

## Reason

Application Name: Yalanji Peoples  
Application (NNTT) No: QC94/13  
Application (Fed Crt) No:  
Region: QLD  
Region: Queensland  
Date Application Made: 07/12/94  
Date Registration Test: 13/09/99  
Decision made:  
Decision: Accepted

### Brief history of the application

The original application by the applicants was lodged with the Tribunal on 7 December 1994. A notice of motion to amend the application was filed with the Federal Court on 27 August 1999 and leave to amend was granted by the Federal Court on 6 September 1999.

### Information considered in making the decision

In determining this application I have considered and reviewed all of the information and documents from the following files, databases and other sources:

- .. The Working/Personnel Files and Registration Test File for QC94/13.
- .. Other tenure information acquired by the Tribunal in relation to the area covered by this application, including historical and current tenure searched and reports conducted and prepared by the Queensland State Government, Department of Lands, Native Title Unit;
- .. Working files and related materials for native title applications that overlap the area of this application (if applicable);
- .. The National Native Title Tribunal Geospatial Database;
- .. The Register of Native Title Claims;
- .. The Native Title Register;
- .. Determination of Representative ATSI Bodies: their gazetted boundaries;

**Note:** Information and materials provided in the context of mediation have not been considered in making this decision due to the without prejudice nature of those conferences and the public interest in maintaining the inherently confidential nature of such conferences.

S190B(2) Identification of area subject to native title Met

190B(2)

#### *Description of the areas claimed:*

*The Registrar must be satisfied that the information and map contained in the application as required by paragraph 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.*

## Reasons for the Decision

## **External Boundaries and Map**

### ***External Boundaries***

The external boundaries of the claim area are described at Attachment B of the amended application.

The claim area consists of 66 discrete parcels of land, located in the state of Queensland on the eastern side of Cape York Peninsular south of Cooktown (for the general description of the location, refer to A6 of the original application).

Each parcel of land making up the claim area is described in Attachment B of the amended application and then shown on a map attached to the amended application at Attachment C.

All of the parcel descriptions are written on the map, next to the claimed parcel, with the exception of 2 parcels, namely, "6/USL1322" and "20/SR505". The reason for the omission of these descriptors is set out in two letters from CYLC dated 13 September 1999.

Generally, there have been changes to the description of parcels claimed in the application. As that change may have resulted in changes to the area covered by the lot and parcel description, the applicants have left the original description in the list of areas claimed, as well as inserting the new descriptions, to ensure that the original areas remain within the claim. For example "6/USL 1322" is shown on the map as "206/FTY 1322" which is the old description for 6/USL 1322; and "20/SR505" is now described as "2/USL 8378"

I have reviewed the State's tenure history information in relation to these parcels of land (see areas 12 and 43). This confirms the accuracy of the information provided by CYLC.

I note that in attachment B many of the parcels are described as a numbered lot on "USL" followed by another number (eg. Lot 1 on USL8838). The corresponding descriptions on the map refer to a numbered lot on "VCL" followed by another number. I interpret USL to mean unallocated state land, and VCL to mean vacant crown land. I accept the explanation contained in the letter from CYLC dated 25 August 1999, that USL is the correct terminology in accordance with current land legislation. I accept that references in the map to VCL are in fact to the USL references in the application.

From a review of the historical and tenure information provided by the State on this application, it is apparent that the written description allocated to each parcel of land at Attachment B is derived from the State's public record system upon which members of the community might reasonably rely to deal with land use issues. I note that the State's information also refers to USL, when describing parcels of land. In general, as each lot/plan description is unique for all time, the reference to a lot and plan description is unambiguous and provides the means by which it is possible to locate the boundary of the area on the earth's surface.

### ***Map***

On the map attached to the amended application, a fine black line defines the external boundary for each parcel of land included in the claim area. Additionally, each claimed parcel is differentially shaded to show its entirety and then identified by reference to the lot/plan descriptions referred to in Attachment B of the amended application. The map is drawn to a scale but does not contain a system of co-ordinates to further assist me in locating the external boundaries of each claimed parcel. However, I find that the usage of the official lot and plan description for each parcel sufficiently identifies the external boundaries of the claimed parcels of land, without the need for co-ordinate points.

I am satisfied that the technical description given to the claim area, coupled with the location of the claim area on the map at attachment C of the amended application enable the external boundaries of the claim area to be identified with reasonable certainty.

I make this finding bearing in mind the:

- use by the applicants of the State's unique identifying references for various parcels claimed in the application (which information is restated on the map). These references may be relied upon by members of the public as accurately locating and describing the land area when dealing with it;
- the extremely difficult and expensive task of otherwise mapping and defining the external boundaries of the claim area with greater accuracy.

It follows that I am satisfied that the physical description of the external boundaries meets the requirements of s62 (2)(a)(i).

### **Internal Boundaries**

The internal boundaries are described at schedule B and at Attachment B of the amended application. The effect of the description of the internal boundaries is the exclusion from the claim area of a number of specific parcels of land and of the classes of tenure defined in s23B and s23C of the Act.

S190B(3)

Identification of native title claim groups

Met

**190B(3)**

*Identification of the native title claim group:*

*The Registrar must be satisfied that:*

- (a) The persons in the native title claim group are named in the application; or*
- (b) The persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.*

Reasons for the Decision

An exhaustive list of names of the persons in the native title claim group has not been provided. Consequently, the requirements of s.190B3(a) of the Act are not met.

It is therefore necessary for the application to comply with s.190B3(b), which states that the application must otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those person

To meet this condition of the registration test the description of the group must be sufficiently clear so that it can be ascertained whether a particular person is a member of the native title claim group.

A description of the native title claim group is found at schedule A of the amended application, elaborated upon at Attachment A to the application.

It is stated in schedule A that the named identity of the native title claim group, the name by which the group identifies itself and the name which it is identified in the Aboriginal community of the Southeast Cape York region is the Eastern Kuku-Yalanji, often referred to as “Yal side”.

It is further stated at schedule A of the application that current membership of the group is *“primarily identified by the principle of cognatic descent (i.e. descent traced through either one’s father or one’s mother) with an emphasis on patrilineal descent. Descent is traced from persons and groups recognised in the regional Aboriginal community associated with Eastern Kuku-Yalanji identity, and with the claim area soon after European occupation. By these descent principles, the current membership of the Eastern Kuku-Yalanji people consists of the descent groups listed below:*

(a) *the descendants of [a named ancestor or ancestors], [followed then, in some cases by . . .] including the [a named family or families] family/families” .*

There are 40 descent groups described in this fashion.

It is finally stated in schedule A that membership of the group *“includes recruitment by adoption into the group, in accordance with traditional laws and customs. See Attachment A.”*

Thus a person may be reckoned as a member of the native title claim group as:

- descended by cognatic descent (ie. through one’s father or one’s mother) from one of the ancestors named in schedule A, and where stated, as a member of the named families listed as descended from a particular ancestor or ancestors; or
- as a person recruited by adoption into the group, in accordance with traditional laws and customs.

#### Members Descended Cognatically from Named Ancestors

I am satisfied that the descendants of the named persons could be identified with minimal inquiry and as such, be ascertained as part of the native title claim group. By referencing the identification of members of the native title claim group as descendants of named ancestors, it is possible to objectively verify the identity of members of the native title claim group, such that it can be clearly ascertained whether any particular person is in the group.

#### Members Recruited by Adoption

At Attachment A, the applicants set out what is meant by “recruitment by adoption into the group, in accordance with traditional laws and customs”. It is stated that “the incidence of adoption is low, and it is not an open-ended or casual process, but arises by similar means and accumulates much the same meaning and status as it does in the general Australian community.”

Following from this are the five features by which the process of adoption can be tested, based upon practice under the laws and customs of the claimants and wider Southeast Cape York region:

- *Has the person been incorporated as a child into one of the Eastern Kuku-Yalanji descent groups by an adult member of the group who raised the child as one of their own? (This is commonly referred to as “growing up” that person).*
- *During the time the child was growing up, did they identify as a member of that descent group, and were they commonly identified as such by the other members.*
- *Were they given the same rights within the descent group as other members? If so, this would be expected to flow on to rights in land as well, since kin relations and relations in connection to country share a common structure – e.g. when one refers to “my mother(’s) land” the relationship to that land is seen as of a similar order to, and derived from, one’s relationship to one’s mother.*
- *As the child matured, did they become recognized as a member of the adopting adult’s descent group and as Eastern Kuku-Yalanji land as a significant number of other descent groups (especially by those most closely related to the family involved), and eventually by a majority of the senior people of the Eastern Kuku-Yalanji claimant group?*

S190B(4)

Identification of claimed native title

Met

**190B(4)**

*Identification of claimed native title*

*The Registrar must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.*

Reasons for the Decision

For the application to pass this condition of the registration test I must be satisfied that the native title rights and interests claimed by the native title claim group can be readily identified.

Schedule E of the amended application contains the description of the claimed native title rights and interests. They are described as “*equivalent to the fullest beneficial ownership, including possession, occupation, use and enjoyment . . .*”.

The native title rights and interests claimed are categorised into the claim group’s proprietary and beneficial right to the “holding” or “owning” of the claim area and the use rights which flow from the proprietary and beneficial right. The proprietary and beneficial right is divided into four major aspects, namely:

1. Physical possession, occupation, use and enjoyment of the claim area as of right;
2. Carriage of responsibility for the care and maintenance of the claim area;
3. The right to hold the claim area as the cultural property and source of the native title group and its identity;
4. The power to transmit ownership of and identification with the claim area, to eg. descendants.

The use rights flowing from the proprietary and beneficial right are divided into categories, according to from which of the four listed proprietary and beneficial rights it flows. An explanation of the description of the rights and interests described in schedule E and how the work for the claim group is found at *{text deleted}*. I note that this material is provided on a confidential basis to the Tribunal (see CYLC letter dated 25/08/99). Although illuminating, I do not require it to be satisfied under s190B4.

To meet the requirements of s190B4 I need only be satisfied that at least one of the rights and interests sought is sufficiently described for to be readily identified.

I am satisfied that all of the rights and interests listed can be readily identified from the description provided at schedule E of the amended application.

The application therefore meets the requirements of s190B4 and s62(2)(d).

S190B(5)

Factual basis for claimed native title

Met

**190B(5)**

*Sufficient factual basis:*

*The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:*

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

Reasons for the Decision

There are three criteria to consider in determining over all whether or not I am satisfied that there is a sufficient factual basis to support the applicants' assertion about the existence of the native title rights and interests listed at Schedule E of this application.

The applicants have submitted affidavits by *{text deleted}* in addition to the information at schedule G of the amended application in support of the contention that this criterion is satisfied. I note that this information has not been filed with the Federal Court and is supplied to the Tribunal on a confidential basis, since they contain sensitive and confidential material, solely for the purposes of the s190A6 of the NTA.

In a letter of 13/9/99, the applicants' legal representative CYLC has advised that the information in *{text deleted}* was prepared by *{name deleted}*, an anthropologist of many years experience, who has worked with the Yalanji people since 1988. The information contained in *{text deleted}* is drawn from:

- a confidential detailed report prepared by *{name deleted}* on the continuing connection of the claim group; and
- his professional knowledge of the Yalanji people and their traditional laws and customs based on his many years working with the Applicants.

I have found all of this confidential material probative in making my decision with regard to this section. I have also found the information attachment A1.2 of the original application probative in making my decision.

190B(5)(a) - that the native title claim group have, and the predecessors of those persons had, an association with the area.

#### *Current Association*

To be satisfied under this criterion, it must be evident that the association with the area is and was communal, that is, shared by a number of members of the native title claim group.

At schedule G of the amended application a number of activities carried out on the claim area in exercise of the rights and interests described in schedule E, are identified, namely:

1. A long and historical and contemporary collection and use of natural resources;
2. Continual access to, camping upon, and residing in outstations with residences on traditional lands, including every major subdivision of those lands;
3. Generation of income and economic benefit from the claim areas – eg. through tourism ventures of their own and work area clearance contracts by the Mossman Gorge Rangers;
4. Substantial and widespread exercise of management responsibilities for the traditional lands, and exercise of cultural property rights; and, both within the claimant and wider regional Aboriginal communities, and externally through involvement in National Park and other conservation and tourism planning, site protection, and work clearances.
5. Continual internal self regulation and demarcation of localized family and sub-group subdivisions and interests within the claim area; under the direction of senior people of authority.

*{Text deleted}*.

I find the information in A1.2 of the original application that the great majority of the contemporary population of the claim group continue to reside within the Yalanji territory at Wujal Wujal, Ayton, China Camp, Daintree, Mossman, Mossman Gorge and Cooya Beach, place names that are identified on the claim map. A1.2 refers also to constant travel across the territory, and high levels of visitation, camping, and resource use at numerous localities within the claim area are a part of everyday life in Yalanji communities.

All of this evidence points to a strong communal attachment to the claim area by the native title claim group and I find that the native title claim group has a current association with the land the subject of the claim, thereby meeting the requirements of the first limb of s190B(5)(a).

#### *Predecessor's Association with the Land*

I am satisfied that the claim group's predecessor's also had an association with the land.

*{Text deleted}*

I also find the following *{text deleted}* probative in reaching the finding that claim group's predecessor's also had an association with the land under claim. The material states that:

*{Text deleted}*

In all of the circumstances outlined above I am satisfied that the second limb of s190B(5) is satisfied as all of the above quoted material



S190B(6)

Prima facie case

Met

**190B(6)**

*Prima facie case:*

*The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.*

Reasons for the Decision

'Native title rights and interests' are defined at s223 of the Native Title Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- A. the rights and interests to be linked to traditional laws and customs;
- B. those claiming the rights and interests to have a connection with the relevant land and waters; and
- C. those rights and interests to be recognised under the common law of Australia.

The definition is closely aligned with all the issues I have already considered under s190B5. I will draw on the conclusions I made under this section in my consideration of s190B6, rather than reconsider these requirements against each individual right and interest sought.

Under s190B6 I must consider that, prima facie, at least some of the rights and interests claimed can be established. The term prima facie is considered in *North Galanjanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ, who noted:

*"The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase "prima facie is: "first sight; on the face of it; as it appears at first sight without investigation." [Citing the Oxford English Dictionary (2nd ed 1989)].*

I have adopted the ordinary meaning referred to by their Honours when considering this application and relied on the information contained in schedule G of the amended application, the confidential affidavits by the applicants and the confidential anthropological information at attachments E and F.

The content of the relevant parts of this material is outlined in my reasons for decision at s.190B5. In these reasons, I will only detail one reference to such rights in the material before me, though there may have been others I could have also drawn on.

The rights and interests claimed by the native title claim group are set forth in schedule E of the amended application namely:

*'The native title in the land and waters covered by the application ("the claim area") is equivalent to the fullest beneficial ownership, including possession, occupation, use and enjoyment to the exclusion of all others subject to:*

- a) *the valid laws of the State of Queensland and the Commonwealth of Australia; and*
- b) *any valid rights and interests conferred upon non-native title holders, or the subject of an agreement made under the Native Title Act 1998 (Cth.), or by the principles of Aboriginal law and custom.*

I accept this as meaning that the applicants do not claim exclusive possession over the area the subject of this claim, where such a claim cannot be made out because of the existence of a previous non-exclusive possession act, as that term is defined in s23F of the Act. Relevant to this also is the statement at schedule J of the draft orders sought by the Applicants (refer to my reasons at s190B6 for the text of the relevant order).

The specific rights and interests sought, together with my reasons, are as follows:

## **1. Proprietary and beneficial right**

1. *Physical possession, occupation, use and enjoyment of the claim area as of right*
2. *Carriage of responsibility for the care and maintenance of the claim area*
3. *The right to hold the claim area as the cultural property and source of the native title group and its identity*
4. *The power to transmit ownership of and identification with the claim area, to eg. descendants*

## **2. Use rights which flow from the proprietary and beneficial right**

### *2.1 Occupation and economic*

- 2.1.1 *The right to access and occupy the claim area, including to live on and erect residences and infrastructure on the land.*
- 2.1.2 *The right to take, use, enjoy and develop the natural resources of the claim area.*
- 2.1.3 *The right to make a living and derive economic benefit from the claim area, including to dispose of the resources or products of the claim area by commerce or exchange.*
- 2.1.4 *The right to a share of the benefit of resources taken on the claim area by others.*

### *2.2 Control and Management*

- 2.2.1 *The right to make decisions over, manage and conserve the claim area and its natural resources.*
- 2.2.2 *The requirement to be asked for and to control access, occupation, use and enjoyment of the claim area and its resources by others.*
- 2.2.3 *The right to control the marking and changing of the claim area.*

S190B(7)

Physical connection

Met

**190B(7)**

*Traditional physical connection:*

*The Registrar must be satisfied that at least one member of the native title claim group:*

- (a) Currently has or previously had a traditional physical connection with any part of the land or waters covered the application; or*
- (b) Previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:*
  - (i) the Crown in any capacity; or*
  - (ii) a statutory authority of the Crown in any capacity; or*
  - (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.*

Reasons for the Decision

Under s 190B(7)(a) I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application.

*{Text deleted}* clearly establish that they are members of the native title claim group.

The evidence also establishes that they all have the requisite connection with lands claimed in the application. I have referred to this information in detail in my reasons under s190B5 and s190B7 and do not intend to repeat it here.

The requirements of this condition of the registration test are therefore met.

S190B(8)

No failure to comply with section 61A

Met

**190B(8)**

*No failure to comply with s61A:*

*The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.*

Reasons for the Decision

For the reasons that follow I have formed the conclusion that there has been compliance with s61A.

#### s61A(1) – Native Title Determination

A search of the Native Title Register has revealed that there is no approved determination of native title in relation to the area claimed in the application.

#### S61A(2) – Previous Exclusive Possession Acts (referred to as a “PEPA”)

A PEPA is defined in s23B of the Act. The application specifically excludes from the claim area the classes or types of tenure referred to in s23B, except to the extent that sections 47, 47A or 47B of the Act applies and subject to any grants of PEPA interests over the claim area being valid.

The State of Queensland has supplied historical and current tenure information with respect to the various parcels of land comprising the claim area, but did not provide any formal submissions under s190A(3) about this tenure in so far as it was relevant to the registration test in this application.

The historical and current tenure information identifies a number of prior grants of tenure that may amount to PEPAs (as defined in s23B) over various parts of the claim area. The status of this tenure under the Native Title Act 1993 (in particular s23B) may involve consideration of complex questions of law. However, it is for another forum to make such decisions.

I need only be satisfied that there has not been a claim made over any area affected by a PEPA. In my view the exclusion of any areas which have been subject to a previous exclusive possession act as defined in s23B of the Native Title Act 1993 effectively excludes any prior or current PEPA from the claim area for the purpose of this section. The applicants have done this by excluding from the claim area specific parcels of land over which PEPAs have been identified (refer Attachment B of the amended application), and also excluding by class the tenure defined in s23B, except to the extent that s47, s47A or s47B of the Act applies (refer to my reasons under s190B2 for the text of the exclusions).

The requirements of s61A(2) are met for the reasons outlined above.

#### S61A(3) – Previous Non-Exclusive Possession Acts (referred to as a “PNEPA”)

Under s61A(3) a claimant application must not be made over any area covered by a PNEPA in which any of the native title rights and interests claimed confer possession, occupation, use and enjoyment of any of the areas to the exclusion of all others. A PNEPA is defined in s23F of the Act.

At schedule E of the amended application the native title interests claimed are *“to the exclusion of all others subject to . . . any valid rights and interests conferred upon non-native title holders . . . ”*.

I note also that at schedule J of the amended application, in the terms of the draft order sought by the applicants if the application is unopposed, the applicants seek an order in these terms:

*“(d) the native title rights and interests are exercisable concurrently with any other valid interests arising from the operation of laws of the Commonwealth of Australia and the State of Queensland. To the extent that they are not exercisable concurrently with those other interests, those other interests may regulate, control, curtail, restrict, suspend or postpone the exercise of the native title rights and interests.”*

This statement lends further weight to expressed intention in schedule E not to claim exclusive possession over any areas covered by a PNEPA.

I am satisfied that the statement in schedule E has the effect that exclusive possession is not claimed over any area the subject of a previous non-exclusive possession act, as defined in s23F.

The requirements of s61A(3) are therefore met.

#### S61A(4) – s47, 47A, 47B

The amended application states (at Schedule L) that the provisions of s47 and s47B apply in the following terms:

- in the case of 2 specifically identified parcels in respect of which a pastoral lease is held by or on behalf of the members of the native title claim group, extinguishment of native title is required by s47 of the Act to be disregarded;
- in the case of vacant Crown land, which are occupied by the members of the native title claim group, such that extinguishment of

S190B(9)

No extinguishment etc. of claimed native title

Met

**190B(9)** *Ownership of minerals, petroleum or gas wholly owned by the Crown:*

- (a) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*  
*(a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;*

Reasons for the Decision

At Schedule Q of the amended application it is stated: *“The native title rights and interests of possession, occupation, use and enjoyment in relation to the claim area also apply to natural resources within the claim area. These include minerals, petroleum, gases and fauna, but or to the extent to which native title has not been affected or extinguish by the valid operation of laws of the Commonwealth of Australia or the State of Queensland.”*

By letter dated 25 August 1999, the applicants’ representative has stated that the wording in schedule Q makes it clear that the rights and interests claimed do not consist of or include ownership of minerals, petroleum or gas where the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas. Further, by letter dated 12 July 1999, the applicants’ legal representative state t the claim to native title rights and interests in respect of resources is only to the extent that they have not been extinguished, suppressed or impaired by any subsequent act of the Crown.

I accept that the statement in schedule Q coupled with the clarification of intention offered by the applicant’s legal representative in the tw letters referred to above, has the effect that the application complies with the requirements of S190B(9)(a). I accept that the reference to *“been affected or extinguished by the valid operation of laws of the Commonwealth of Australia or the State of Queensland”* covers the situat where the Crown “wholly owns” the resources over which native title is claimed.

**190B(9)** *Exclusive possession of an offshore place:*

- (b) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*  
*(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place - those right interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;*

Reasons for the Decision

At schedule P of the amended application it is stated, in response to the request for details of any claim of exclusive possession of an offsh place, “not applicable”.

I note that some of the parcels claimed in this application are located on the coast. It is confirmed in a letter from CYLC dated 13/09/99 th those parcels extend only to the high water mark. It is clear therefore that the boundaries of this application do not extend to offshore plac The requirements of this section are met.

- 190B(9)** *Other extinguishment:*
- (c) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).*
- Reasons for the Decision

The application and supporting material and the Tribunal's file do not disclose nor am I otherwise aware that the native title rights and interests claimed in the application have been otherwise extinguished.

In this regard I rely on the statement in schedule E of the amended application to the effect that *"the native title in the land and waters covered by the application ("the claim area") is equivalent to the fullest beneficial ownership, including possession, occupation, use and enjoyment to the exclusion of all others subject to:*

- a) the valid laws of the State of Queensland and the Commonwealth of Australia; and*
- b) any valid rights and interests conferred upon non-native title holders, or the subject of an agreement made under the Native Title Act 1998 (Cth.), or by Aboriginal law and custom."*

I rely also on the above quoted statement in schedule Q (refer to my reasons under s190B9(a)). I see also that the applicants have expressly stated that for any land or waters in the claim area subject to a validly granted PNEPA, as defined by s23G of the Native Title Act, then the native title rights and interests claimed in respect of any such areas do not include native title rights and interests extinguished by that validly granted PNEPA, except to the extent that sections 47, 47A or 47B may apply.

In light of the aforesaid statements, I am satisfied that the requirements of this section have been met.

S190C(2) Information etc required by sections 61 & 62 Met

*Information, etc, required by section 61 and section 62:*

- 190C(2)** *The Registrar must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.*

#### Details required in section 61

- 61(3)** **Name and address for service of applicant(s)**

Reasons relating to this sub-condition

Requirements are met. Page 2 of the amended application identifies the six applicants and the address for service is detailed at page 15 of the amended application.

**61(4) Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons**

Reasons relating to this sub-condition

Requirements are met. The amended application describes the native title claim group at Schedule A, page 3 of the amended application, and at Attachment A of the amended application. In my view the description of the claim group at schedule A and Attachment A is sufficient for it to be ascertained whether any particular person is one of those persons. I have reached this view for the reasons contained in my decision at s.190B3.

**61(5) Application is in the prescribed form** Note that in relation to pre 30.09.98 applications, the application does not need to be in the prescribed form as required by the amended Act. Note also that pre 30.09.98 applications are deemed to have been filed in the Federal Court, **lodged in the Federal Court, contain prescribed information** Note also that prescribed information” is that which is required by s62 as set out in the text of this reasons document under “Details required in section 62(1)”, **and accompanied by prescribed documents and fee**

Reasons relating to this sub-condition

Requirements are met. The amended application is in the form prescribed by Regulation.5(1)(a) Native Title (Federal Court) Regulations 1998.

As required under section 61(5)(b), the amended application was filed in the Federal Court. The original application taken to have been made to the Federal Court in accordance with Table A, *Application, Savings or Transitional Provisions*, item 6 case 3.

The application meets the requirements of section 61(5)(c). I refer to my reasons in relation to s62.

As required by section 61(5)(d) an affidavit and map as prescribed by s62(1)(a) and s62(2)(b) respectively accompany the application. I refer to my reasons below in relation to s62(1)(a) and s62(2)(b) of the Act.

I note that section 190C(2) only requires me to consider details, other information, and documents required by section 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court.

**Details required in section 62(1)**

**62(1)(a) Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)**

Reasons relating to this sub-condition

Requirements are met.

Each of the six applicants has sworn an affidavit addressing the matters required by s62(1)(a)(i) – (v). The affidavits have been competently sworn and witnessed. They are appended to the amended application. The affidavits meet the requirements of s62(1)(a)(i) to s62(1)(a)(iv), at the first, second, third and fourth paragraphs respectively.

The fifth paragraph of each affidavit refers to the basis of the applicant's authorisation, and consequently the requirements of s62(1)(a)(v) are satisfied. See further my reasons under s190C(4).

For the reasons set out above, I have formed the view that the application complies with the requirements of this subsection.

**62(1)(c) Details of any traditional physical connection (information not mandatory)**

Comment on details provided

The applicants have provided detail of traditional physical connection at schedule M of the application, and *{text deleted}*.

It is noted that the *{text deleted}* are provided on a confidential basis, since they contain sensitive and confidential material, solely for the purposes of section 190A(6). It is expressly stipulated by the applicants' representative that they are not to be copied or disclosed to any other person or party without first obtaining written consent from CYL (refer *{text deleted}*).

**Details required in section 62(2) by section 62(1)(b)**

**62(2)(a)(i) Information identifying the boundaries of the area covered**

Reasons relating to this sub-condition

Application **passes** the condition

Requirements are met.

The boundaries of the area covered by the application are identified by the following information:

- a map at Attachment C of the amended application showing the claim area. This map shows the location of each claimed parcel, and the location of towns, rivers and other geographic features in the vicinity of the claimed parcel. The boundary of each claimed parcel is drawn with a fine line;
- a description of each parcel of land claimed in the application, at Attachment B of the amended application. The description of each parcel is by reference to a unique lot and plan description allocated by the State to each claimed parcel. The lot and plan number is then reproduced on the map at Attachment C.

The application meets the requirements of this condition. See also my reasons for decision provided under s190B(2).



**62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered**

Reasons relating to this sub-condition

Requirements are met.

At schedule B of the amended application, the applicant sets out areas within the boundaries of the claim area that are covered by the application. The areas referred to in schedule B are defined by reference to previous exclusive possession acts and previous non-exclusive possession acts, as those terms are defined in s23B and s23G of the Act respectively. Further, at attachment B of the amended application, various parcels of land (described by reference to the unique lot plan descriptions allocated to the parcels) are expressed to be excluded from the claim. I am satisfied that the information in the application enables any areas within the external boundaries to be identified.

See further my reasons for decision in relation to this condition at 190B(2).

**62(2)(b) A map showing the external boundaries of the area covered by the application**

Reasons relating to this sub-condition

Requirements are met. A map showing the external boundaries is attached to the amended application at Attachment 4. See further my reasons provided under s62(2)(a)(i).

**62(2)(c) Details/results of searches carried out to determine the existence of any non-native title rights and interests**

Reasons relating to this sub-condition

Requirements are met.

The requirements of s62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that I need only be informed of searches conducted by the applicant, in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect applicants to have knowledge of and obtain details about all searches carried out by every other person or body.

At A8 of the original application the applicant states that it has conducted searches of the land tenure records held by the Wet Tropics Management Authority, the results of which are at attachments A6.1, A6.2 and A7. The attachments contain details of:

- parcels of land over which native title is not claimed and the interests held over the parcels (A6.2);
- parcels of land held by the Crown (A7).

Attachment A6.1 is a copy of the map at attachment C of the amended application. This information is reiterated at schedule D of the amended application.

There is no information on the files held by the Tribunal to indicate that the applicants have carried out any searches other than those disclosed in the original and amended applications.

It follows that I am satisfied that the requirements of this section are met.

**62(2)(d) Description of native title rights and interests claimed**

Reasons relating to this sub-condition

Requirements are met.

An adequate description of native title rights and interests claimed is contained in the amended application at Schedule of the amended application. I have outlined these rights and interests claimed in my reasons for decision in relation to s.190B(4).

**62(2)(e)(i) Factual basis – claim group has, and their predecessors had, an association with the area**

Reasons relating to this sub-condition

Requirements are met.

The original application outlines the factual basis for the assertion that the native title claim group has and their predecessors had, an association with the area at attachment A1.2. At schedule F of the amended application there is statement that the claim group has, and their predecessors had, an association with the area, also sworn to by each of applicants (at the 6th paragraph of each affidavit respectively) in the affidavits accompanying the application. Further information about the claim group's association with the area, and that of their predecessors, is contained in *{text deleted}*.

I have outlined the factual basis as described by the applicants in my reasons for decision in relation to condition 190I I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist. This matter is tested further in relation to s.190B(5).

The application complies with this condition.

**62(2)(e)(ii) Factual basis – traditional laws and customs exist that give rise to the claimed native title**

Reasons relating to this sub-condition

Requirements are met.

The application outlines the factual basis for the assertion that traditional laws and customs exist that give rise to the claimed native title at Attachment A1.2 of the original application and at schedule F of the amended application. At schedule F of the amended application there is a statement that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interest also sworn to by each of the applicants (at the 7th paragraph of each affidavit respectively) in the affidavits accompanying the application.

Further information about the claim group's association with the area, and that of their predecessors, is contained in *{text deleted}*.

I have outlined the factual basis as described by the applicants in my reasons for decision in relation to condition 190B(5). I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist. This matter is tested further in relation to s.190B(5).

The application complies with this condition.

**62(2)(e)(iii) Factual basis – claim group has continued to hold native title in accordance with traditional laws and custom**

Reasons relating to this sub-condition

Requirements are met.

The application outlines the factual basis for the assertion that the native title claim group has continued to hold native title in accordance with traditional laws and customs, at A1.2 of the original application and at schedule F of the amended application. At schedule F of the amended application there is a statement that the claim group has continued to hold native title in accordance with traditional laws and customs, also sworn to by each of the applicants (at the 8th paragraph of each affidavit respectively) in the affidavits accompanying the application. Further information about the claim group's association with the area, and that of their predecessors, is contained in *{text deleted}*.

I have outlined the factual basis as described by the applicants in my reasons for decision in relation to condition 190B(5).

I am satisfied that the application sets out a general description of the factual basis on which the asserted native title rights and interests claimed exist. This matter is tested further in relation to s.190B(5).

The application complies with this condition.

**62(2)(f) If native title claim group currently carry on any activities in relation to the area claimed, details of those activities**

Reasons relating to this sub-condition

The application provides general details of activities that the native title claim group carry out in relation to the area claimed at schedule G of the amended application.

I consider that the activities that the group carries out in the claim area are described in general terms and that the application complies with this condition.

**62(2)(g) Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)**

Reasons relating to this sub-condition

Requirements are met.

Schedule H of the amended application states "not applicable" in response to the request for details of any other applications of which the applicant is aware. I interpret this to mean that the applicants are not aware of any such applications.

**62(2)(h) Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area and the applicant is aware of**

Reasons relating to this sub-condition

Requirements are met.

It is stated at Schedule I of the amended application that there are none.

The application complies with this condition.

#### Reasons for the Decision

The application meets all of the requirements of s 190C(2), for the reasons detailed above.

S190C(3)      No previous overlapping claim groups      Met

#### *Common claimants in overlapping claims:*

- 190C(3)**      *The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:*
- (a) the previous application covered the whole or part of the area covered by the current application; and*
  - (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and*
  - (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190C(3)(b).*

#### Reasons for the Decision

A search of the Geospatial Database and Register of Native Title Claims on 13th September 1999 reveals that there were no previous applications entered on the Register as a result of a consideration of any such previous applications under s190A where:

- the previous application covered the whole or part of the area covered by this application; and
- a person included in the native title claim group for this application was a member of the native title claim group for a previous application when this application was made.

S190C(3)(b) requires identification of those claims that were on the Register of Native Title Claims when the current application was made

As a consequence, 190C(3) have no operation with respect to the application under consideration.

S190C(4)      Identity of claimed native title holders      Met

**190C(4)(a)**            ***Certification and authorisation:***

**or**

***The Registrar must be satisfied that either of the following is the case:***

**190C(4)(b)**

***(a) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or***

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

*Note: s.190C(5) – Evidence of authorisation:*

*If the application has not been certified as mentioned in paragraph 4(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:*

*(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and*

*(b) briefly set out the grounds on which the Registrar should consider that it has been met.*

Reasons for the Decision

Requirements are met.

The application has not been certified pursuant to s. 190C(4)(a). I must therefore be satisfied that the applicants are members of the native title claim group and are 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 pursuant to s190C4(b).

There are two limbs to s190C(4)(b):

1. the applicants must be a member of the native title claim group;
2. the applicants must be authorised to make the application and deal with matters arising in relation to it by all other persons in the claim group.

The evidence of authorisation is contained in each of the applicant's sworn affidavits attached to the amended application, reiterated in *{text deleted}*.

### ***The First Limb***

I am satisfied that the six applicants are members of the native title claim group by virtue of their sworn evidence to that effect at the 5th paragraph of each of their respective affidavits.

I note also that families bearing names of the surnames of the six applicants all appear in the definition of the members of the native title claim group at schedule A of the amended application.

### ***The Second Limb***

At schedule M of the amended application, it is stated that:

*"The Applicants are members of the native title claim group and are authorised to make the Application and to deal with matters arising in relation to it by all the other persons in the native title claim group in accordance with their traditional laws and customs, and as set out in the attached affidavits."*

The affidavits attached to the application by each of the six applicants provide further information as to the authorisation process (refer 5th para. thereof), namely:

- each of the applicants is a senior member of the native title claim group;
- nominated by unanimous agreement of the members of the native title claim group present at a meeting on 8 June 1999;
- to which all known members of the native title claim group had been invited;
- in accordance with their traditional laws and customs.

I am satisfied that the processes referred to in the affidavits evidence proper authorisation of the application, as defined in s251B of the Act.

It follows that I am satisfied that the requirements of s190C5 are met as:

- the statement at schedule R of the amended application, elaborated upon in the affidavit of the applicants constitute the requisite statement under s190C5(a);
- the affidavits referred to herein adequately set out the grounds on which I should consider that s190C4(b) has been met.

I am also satisfied that the applicant is a member of the native title claim group and properly authorised to make the application and to deal with matters arising in relation to it.

The application passes this condition of the registration test.