Claim without first obtaining a resolution of the Claim Group authorising the Applicant to do so;

⁴⁵ Ibid [24], cited with approval in *Lawson* [26].

⁴⁶ Applicant's submissions dated 2 November 2023 [60].

- f) not execute an agreement that involves high disturbance to the land (such as large mining agreement) or that are over extended land area (such as windfarm and solar farm project) within the external boundary of the Claim without first obtaining a resolution of the Claim Group authorizing [sic] the Applicant to do so;
- g) not agree to amend the Claim without a resolution of the Claim Group authorising them to do so;
- h) not agree to discontinue the Claim without first obtaining a resolution of the Claim Group authorising them to do so;
- i) attend and participate in properly convened meeting of the Applicant; and
- j) sign agreements or other documents to which the Applicant through its decision making process has resolved to agree and formalise when asked to do so.

The Applicant (and the individuals who are jointly the Applicant), has an overriding duty to the Claim Group and, while performing the role and duties of the Applicant, must prefer the interests of the Claim Group as a whole to their individual interest or those of their family or friends.

[68] The powers set out in clause 2.3 of the conditions imposed under s 251BA include for the Applicant to:

- a) make decisions and give instructions to the Claim Group's solicitor in relation to steps that are necessary or incidental to the prosecution or advancement of the Claim;
- b) with legal advice and assistance enter into negotiations with persons or groups that claim an overlapping interest in the claim area or who claim membership of the Claim Group; and
- c) with legal advice and assistance enter into negotiations with the State of Queensland and other respondent parties regarding the possible resolution of the Claim; but
- d) not make a final decision arising out of negotiations in (b) or (c) without a resolution of the Claim Group.

[69] Paragraphs 8 to 9 of each of the s 62 affidavits then state as follows:

- 8. I and the other members comprising the Applicant were authorised subject to the Terms of Appointment, being conditions under section 251BA NTA on the authority of the Applicant that relate to the making of the Application as set out in the attachment to the proposed amended Application ('**the 251BA Conditions**').
- 9. I believe that the 251BA conditions have been satisfied.
- 10. The basis upon which I know that the 251 Conditions have been satisfied is that I and other members of the Applicant abide by the 251BA Conditions by ensuring all decisions and actions relating to the making of the Application are made after receiving legal advice and in accordance with the 251BA Conditions.

[70] The material in relation to the authorisation meeting confirms that the making of the amended application by the authorised applicant was made after receiving legal advice and in accordance with the relevant resolutions of the claim group, as set out above.

[71] I am satisfied that the requirement under s 190C(4AA)(b) (that the relevant conditions imposed on the authority of the applicant under s 251BA have been satisfied) is met.

[72] It therefore follows that I am satisfied that the condition in s 190C(4) is met.

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

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

[73] Section 190B(2) provides that the Registrar must be satisfied that the information and map contained in the application (as required by ss 62(2)(a) and (b)) 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.

[74] Schedule B refers to a written description of the external boundaries of the area covered by the amended application at Attachment B and a map showing these boundaries at Attachment C. Schedule B also identifies how various interests may affect whether particular land or waters within the external boundaries are covered by the amended application.

[75] Attachment B describes the application area as a metes and bounds description, making reference to surrounding native title determinations, catchment and sub basin catchment areas, land parcels, roads, rivers and creeks, state borders and coordinate points to six decimal places. The description also notes that the area covered by the application does not include any land or waters subject to three identified determinations (Jinibara People (QUD6128/1998; QCD2012/011), Yugara/Yugarapul People and Turrbal People (QUD6196/1998 and QUD586/2011; QCD2015/001) and David Weber v Queensland (QUD405/2014; QUD405/2014)).

[76] The map titled 'Yuggera Ugarapul People' at Attachment C was prepared by QSNTS and is dated 27 March 2017. The map includes the application area depicted by a dark blue outline and stipple, the surrounding native title determinations referred to above, scalebar, northpoint, coordinate grid and notes relating to the source, currency and datum of data.

[77] The geospatial assessment concludes that the description and map are consistent and identify the amended application area with reasonable certainty. The geospatial assessment notes that the area covered by the amended application has not been amended or reduced from that in the previous application. I agree with this assessment and am satisfied that the claim meets the requirements of s 190B(2). The information provided about the external boundary and internally excluded areas are sufficient to identify with reasonable certainty the particular land or waters over which native title rights and interests are claimed.

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

[78] I am satisfied the claim meets the requirements of s 190B(3) for the reasons below.

What is needed to meet this condition?

[79] In order to meet this condition, I must be satisfied that either the persons in the native title claim group are named in the amended application (s 190B(3)(a)) or are described sufficiently clearly so that it can be ascertained whether any particular person is a member of the claim group (s 190B(3)(b)).

[80] When considering whether the requirements of this consideration have been met, I understand that:

- I am required to address only the content of the application;⁴⁷
- 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';⁴⁸
- the conditions or rules set out in a claim group description can be sufficient for the purpose of s 190B(3)(b) notwithstanding where it is necessary to 'engage in some factual inquiry when ascertaining whether any particular person is in the group as described'.⁴⁹

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

[81] Schedule A describes the native title claim group as those persons who are descendants of named apical ancestors and who identify and are recognised under the traditional laws and customs of the Yuggera Ugarapul People as Yuggera Ugarapul.

[82] As Schedule A contains a description and not the names of persons in the native title claim group, s 190B(3)(b) applies. As such, in order for this condition to be met I must be satisfied that the description is sufficiently clear so that it can be ascertained whether a particular person is a member of the claim group.

[83] I consider that the description of the native title claim group set out three criteria, descent from one of the named apical ancestors, self-identification as a Yuggera Ugarapul person and recognition by the claim group in accordance with their traditional laws and customs.

Descent

[84] The Court has previously accepted the approach of identifying members of a native title claim group by reference to the descendants of named persons.⁵⁰ I consider that requiring a person to show descent from one of the named ancestors provides a clear starting point from which to commence an inquiry.

[85] I note that the description of the claim group in Schedule A does not specify whether 'descendants' is limited to biological descent or whether it includes descent by adoption. I consider that it is open to me to read Schedule A as a whole and note that the description refers to the traditional laws and customs of the Yuggera Ugarapul People. These traditional laws and customs are then set out in Schedule F and Attachment F. In my view, it is by that 'set of rules or principles' that it can be ascertained whether or not the claim group includes descendants by adoption.⁵¹ In reaching this view I have also considered judicial guidance that it is appropriate to construe the requirements of the Act beneficially.⁵²

⁴⁷ *Doepel* [51]; *Gudjala 2007* [30].

⁴⁸ *Gudjala 2007* [33].

⁴⁹ *WA v NTR* [67].

⁵⁰ *Ibid.*

⁵¹ *Ward v Registrar* [25].

⁵² *Strickland* [55].

Self-identification and recognition

[86] The other criteria in the claim group description requires a person to ‘identify’ and be ‘recognised under the traditional laws and customs of the Yuggera Ugarapul People as Yuggera Ugarapul’.

[87] I consider that whether a person self-identifies as a member of the claim group may be ascertained through inquiries of the relevant person in question.

[88] Group acceptance has been previously held by the Court as ‘inherent in the nature of a society’.⁵³ In *Sampi FC*, the Full Court notes that:

in determining whether a group constitutes a society in the *Yorta Yorta* sense is the internal view of the members of the group – the emic view. The unity among members of the group required by *Yorta Yorta* means that they must identify as people who are bound by the one set of laws and customs or normative system.⁵⁴

[89] I note that Schedule F asserts that the claim group’s rights to the claim area are in accordance with traditional laws and customs, which the claim group continues to hold. As such, I consider that it by reference to those laws and customs that those persons would need to be recognised as Yuggera Ugarapul for the purpose of applying the description of the claim group.

Conclusion on s 190B(3)

[90] I am satisfied that the description of the claim group is sufficiently clear such that it can be ascertained whether a particular person is a member of the claim group as required by s 190B(3). This condition is met.

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

[91] For the reasons below, I am satisfied the description in Schedule E of the amended application meets the requirements of this condition.

What is needed to meet this condition?

[92] The task at s 190B(4) is to assess whether the description of the native title rights and interest claimed is sufficient to allow the rights and interests to be readily identified. I consider that in order to meet this condition the description in the amended application must be understandable and have meaning, and be without contradiction.⁵⁵

[93] The description referred to in s 190B(4), 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.

[94] For the purpose of s 190B(4), I consider that the focus is only on whether the rights and interests as claimed are ‘readily identifiable’. While undertaking this task, I consider that a description of

⁵³ *Aplin* [260]; *Yorta Yorta* [108].

⁵⁴ *Sampi FC* [45].

⁵⁵ *Doepel* [99], [123].

a native title right or interest that is broadly asserted ‘does not mean that the rights broadly described cannot readily be identified within the meaning of s 190B(4)’.⁵⁶

[95] In assessing the requirements of this provision, I understand that I am confined to the material in the application itself.⁵⁷

[96] I note that whether the claimed rights and interest can be prima facie established as native title rights and interests within the meaning of s 223 is considered in my below reasons on the condition at s 190B(6).

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

[97] The amended application sets out a description of the claimed native title rights and interests at Schedule E. The effect of paragraph 1 of Schedule E is that the ‘right to possess, occupy, use and enjoy the lands and waters’ is claimed on an exclusive basis over those areas where it is claimable on that basis. The effect of paragraph 2 is then that the rights described in subparagraphs (a) to (k) are claimed on a non-exclusive basis over those areas where a claim to exclusive possession cannot be recognised.

[98] Having read Schedule E as a whole, I am satisfied that the native title rights and interests described in the amended application are understandable and have meaning. I do not consider there to be any inherent contradictions. As such I am satisfied that the requirements of s 190B(4) are met.

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

[99] For the reasons set out below, 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 set out in ss 190B(5)(a)–(c).

What is needed to meet this condition?

[100] For the purpose of assessing the requirements of this condition, 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 claimed.⁵⁸

[101] Although the facts asserted are not required to be proven by the applicant, I consider that the factual basis must provide sufficient detail to enable a ‘genuine assessment’ of whether the assertions set out in ss 190B(5)(a) to (c) are supported by the applicant’s factual basis material.⁵⁹

[102] I also understand that the applicant’s material must provide ‘more than assertions at a high level of generality’,⁶⁰ and cannot merely restate a claim or be an alternate way of expressing a claim.⁶¹

⁵⁶ *Strickland* [60]; *Strickland FC* [85] – [87].

⁵⁷ *Doepel* [16].

⁵⁸ *Doepel* [17]; *Gudjala FC* [57], [83].

⁵⁹ *Gudjala FC* [92].

⁶⁰ *Ibid.*

⁶¹ *Gudjala 2009* [28], [29]; *Anderson* [43], [48].

[103] In my view, the condition at s 190B(5) requires the applicant’s factual basis material to provide adequate specificity of particular and relevant facts going to each of the assertions.

[104] The factual basis material is contained in Attachment F, the affidavit of Wade Scott Thompson dated 29 March 2017 and the additional material provided by the applicant on 2 November 2023 (the statement from [claim group member 1] dated 5 July 2017 and the supplementary table dated 28 June 2017). This material is also summarised in the applicant’s submissions dated 2 November 2023. The applicant’s submissions also provide additional information relating to the six apical ancestors added to the amended description of the claim group in the amended application.

[105] I will consider the sufficiency of this material by addressing each of the assertions set out in s 190B(5) in turn.

Association with the claim area: s 190B(5)(a)

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

[106] 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’;⁶²
- the predecessors of the group were associated with the area over the period since sovereignty;⁶³ and
- 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’.⁶⁴

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

[107] The applicant’s factual basis material describes the historical record from James Cook’s passage along the coast in 1770,⁶⁵ to expeditions by John Oxley in 1823 and 1824 in which the heavy population of Aboriginal people in the area was noted from the ‘chain of fires’ that was observed,⁶⁶ to what is described as ‘closer settlement’ in the 1860s and 1870s.⁶⁷

[108] The material sets out that although some of the early records from this time are limited, linguistic and ethnographic information collected in the 1860s and 1870s was later attributed to accounts that identified the languages spoken in the claim area as ‘Turrbal, Yaggapal/ Yagarbull’.⁶⁸ These accounts describe that the extent of the Yagarbull language spoken by the Aboriginal peoples occupying the Logan River area was very wide.⁶⁹ Early accounts also recorded that Aboriginal people were numerous in the area, with substantial camps and

⁶² *Gudjala 2007* [52].

⁶³ *Ibid.*

⁶⁴ *Martin* [26]; see also *Corunna* [45].

⁶⁵ Attachment F, [5].

⁶⁶ *Ibid* [15]–[16].

⁶⁷ *Ibid* [23].

⁶⁸ *Ibid* [25].

⁶⁹ *Ibid* [35].

extensive paths, and observed traditional customs such as ritual scarring of senior Aboriginal men and ceremonial fights in bora rings.⁷⁰

[109] In the late 1800s, many Aboriginal people in the claim area were 'removed from their camps in the ranges and along the river valleys to Deebing Creek mission near Ipswich', and so many families remained near or on their traditional country.⁷¹

[110] Attachment F then notes that:

Not only did people survive as an Aboriginal community, they kept alive their connection to country. For example, the Deebing Creek Cultural Committee in 1985 asserted that the site of the mission had never been willingly relinquished by the original Aboriginal owners. The site of the cemetery at Deebing Creek was sacred to the Aboriginal people seeking to protect it.⁷²

[111] The applicant's submissions set out the following, with references to the relevant paragraphs of Attachment F to the amended application:

13. At the first contact with European settlers, the entire area was heavily populated by Aboriginal people with evidence clusters of dwellings and bora rings for male initiation and ritual fights.⁷³ Along the Logan River, which is within the YUP Claim area there was evidence of 'native encampment' which included small structures of sticks and bark, with dilly bags and other goods suspended under tripods used as storage.⁷⁴
14. Settlement within the YUP Claim area started in 1860s and 1870s.⁷⁵ The Europeans on the claim area during these years identified the languages spoken in the area as Turrbal, Yaggapal/Yagarbull.⁷⁶
15. The early settlers recorded Aboriginal people holding ritual fights on constructed earth rings, hunting with neighbours or camping on their Country, doing ritual tattooing and scaring of senior Aboriginal men, and constructing battle circles in the valleys along the Logan River.⁷⁷ The tribe in Ipswich also traded spears from the rosewood/bunuro tree with other tribes, including the Turrbal people.⁷⁸
16. Around the time of effective sovereignty, the following apical ancestors had an association with the YUP Claim area, including their subsequent descendants:
 - a) Janie/Janey Billie/Billy (mother of Harry Thompson and Daisy Moreton (nee Thompson)) was likely born around 1850 and had at least two children. Janie Billie and her children were present in the Normanby Station, Harrisville, Warrill Creek, and Fassifern areas since the very earliest days of settlement.⁷⁹
 - b) Billy Turner (father of Amy Turner) was likely born around the 1840s and appears alongside his daughter on a blanket list in 1881. Both are listed as being from Helidon to

⁷⁰ Ibid [27].

⁷¹ Ibid [42].

⁷² Ibid [44].

⁷³ Ibid [4].

⁷⁴ Ibid [18].

⁷⁵ Ibid [23].

⁷⁶ Ibid [25].

⁷⁷ Ibid [27].

⁷⁸ Ibid [30].

⁷⁹ Ibid [46].

the West of Gatton, and Billy Turner has also been associated with the Lockyer Valley area.⁸⁰

- c) Jackey Harvey (father of Emily Harvey the mother of Robert Anderson Snr) was likely born circa 1826 and was documented as being from the 'Yakara Tribe'. He was identified in approximately 1867 as the 'King of Laidley' and is remembered as blazing the track across Cunningham's Gap for the first bullock drays and being carried to the Bunya Mountain gathering where he passed away.⁸¹
- d) Thomas Duggandan/Anderson (father of Robert Anderson Snr) was born in circa 1850 at Duggandan (South of Boonah). In 1902 he was described on records as a 'full blood of Dugandan Station, near Boonah'. His son, Robert Anderson, was recorded as being born in 1884 on Ipswich.⁸²
- e) Topsy of Ipswich (mother of Jimmy Edwards Jnr) had 3 children. One of them, Jimmy Edwards, was recorded as being born in 1879 and described as being a 'Banda skin of Boonah, Ipswich'.⁸³
- f) Ted Myer / Meyers / Myers (father of Elsie Richards) was born circa 1884 at Esk and was recorded as 'Jaggara fb? Brisbane District'. He had a wife named Molly Myers (nee Crow) (mother of Elsie Richards) who was recorded as a 'half caste' woman of the 'Jagara Tr'. Their daughter was noted to be a Jagara woman born in Ipswich.⁸⁴

[112] Although Attachment F does not contain information with respect the six apical ancestors added to the amended claim group description, the applicant's submissions provide the following at paragraph 16:

- g) Roger Bell (born circa 1869-72) and his brother Stanley Bell (birth circa 1875-85) were associated with areas around Bellevue, Wivenhoe and Mount Brisbane, on the northern boundary of the YUP Claim area.
- h) Maggie McCarthy was married to Jacko McCarthy. Records indicate that she could have been born as early as 1851, but more likely between 1860-1870 in the Boonah/Dugandan district within the YUP Claim Area. Maggie McCarthy is recorded as the mother of Peter Long who was born at Kalbar in 1891.
- i) Annie or *Boonjeen* was born in the 1840s and her partner Jerry Ben "Old" Jerry Ben or *Giddeel Been* was also born in the 1840s. They were associated with the area around Peaks Crossing, Boonah, and Coochin Coochin Station, within the YUP Claim Area.
- j) Bella Morgan/Collins was born at Maroon around 1860 and was recorded living at Deebing Creek and Ipswich and was referred to in documents as being a native of that district. Two of her sons were born at Normanby Station and Laidley within the YUP Claim Area in the early to mid-1980s.
- k) George Beckett was born circa 1863 around Mt Walker in the county of Stanley. G. Beckett was recorded in a c.1903 List of People at Deebing Creek. He was described as a "half-caste" male, 45 years old suggesting a birth year of c.1857, and as a "native of Mt.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

Walker” (Habermann 2003:32; Thorpe 2004:72). Mt. Walker is located about 20km southeast of Laidley near the centre of the YUP claim area.

[113] The applicant’s submissions then outline the association of current members of the claim group with the claim area with reference to the affidavit of Wade Scott Thompson dated 29 March 2017, Attachment F of the amended application and the additional material. This material indicates that current members of the claim group:

- were born in or adjacent to the claim area and currently or previously live in the claim area;⁸⁵
- visit locations within the claim area, including the Bremer River, Deebing Creek, Ripley, Bundamba Creek, Purga, Churchill, Gatton, Helidon, Glen Rock and Blackfellow Creek;⁸⁶
- were taught about cultural and spiritual practices on or in relation to these areas from their elders,⁸⁷ and pass cultural knowledge on to the younger generations;⁸⁸
- maintain knowledge of sacred sites within the claim area;⁸⁹
- conduct ceremonies on country, including Welcomes to Country and smoking ceremonies;⁹⁰
- undertake cultural heritage protection within the claim area;⁹¹
- attend funerals and emphasise the importance of Yuggera Ugarapul people being buried within the claim area;⁹²
- undertake fishing and hunting within the claim area in accordance with traditional laws and customs.⁹³

[114] One member of the claim group described visiting Chillawong Cave on Black Duck Creek, a significant area of Aboriginal rock art, and Glen Rock Park. Elders undertook a traditional practice of ‘brushing’ those who attended the cave and shared knowledge of the area such as how particular plants were used for hygiene, to help catch animals and fish and for weaving.⁹⁴

⁸⁵ Affidavit of Wade Scott Thompson dated 29 March 2017, [1], [5]; Applicant’s submissions dated 2 November 2023 [19]; Attachment F, Table 2 (a).

⁸⁶ Affidavit of Wade Scott Thompson dated 29 March 2017, [6]–[7], [13], [16]; Attachment F, Table 2 (a)–(c), (j); Supplementary Table dated 28 June 2017, pg 1–6; Statement of [claim group member 1] dated 5 July 2017.

⁸⁷ Affidavit of Wade Scott Thompson dated 29 March 2017, [7]–[8], [20]–[21]; Attachment F, Table 2(a)–(b), (i); Supplementary Table dated 28 June 2017, pg 2–6.

⁸⁸ Affidavit of Wade Scott Thompson dated 29 March 2017, [7]; Attachment F, Table 2 (a), (i); Supplementary Table dated 28 June 2017, pg 2–3, 5–6.

⁸⁹ Attachment F, [44] and Table 2 (h); Supplementary Table dated 28 June 2017, pg 4, 6.

⁹⁰ Attachment F, Table 2 (f)–(g), (k); Supplementary Table dated 28 June 2017, pg 3–4.

⁹¹ Attachment F, Table 2 (g)–(h); Supplementary Table dated 28 June 2017, pg 1–4.

⁹² Affidavit of Wade Scott Thompson dated 29 March 2017, [24]; Attachment F, Table 2 (e), (k).

⁹³ Affidavit of Wade Scott Thompson dated 29 March 2017, [8]–[13]; Attachment F, Table 2 (a), (c)–(d), (i)–(j); Supplementary Table dated 28 June 2017, pg 5; Statement of [claim group member 1] dated 5 July 2017.

⁹⁴ Statement of [claim group member 1] dated 5 July 2017.

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

[115] I understand that for the purpose of this condition the Registrar's task is to 'address the relationship which all members claim to have in common in connection with the relevant land'.⁹⁵ This task is to be undertaken by assessing whether 'the alleged facts support 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)',⁹⁶ and that there has been 'an association between the predecessors of the whole group and the area over the period since sovereignty'.⁹⁷ Consistently with these principles, I consider that the factual basis material must provide information relating to the identity of the native title claim group, their predecessors and the nature of the association with the area covered by the application.

[116] In my view, the factual basis material clearly identifies the native title claim group and their predecessors. The material establishes that the apical ancestors were recorded in the historical record as being members of the group for the relevant area, and as having an association with the area. For example, Janie Billie and her children are recorded as living in the claim area 'since the very earliest days of settlement' and Jackey Harvey is recorded as being of the 'Yakara Tribe' and was recognised as 'blazing the track across Cunningham's Gap'.⁹⁸ The material shows that the predecessors are linked with the claim area at the time of settlement in the 1860s and 1870s.⁹⁹ Although the factual basis material at Attachment F does not contain detail regarding the six apical ancestors added to the amended claim group description, the applicant's submissions dated 2 November 2023 indicate that they are associated with the claim area, including Boonah, Kalbar, Peaks Crossing, Deebing Creek and Mt Walker.

[117] The factual basis material shows that descendants of these predecessors have maintained an association with the claim area through continuing to reside in the area and visit locations of significance in order to camp, hunt, fish and pass on knowledge.¹⁰⁰ Members of the claim group described sharing knowledge of significant sites and cultural practices at a visit to Chillawong Cave and Glen Rock Park.¹⁰¹ Other members of the claim group demonstrate that a spiritual connection to Country is maintained, including through conducting smoking ceremonies for spiritual cleansing.¹⁰² Members are also actively involved and regularly meet to discuss the protection of particular sites such as at Deebing Creek, as well as maintain stories of the creation of significant features of the landscape at Boonah and Fassifern Valley.¹⁰³ In addition, the Supplementary Table provided with the additional materials on 2 November 2023 provides clear detail of the current association and native title rights and interests enjoyed by current members of the claim group with geographic particularity over areas in the west of the claim area.

⁹⁵ *Gudjala 2007* [40].

⁹⁶ *Ibid* [39].

⁹⁷ *Ibid* [52].

⁹⁸ Attachment F, [46].

⁹⁹ Attachment F, [23], [46].

¹⁰⁰ Attachment F, Table 2.

¹⁰¹ Statement of [claim group member 1] dated 5 July 2017.

¹⁰² Attachment F, Table 2 (f).

¹⁰³ Attachment F, Table 2 (g)–(h).

[118] For the purpose of s 190B(5)(a), I must also be satisfied that the factual basis material is sufficient to support the assertion of an association between the claim group and the whole of the area covered by the claim. From the above information, I consider that the factual basis material is sufficient, and provides sufficient geographical particularity, to support the assertion of an association between the whole group and the whole area since sovereignty.¹⁰⁴ As such, I am satisfied that the requirements of s 190B(5)(a) are met.

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

[119] Section 190B(5)(b) requires the factual basis material to be sufficient to support the assertion of the existence of the traditional laws and customs giving rise to the native title rights and interests claimed. 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 by, and traditional customs observed’ by the native title holders. Considering the similar wording between this provision and s 190B(5)(b), in my view it is appropriate to have regard to the case law regarding the definition of ‘native title rights and interests’ in s 223(1).

[120] Having regard to the observations of the High Court in *Yorta Yorta*, I consider that laws and customs are ‘traditional’ where:

- ‘the origins and content of the law or custom concerned are to be found in the normative rules’ of a society that existed prior to the assertion of British sovereignty,¹⁰⁵ where the society consists of a body of persons united in and by their acknowledgement and observance of a body of laws and customs;¹⁰⁶
- the normative system under which those traditional rights and interests are possessed is one which ‘has had a continuous existence and vitality since sovereignty’;¹⁰⁷
- the laws and customs have been passed from generation to generation, and must be rooted in the traditional laws and customs that existed pre-sovereignty;¹⁰⁸
- those laws and customs have been acknowledged and observed with substantial interruption since sovereignty.¹⁰⁹

[121] Dowsett J discussed some of the factors that may guide the Registrar in assessing the factual basis in *Gudjala 2009*, including that:

- it is necessary for the factual basis material to identify the relevant pre-sovereignty society of persons who acknowledged and observed the laws and customs;¹¹⁰
- where the basis for membership of the claim group is descent from named ancestors, the factual basis material must demonstrate some relationship between

¹⁰⁴ *Gudjala 2007* [52].

¹⁰⁵ *Yorta Yorta* [46].

¹⁰⁶ *Ibid* [49].

¹⁰⁷ *Ibid* [47].

¹⁰⁸ *Ibid* [46], [79].

¹⁰⁹ *Ibid* [87].

¹¹⁰ *Gudjala 2009* [37], [52].

the ancestors and the pre-sovereignty society from which the laws and customs are derived;¹¹¹ and

- the factual basis material must provide an explanation, beyond a mere assertion, of how the current laws and customs of the claim group are traditional and derived from the pre-sovereignty society.¹¹²

[122] I also note the observations of the Full Court in *Warrie*, that although ‘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’.¹¹³

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

[123] Attachment F notes that the term ‘Yuggera’ / ‘Jagera’ / ‘Yugara’ / ‘Yugarapul’ has been used to refer to the aggregation of ‘highly localised country groups some of which may have possessed their own slightly variant dialects.’¹¹⁴

[124] Attachment F also provides the following information which is relevant for my consideration of whether the factual basis is sufficient to demonstrate the existence of a pre-sovereignty society and the traditional laws and customs of the native title claim group:

47. The traditional laws and customs observed by the Yuggera Ugarapul extend across the broader south-east Queensland region and are not restricted to the members of any one of the language/dialect groupings in this wider area. This regionally shared nature of law and custom is commonly expressed by its members in terms of their shared identity as Aboriginal people of south-east Queensland with a particular type of kin-based society.
48. All the members of the regional society hold the body of laws and customs from which rights and interests in land ensue but not all members of the society hold equal and identical rights and interests. One of the defining features of the regional system of law and custom is that localised groups speak for and manage particular areas of country.
49. The regional society shared a common set of practices and institutions including their:
 - (a) Descent criteria for membership of localised land holding groups
 - (b) Participation in extensive kinship and marriage networks with their ensuing rights and obligations
 - (c) Shared set of experiences with the ancestral spirit world which plays an important role in the maintenance of a normative social order.
 - (d) Belief in place-centred spirits which underpins increase site rituals and ownership through the *djurebil* (increase rites and sites) as a property right.
 - (e) Sharing of some major creation stories and the permanent identification of land and language as having been instituted in the originary epoch through the travels of Ancestral Beings.

¹¹¹ Ibid [40].

¹¹² Ibid [29], [54].

¹¹³ *Warrie* [107]; see also *Alyawarr* [78].

¹¹⁴ Attachment F [2].

- (f) Shared respect for ceremonial traditions particularly Bora ceremonies and maintenance of associated sites.
- (g) Institution of the Bora council of senior men as a means of high-level decision-making.
- (h) Structured sharing of natural resources
- (i) Shared mortuary practices for e.g. mortuary ceremonies appeared to entail activation of networks created through shared matritotems.
- (j) Shared mode of transmission of traditional beliefs, laws and customs to the younger generation
- (k) Sibling order ranking structured authority and responsibility for country
- (l) Regional focus on a major cosmological Being, a set of beliefs about High or Sky Gods namely Biame/Biral/Benewa
- (m) Regional stories associated with the Rainbow Serpent complex which carries normative injunctions for human social behaviour, particularly in relation to territorial protocols
- (n) Distinctive systems of totemic affiliation
- (o) Local group estates were of a patriclan type with more or less clearly defined boundaries.
- (p) The distribution of rights and interests to land and its associated resources consisted of a multi-layered patterning of regional, language-group, local estate group and individual rights and interests.
- (q) Coastal-inland divide in regard to movements for bunya feasts with most of the Yugambah-Bandjalang groups, along with the peoples from Stradbroke, Moreton and Bribie Islands met with the Yagara, Kabi, Waka and Gurang peoples at the Blackall Mountains in Kabi country.

50. The Yuggera Ugarapul language label identifies a set of people who share a common body of traditional laws and customs with the Waka-Kabi groups to their north. These laws and customs include their:

- (a) use of a traditional four-section system which operated as a shorthand means of regulating marriage choices and classifying kinship relationships.
- (b) matri-totemic clans being recruited through direct matrification.
- (c) having local country groups recruited on principles of patrification. These local group estates were generally designated with a cognate version of the –bara suffix.

[125] The information at Table 2 to Attachment F then provides further examples of the society described as at sovereignty and how the current native title rights and interests have been derived from that society, summarised as follows:

- The area was heavily populated by Aboriginal people at the time of first contact with Europeans, and the Aboriginal people used nets, canoes, spears and fires to hunt and gather resources. Current members of the claim group hunt and collect resources and recall their predecessors living off the land and eating turtles, kangaroo, wallaby and witchetty grubs.¹¹⁵

¹¹⁵ Attachment F, Table 2, (a), (c)–(d), (j).

- The Aboriginal people in the claim area at the time of first contact built bora rings and conducted ritual fights. Bora rings were oriented according to the position of dark circles ('mimburi') in the sky relating to where the spirits of the dead performed ceremonies.¹¹⁶ The term 'mimburi' also relates to continuous action, such as waterfalls and springs and the homes and breeding places of birds and animals, which are to be protected.¹¹⁷
- 'Bora' also refers to a regional authority or tribal council that would have responsibility for maintaining the regional society's laws and customs.¹¹⁸ These bora councils could deal with discipline of children by conducting a smoking ceremony to drive out an evil spirit.¹¹⁹ Current members of the claim group continue to conduct smoking ceremonies as a form of spiritual cleansing to rid a place or person of bad spirits.¹²⁰
- Current members of the claim group maintain and pass on stories relating to the ancestral presence at and creation of particular places, and places that are associated with men's or women's business such as White Rock / Ugarapul mountain.¹²¹
- Current members of the claim group were taught about Djanjerris (little hairy men) that could follow people around on country and be passed on to other people or family members.¹²² The laws relating to totems, such as that you cannot eat your own totem, were also passed on to current claim group members.¹²³
- Burials rites and mortuary practices were an important part of the society at sovereignty, and current claim group members maintain the importance of being buried on country in accordance with the traditional customs.¹²⁴

[126] In addition, I note that the information set out above with respect to my consideration of s 190B(5)(a) is also relevant to the consideration of this assertion.

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

[127] I understand the factual basis material to assert that the Yuggera Ugarapul people are part of a wider regional society that features a number of language or dialect groups across south-east Queensland and a shared identity through a particular kin-based system. This society shares a common body of laws and customs and local land-owning groups speak for and look after particular parts of country. The members of the society hold a shared relationship with the ancestral spirit world and belief in the major cosmological being (Biame / Biral / Benewa).

¹¹⁶ Ibid (a), (f).

¹¹⁷ Ibid (h).

¹¹⁸ Ibid (e), (g).

¹¹⁹ Ibid (j).

¹²⁰ Ibid (f).

¹²¹ Ibid (g)–(h).

¹²² Ibid (i).

¹²³ Ibid (j).

¹²⁴ Ibid (k).

[128] I consider that the factual basis material demonstrates that the traditional laws and customs of the claim group are derived from this society situated in the area covered by the application. In my view, these rights and interests asserted to be held by the claim group are based on the regionally acknowledged and observed laws and customs of the wider society to which the more localised land-owning groups belong. In reaching this view I have had regard to the comments of Lindgren J in *Harrington Smith* that it 'is conceivable that the traditional laws and customs under which the rights and interests claimed are held might, in whole or in part, be also traditional laws and customs of a wider population, without that wider population being a part of the claim group'.¹²⁵

[129] In my view, the factual basis material demonstrates that the ancestors occupied the area, having been born prior to or shortly after the period described in the material as 'closer settlement' in the 1860s and 1870s.¹²⁶ The material draws clear links between these ancestors and members of the current claim group, with many examples of current claim group members indicating the ancestors from which they are descended. In my view the material is sufficient to support an inference that the body of traditional laws acknowledged and customs observed by these ancestors at 'closer settlement' reflects the pre-sovereignty position at 1788.¹²⁷

[130] I am also of the view that the factual basis material indicates that the laws and customs currently held by contemporary members of the claim group accords with those of the pre-sovereignty society. Examples of this include the maintenance of place-specific creation stories and respect for spiritual restrictions such as at White Rock / Ugarapul mountain. The material also shows ceremonies such as smoking to cleanse bad spirits, burial and mortuary practices and respect for totems are maintained and continue to be passed on to the younger generations. Current claim group members also continue to visit places of significance and to hunt, fish and gather resources within the claim area. In my view, the material demonstrates the deep respect that members of the claim group have not only for Country and particular places, but also spiritual beliefs and practices that have their roots in the pre-sovereignty society.

[131] I consider that the factual basis material is sufficient to show that the laws acknowledged and the customs observed by the native title claim group are traditional in the sense required by the case law set out above, including *Yorta Yorta*.

[132] As such, I am satisfied that the factual basis is sufficient to support the assertion for the purpose of s 190B(5)(b).

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

[133] Section 190B(5)(c) requires the factual basis material to be sufficient to support the assertion that the native title claim group continues to hold native title in accordance with the traditional laws and customs. These traditional laws and customs are those identified for the purpose of s 190B(5)(b).¹²⁸ As such, in my view, s 190B(5)(c) requires the factual basis material to

¹²⁵ *Harrington-Smith (No 5)* [53].

¹²⁶ Attachment F [23].

¹²⁷ *Gudjala 2009* [40].

¹²⁸ *Martin* [29].

demonstrate that the claim group has continued to hold native title through the continued observance of these traditional laws and customs.

[134] I also understand that continuity may be inferred where there is '[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'.¹²⁹

Is the factual basis material sufficient for the assertion at s 190B(5)(c)?

[135] In my view there is sufficient information in the factual basis material relating to the transmission and continuity of the native title rights and interests held by the native title claim group in accordance with the relevant traditional laws and customs.

[136] The factual basis material demonstrates that current members of the claim group have been taught about these laws and customs through their kin relationships. One claim group member describes being taught about the significance of sites by his aunties and uncles, who in turn were taught by their aunties and uncles.¹³⁰ Another claim group member describes how she teaches her children about the importance of never eating their totem when they are out camping, hunting and fishing.¹³¹ The factual basis material also demonstrates that important spiritual restrictions relating to certain places have 'been that way forever'.¹³²

[137] In assessing this requirement, I have also had regard to the information contained in the factual basis material relevant to my above consideration in relation to ss 190B(5)(a) and (b). In my view, the factual material is sufficient to identify the pre-sovereignty society and that the current members of the claim group continue to acknowledge and observe these traditional laws and customs.

[138] As such, I am satisfied that the factual basis material provided is sufficient to support the assertion at s 190B(5)(c).

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

[139] For the reasons 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 required to meet this condition?

[140] Section 190B(6) requires that the Registrar must consider that at least some of the claimed native title rights and interests can be established on the face of application and supporting material. A claim may be accepted on a prima facie basis if it is arguable on its face and notwithstanding any disputed issues of fact or law that may be involved.¹³³ The Registrar's task

¹²⁹ *Gudjala 2009* [33].

¹³⁰ Supplementary Table dated 28 June 2017, pg 1.

¹³¹ Attachment F, Table 2 (b).

¹³² *Ibid* (g).

¹³³ *North Ganalanja Aboriginal Corporation v Queensland* [1996] HCA 2; (1996) 185 CLR 595 ('*Waanyi*') [35], cited with approval in *Doepel* [135].

involves some weighing of the factual basis and imposes a ‘more onerous test to be applied to the individual rights and interests claimed’ than at s 190B(5).¹³⁴

[141] I understand that I may consider material outside of the application itself in my assessment of s 190B(6).¹³⁵

[142] I note the comments of Kirby J in *Ward HC*, that ‘for a native title right to be recognised under the [Act], the critical threshold question is whether it is a right or interest “in relation to” land or waters’.¹³⁶ The term “in relation to” is here to be given a ‘wide import’.¹³⁷

[143] I also understand that s 190B(6) is to be assessed having regard to the definition of ‘native title rights and interests’ in s 223(1).¹³⁸ As such, I must consider whether, on a prima facie basis, the claimed native title rights and interests:

- 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.

[144] A claimed native title right and 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.¹³⁹

[145] My below reasons in relation to this condition should also be read in conjunction with, and in addition to, my above reasons and the relevant material outlined for the purpose of s 190B(5).

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

[146] At the outset, I note that having considered each of the claimed native title rights and interests at Schedule E of the amended application, in my view they are all clearly “in relation to” lands or waters.

[147] I also note that I consider that paragraph 2 of Schedule B of the amended application sufficiently addresses extinguishment for the purpose of my assessment of s 190B(6).

The right to possess, occupy, use and enjoy the land and waters to the exclusion of all others

[148] Paragraph 1 of Schedule E of the amended application claims the following:

Where claimable, including where sections 47, 47A or 47B of the *Native Title Act 1993* (Cth) applies to an area, the right to possess, occupy, use and enjoy the land and waters covered by the application to the exclusion of all others.

[149] There is considerable judicial guidance with respect to claims for exclusive native title rights and interests. In *Ward HC*, the High Court commented that it ‘is the rights under traditional law and

¹³⁴ *Doepel* [127], [132].

¹³⁵ *Ibid* [16].

¹³⁶ *Ward HC* [577].

¹³⁷ *Alyawarr* [93].

¹³⁸ *Gudjala 2007* [85]–[87].

¹³⁹ *Yorta Yorta* [86]; *Gudjala 2007* [86].

custom to be asked permission and to “speak for country” that are expressed in common law terms as a right to possess, occupy, use and enjoy land to the exclusion of all others’.¹⁴⁰

[150] In *Griffiths*, the Full Court held:

It is not necessary to a finding of exclusivity in possession, use and occupation, that the native title claim group should assert a right to bar entry to their country on the basis that it is “their country”. If 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.¹⁴¹

[151] In *Sampi*, French J noted that:

The right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation.¹⁴²

[152] There are some examples of restrictions to particular sites or ceremonies, such as women and strangers being excluded from the ceremonial fights conducted on bora rings,¹⁴³ and White Rock / Ugarapul Mountain being a women’s place where men are not permitted,¹⁴⁴ or avoiding swimming in a particular place as it is where the *mundagatta / goondal* (bunyip) lives.¹⁴⁵ Also, the early account of the Aboriginal groups in the broader Brisbane area given by Petrie indicates that ‘[e]ach tribe had its own boundary, and none went to hunt, etc., on another’s property without an invitation, unless they knew they would be welcome, and sent special messengers to announce their arrival’.¹⁴⁶ There is also some suggestion that rights to hunt were limited to localised groups.¹⁴⁷

[153] However in my view, this material is insufficient to establish the claimed right to possess, occupy, use and enjoy the land and waters to the exclusion of all others on a prima facie basis. I consider that the material set out above is limited and does not indicate that there exist traditional laws and customs that provide the right to control access or spiritual sanctions on unauthorised entry that is capable of establishing a right to exclusive possession.

¹⁴⁰ *Ward HC* [88].

¹⁴¹ *Griffiths* [127].

¹⁴² *Sampi* [1072].

¹⁴³ Attachment F [27].

¹⁴⁴ Attachment F, Table 2 (g); Affidavit of Wade Scott Thompson dated 29 March 2017, [20].

¹⁴⁵ Affidavit of Wade Scott Thompson dated 29 March 2017, [7].

¹⁴⁶ Attachment F [29].

¹⁴⁷ Attachment F, Table 2 (e).

Non-exclusive rights and interests

[154] The non-exclusive rights and interests claimed at paragraph 2 of Schedule E are as follows:

- a. access, be present on, move about on and travel over the area;
- b. camp on the area, and for that purpose erect temporary shelters on the area;
- c. hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
- d. take, use and share Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
- e. take and use the Water of the area for personal, domestic and non-commercial communal purposes;
- f. participate in cultural activities on the area;
- g. hold meetings on the area;
- h. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs to protect those places and areas from physical harm;
- i. teach on the area the physical and spiritual attributes of the area;
- j. light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;
- k. be buried and bury native title holders within the area.

[155] In my view the amended application and supporting material contain sufficient detail to establish each of these claimed native title rights and interests on a prima facie basis. Examples of the relevant facts for each of these claimed rights and interests are set out in detail in Table 2 to Attachment F. The Supplementary Table dated 28 June 2017 provides further examples. This material demonstrates that the contemporary members of the claim group and their predecessors live within the claim group and visit particular areas, including to camp, hunt, fish, light fires and gather the natural resources. Claim group members swim and fish in the waters and use water for ceremonial purposes. Cultural activities such as smoking ceremonies are undertaken and meetings are held on the claim area. Particular sites are maintained, and knowledge of sites and the traditional laws and customs are passed on to the younger generations on the claim area. The material shows the importance of being buried on country to claim group members as well as the respect for the burial sites of ancestors and predecessors.

[156] I am satisfied that the factual basis material establishes on a prima facie basis that the claim group possesses the claimed non-exclusive rights and interests under their traditional laws and customs.

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

[157] I am satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with a part of the claim area.

What is needed to meet this condition?

[158] Section 190B(7) requires the Registrar to 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 currently to have a traditional physical connection with any part of the land or waters but for certain things done.

[159] I note the observation of Dowsett J in *Gudjala 2009* that the ‘traditional physical connection’ for the purpose of this condition ‘must be in exercise of a right or interest in land or waters held pursuant to traditional laws and customs’.¹⁴⁸ In interpreting connection in the traditional sense as required by s 223, the joint judgment in *Yorta Yorta* stated 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’.¹⁴⁹

[160] In *Doepel*, Mansfield J considered that the task imposed by s 190B(7) requires the Registrar to be satisfied of this condition based on a particular fact or facts.¹⁵⁰ I consider that there must be factual material to demonstrate that at least one member of the native title claim group has or had the necessary traditional physical association with the area covered by the application.

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

[161] I note my above reasons with respect to s 190B(5) that the factual basis material supports the assertion that the native title claim group acknowledges and observes the traditional laws and customs of the pre-sovereignty society.

[162] In my view, the factual basis material demonstrates that members of the native title claim group have a traditional physical connection with the claim area, through living on the claim area, visiting, camping, hunting, gathering resources and performing ceremonies.¹⁵¹

[163] Having regard to the information in the amended application and supporting material, I am satisfied that at least one member of the native title claim group has a traditional physical connection with the land or waters in the area covered by the application within the meaning of s 190B(7). As such I consider that this condition is met.

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

[164] As set out in my reasons below, I am satisfied that the amended application does not contravene s 61A and so the condition in s 190B(8) is met.

What is required to meet the condition in s 190B(8)?

[165] Section 190B(8) requires that the application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that the application should not have been made due to the operation of s 61A. Section 61A provides that an application must not be made over an area where there is an approved determination of native title, or where previous exclusive or non-exclusive possession acts have been made.

¹⁴⁸ *Gudjala 2009* [84].

¹⁴⁹ *Yorta Yorta* [86].

¹⁵⁰ *Doepel* [18].

¹⁵¹ Attachment F, Table 2.

Does the application meet the requirements of s 190B(8)?

Section 61A(1)

[166] Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title.

[167] The geospatial assessment shows that there is no approved determination of native title over the area covered by the amended application. I have also confirmed this through my own searches of the Tribunal's mapping database. I am satisfied that the amended application does not contravene s 61A(1).

Section 61A(2)

[168] Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply.

[169] Schedule B of the amended application confirms that any area where native title has been wholly extinguished due to a previous exclusive possession act or otherwise is excluded. I am satisfied that the amended application does not contravene s 61A(2).

Section 61A(3)

[170] Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s 61A(4) apply.

[171] Having regard to the description of the native title rights claimed in Schedule E of the amended application and the application and accompanying documents, in my view exclusive possession is not claimed over areas in contravention of s 61A(3).

Conclusion on the condition at s 190B(8)

[172] In my view the amended application has not been made contrary to s 61A, and as such I am satisfied that the condition in s 190B(8) is met

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

[173] Section 190B(9) provides three sub-conditions that restrict the extent of the native title rights and interests that may be claimed. For the reasons below I consider that the amended application and accompanying documents do not contravene any of the provisions of ss 190B(9)(a)–(c) and therefore the application meets the condition of s 190B(9).

Section 190B(9)(a)

[174] The sub-condition at s 190B(9)(a) requires that an application does not include a claim of ownership of minerals, petroleum or gas wholly owned by the Crown.

[175] Schedule Q of the amended application confirms that the native title claim group does not claim ownership of minerals, petroleum or gas wholly owned by the Crown. As such this sub-condition is met.

Section 190B(9)(b)

[176] The sub-condition at s 190B(9)(a) requires that an application does not claim exclusive possession over all or part of waters in an offshore place.

[177] Schedule P of the amended application confirms that the native title claim group does not include a claim for exclusive possession over all or part of waters in an offshore place. As such this sub-condition is met.

Section 190B(9)(c)

[178] The sub-condition at s 190B(9)(c) requires that the native title rights claimed must not have otherwise been extinguished.

[179] Paragraph 2(b) of Schedule B confirms that native title is not claimed over any area where native title rights and interests have been extinguished. As such this sub-condition is met.

Conclusion on the condition at s 190B(9)

[180] In my view the amended application and accompanying documents do not disclose that the sub-conditions of s 190B(9) have been contravened. I am satisfied that this requirement is met.

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Yuggera Ugarapul People
NNTT No.	QC2017/005
Federal Court of Australia No.	QUD213/2017

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:

7 April 2017

Date application entered on Register:

4 August 2017

Applicant:

Kevin Fernando, Samantha Lee Carr, David John Conlon, Wade Scott Thompson, Tamala Coolwell, Shannon (Ben) Thompson, Tanya-Dee Bonner, Kruze Summers, Craig Egert, Teresa Watterson

Applicant's address for service:

Mr Michael Allbrook
Queensland South Native Title Services
Level 4, 293 Queen Street
(PO Box 10832, Brisbane, QLD, 4001)
Brisbane, QLD, 4000

Conditions on Applicant's authority

Terms and Conditions of appointment of the Yuggera Ugarapul Applicant as of 25 June 2023:

2.2 Responsibilities

The Applicant must:

- a) remain informed about and engaged in processing the Claim at all times;
- b) provide timely and informed instructions, as necessary, to the Claim Group's solicitor in relation to the Claim;
- c) do all things necessary to implement resolutions of the Claim Group in relation to the Claim;

- d) not act inconsistently with any resolution passed by the Claim Group;
- e) not execute an agreement that has the effect of extinguishing or confirming the extinguishment of native title with the external boundary of the Claim without first obtaining a resolution of the Claim Group authorising the Applicant to do so;
- f) not execute an agreement that involves high disturbance to the land (such as large mining agreement) or that are over extended land area (such as windfarm and solar farm project) within the external boundary of the Claim without first obtaining a resolution of the Claim Group authorizing the Applicant to do so;
- g) not agree to amend the Claim without a resolution of the Claim Group authorising them to do so;
- h) not agree to discontinue the Claim without first obtaining a resolution of the Claim Group authorizing them to do so;
- i) attend and participate in properly convened meeting of the Applicant; and
- j) sign agreements or other documents to which the Applicant through its decision making process has resolved to agree and formalise when asked to do so.

The Applicant (and the individuals who are jointly the Applicant) has an overriding duty to the Claim Group and, while performing the role and duties of the Applicant, must prefer the interests of the Claim Group as a whole to their individual interests and those of their family or friends.

2.3 Powers

Subject to these terms and conditions the Applicant may:

- a) make decisions and give instructions to the Claim Group’s solicitor in relation to steps that are necessary or incidental to the prosecution or advancement of the Claim;
- b) with legal advice and assistance enter into negotiations with persons or groups that claim an overlapping interest in the claim area or who claim membership of the Claim Group; and
- c) with legal advice and assistance enter into negotiations with the State of Queensland and other respondent parties regarding the possible resolution of the Claim; but
- d) not make a final decision arising out of negotiations in (b) or (c) without a resolution of the Claim Group.

Area covered by application:

1. The boundaries of the area covered by the application area are shown on the map attached and marked **“Attachment C”** and a written description of the boundaries of the area covered by the application is attached and marked **“Attachment B”**.
2. Subject to paragraphs 4 and 5, the areas of land and waters within the boundaries referred to in 1 above that are not covered by the application are:
 - a. any area that is or has been subject to any of the following:
 - i. scheduled interest;
 - ii. a freehold estate;

- iii. a commercial lease that is neither an agricultural lease nor a pastoral lease;
 - iv. an exclusive agricultural lease or an exclusive pastoral lease;
 - v. a residential lease;
 - vi. a community purpose lease;
 - vii. a lease dissected from a mining lease and referred to in s.23B(2)(c)(vii) of the *Native Title Act 1993* (Cth);
 - viii. any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters;
- which was validly granted or vested on or before 23 December 1996.
- b. any other area in relation to which native title rights and interests have otherwise been wholly extinguished.
3. Subject to paragraphs 4 and 5, the land and waters the subject of the application do not include any land or waters covered by the valid construction or establishment of any public work (as defined by the *Native Title Act 1993* (Cth)), where the construction or establishment of the public work commenced on or before 23 December 1996.
4. Subject to paragraph 6, where the act specified in paragraphs 2 or 3 falls within the provision of:
- a. s.23B(9) – Exclusion of acts benefiting Aboriginal Peoples or Torres Strait Islanders;
 - b. s.23B(9A) – Establishment of a national park or state park;
 - c. s.23B(9B) – Acts where legislation provides for non-extinguishment; and
 - d. s.23B(10) – Exclusion by regulation
- the land and waters covered by the act are not excluded from the application.
5. Where an act specified in paragraphs 2 or 3 affects or affected land and waters referred to in:
- a. s.47 – Pastoral leases held by or on behalf or [sic], or as trustee for any of the native title claim group;
 - b. s.47A – Reserves etc. covered by the claimant application; and
 - c. s.47B – Vacant Crown land covered by the claimant application
- the land or waters covered by the act are not excluded from the application.
6. Where there is any discrepancy between the map provided at “**Attachment C**” and the written description contained here and in “**Attachment B**”, the latter shall prevail.

Persons claiming to hold native title:

Those persons who are descendants of the following Apical Ancestors and who identify and are recognised under the traditional laws and customs of the Yuggera Ugarapul People as Yuggera Ugarapul:

- Janie/Janey Billie/Billy (mother of Harry Thompson and Daisy Moreton (nee Thompson));
- Billy Turner (father of Amy Turner);
- Jackey Harvey (father of Emily Harvey the mother of Robert Anderson Snr);
- Thomas Duggandan/Anderson (the father of Robert Anderson Snr);

- Topsy of Ipswich (mother of Jimmy Edwards Jnr);
- Ted Myer/Meyers/Myers (father of Elsie Richards);
- Molly Myers (nee Crow) (mother of Elsie Richards);
- Roger Bell;
- Stanley Bell;
- Maggie McCarthy;
- Annie and Jerry Ben;
- Bella Morgan / Collins;
- George Beckett.

Registered native title rights and interests:

1. [Not registered].
2. Over areas where a claim to exclusive possession cannot be recognised, the following non-exclusive native title rights and interests are claimed:
 - a. access, be present on, move about on and travel over the area;
 - b. camp on the area, and for that purpose erect temporary shelters on the area;
 - c. hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - d. take, use and share Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - e. take and use the Water of the area for personal, domestic and non-commercial communal purposes;
 - f. participate in cultural activities on the area;
 - g. hold meetings on the area;
 - h. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and to protect those places and areas from physical harm;
 - i. teach on the area the physical and spiritual attributes of the area;
 - j. light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;
 - k. be buried and bury native title holders within the area.

Michael Raine

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Act under an instrument of delegation dated 19 May 2021 and made pursuant to s 99 of the Act.

8 December 2023