National Native Title Tribunal

REASONS FOR DECISION COVER SHEET

REGISTRATION TEST

DELEGATE:	Andrew Solomon

APPLICATION NAME:	Ankamuthi People

NAME(S) OF APPLICANT(S):

{names deleted}

FEDERAL COURT NO: **QG6158/98** (combined application:- includes applications QG6159/98, QG6160/98)

NNTT NOs: QC99/26 (formerly QC97/51, QC97/52, QC97/53 - now combined into one application)

REGION	North Queensland

DECISION

The delegate has considered the application against each of the conditions contained in s190B and 190C of the *Native Title Act* 1993.

DECISION

The application IS ACCEPTED for registration pursuant to s190A of the *Native Title Act* 1993.

…….

Andrew Solomon

Delegate of the Registrar pursuant to

sections.190, 190A, 190B, 190C, 190D

21 September 1999

Date of Decision

Brief History of the Application

The original applications were lodged with the Tribunal on 29 October 1997. A notice of motion to amend the applications, and to combine and consolidate the applications into one application, for purposes of administrative efficiency, was filed with the Federal Court on 15 July 1999. On **21 July 1999** the Deputy District Registrar *{name deleted}* of the Federal Court granted leave to amend the three applications and to combine the three applications into one application.

The three applications that have been combined to form the Ankamuthi application are:

NNTT #.	Fed. Court #	Name	Date Lodged	Date Registered
QC97/51	QG6158/98	Ankamuthi People #1	29/10/97	29/10/97
QC97/52	QG6159/98	Ankamuthi People #2	29/10/97	29/10/97
QC97/53	QG6160/98	Ankamuthi People #3	29/10/97	29/10/97

The orders for each of the applications above by the Deputy District Registrar on **21 July 1999** includes order 3 that "The three applications … be combined and continued in and under the application numbered **QG6158/98**.

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 National Native Title Tribunal's Working/Personnel Files, Legal Services Files, Party Files and Registration Test Files for QC97/51, QC97/52 and QC97/53.
- Tenure information acquired by the Tribunal in relation to the area covered by this application.
- The National Native Title Tribunal's 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.

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.

A. Procedural Conditions

190C2	***Information, etc, required by section 61 and section 62:*** ***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	Application **passes** the condition

The application as amended identifies the names and address for service of the applicants.

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	Application **passes** the conditions

The native title claim group is described at Schedule A of the combined amended application. In my view, the description of the claim group at schedule 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[1], lodged in the Federal Court, contain prescribed information[2], and accompanied by prescribed documents and fee***

Reasons relating to this sub-condition	Application **passes** the condition

s61(5)(a)

The application **is** in the form prescribed by Regulation.5(1)(a) Native Title (Federal Court) Regulations 1998 (the "Regs").

s61(5)(b)

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

s61(5)(c)

The application **meets** the requirements of section 61(5)(c) and contains all information as prescribed in section 62. I refer to my reasons in relation to s62.

s61(5)(d)

As required by section 61(5)(d) the application **is** accompanied by the prescribed documents, being:

- Affidavits as prescribed by s62(1)(a);
- A map, as prescribed by s62(2)(b).

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

[1] 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.

[2] 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)".

Court.
For the reasons outlined above, it is my view that the requirements of s61(5) are met.

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	Application **passes** the condition

The requirements of this section are met.

Each of the five applicants has sworn an affidavit addressing the matters required by s62(1)(a)(i) – (v). The affidavits have been competently witnessed. They are appended to the amended application, and were sworn between 26 May 1999 and 15 June 1999 respectively.

The affidavits meet the requirements of s62(1)(a)(i) to s62(1)(a)(iv), at paragraphs (a), (b), (c), (d) respectively.

Paragraph (e) of the affidavit by one of the applicants, *{name deleted}* says *"see my Affidavit in "Attachment R"* as stating the basis on which the applicants are authorised. *{name deleted}* has sworn an affidavit at Attachment R stating the basis on which the applicants are authorised. The other four applicants, at paragraph (e) of their respective affidavits say, *"see Affidavits of {name deleted} "Attachment R"* as stating the basis on which the applicants are authorised. But in fact, of the remaining four applicants, *{names deleted}*, have each sworn a further affidavit (contained in Attachment "R") that states the basis of the applicants' authorisation.

The four further affidavits in attachment "R" are each competently witnessed and were sworn between 31/05/1999 and 15/06/1999. The four further affidavits address the requirements of s62(1)(a)(v).

The one applicant who has not sworn a further affidavit stating the basis of authorisation is *{name deleted}*. He states at paragraph (e) of his affidavit that:
"stating the basis on which the applicant is authorised as mentioned in paragraph (d) – see affidavit of {name deleted} "Attachment R"".

As referred to above, *{name deleted}* has sworn an affidavit at attachment R of the combined amended application dated 31 May 1999 in which he states the basis of the applicants' authorisation (including the authorisation of *{name deleted}*), as required by s62(1)(v).

Additionally, he has stated at paragraph (f) of the affidavit appended to the combined amended application, that he is authorised by the other applicants to swear this affidavit on their behalf. On the basis of this sworn statement, I accept that it follows therefore that he is also authorised by the applicant, *{name deleted}*, to swear to the basis that the applicants are authorised, as required by s62(1)(a)(v).

{name deleted} also states in his affidavit (appended to the combined amended application) at paragraph (d), that:

I am authorised by all the persons in the native title claim group to make the application and to deal with matters arising on relation to it."

I accept that the affidavit by *{name deleted}* complies with the requirements of s62(1)(a)(v). He has referred to the affidavit of *{name deleted}* in attachment R as stating the basis of authorisation. This coupled with his own statement in his affidavit that the native title claim group has authorised the applicants to make the application is sufficient compliance with the requirements of s62(1)(a)(v).

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	Application **passes** the condition

The applicants **have** provided detail of **traditional physical connection to the claim area**. At schedule M of the combined amended application it is stated:

"Affidavits supplied in "Attachment F" satisfy this section".

The affidavits at attachment "F", by *{name deleted}* and *{name deleted}*, provide details of traditional physical connection to the claim area.

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

At Schedule B and Attachment C ("the maps") of the combined amended application, the applicants have provided information which identifies the external boundaries of the claimed areas by reference to known parcels of land, and, in the case of four of the claimed parcels, by reference to areas north of a particular river.

Some clarification of the areas forming the application has been provided by way of letter dated and received on 23 August 1999 (together with three further maps of the claim area, more particularly locating the external river boundary).

I am of the view that despite the provision of clarifying information, there is sufficient information **in** the application as amended to identify the boundaries of the application with reasonable certainty.

See 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	Application **passes** the condition

At Schedule B, the applicants have provided information identifying areas within the external boundaries of the claim area not covered by the claim. This has been done by the exclusion from the claim area of current and historical classes of land tenures.

It would be particularly onerous to expect the applicants to identify areas excluded by lot description or other specific description, where the analysis would require considerable time and cost resources and is dependant on access to comprehensive records of the State of Queensland and other statutory authorities.

In view of the relatively short timeframes required for a native title determination application involving complex tenure and a large geographic area to be considered for registration under s190A, I consider that exclusion of areas by class of tenure is sufficient, particularly where the description of the exclusions is derived from provisions in the Act detailing the types of tenured areas that cannot form part of an native title determination application,

The description in Schedule B of the areas excluded from this application can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area, or not, even though that process may take some time and resources on the part of the applicants and the State of Queensland (the latter being the custodians of the majority of that information).

I consider that the exclusion in this application of particular areas by reference to classes of tenures (derived from the description of tenured areas that may not be part of a native title determination application in by s23B of the Act) provides a reasonable level of certainty and enables the identification of areas not covered by the application.

See also my reasons for decision in relation to test conditions contained at 190B2.

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

Reasons relating to this sub-condition	Application **passes** the condition

The applicants have provided a series of maps of the claimed parcels with the combined amended application (at attachment "C"). These maps show the external boundaries of the areas claimed to a sufficient standard when read in conjunction with the written description and the clarifying documentation supplied on 23 August 1999. See also my reasons provided under s190B2.

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	Application **passes** the condition

The 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 under this condition 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.

The combined amended application states at Schedule D that *"it has not been possible to carry out historical tenure searches on the lots claimed"*.

I have reviewed the Tribunal's files and, in the absence of information to the contrary, I am satisfied that this condition has been met.

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

Reasons relating to this sub-condition	Application **passes** the condition

Each of the native title rights and interests claimed by the applicants is described in Schedule E of the application. In accordance with section 62(2)(d), the rights and interests claimed do not merely consist 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 common law. The description is a list of individually identifiable rights and interests.

The claimed native title rights and interests are subject to express statements **in** the application which qualify the rights and interests. I have outlined the claimed rights and interests (together with the stated qualifications) in my reasons for decision in relation to s.190B4.

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

Reasons relating to this sub-condition	Application **passes** the condition

The application outlines the factual basis for the assertion that the native title claim group has and their predecessors had an association with the area in the two affidavits listed below, at attachment F of the combined amended application. A general description of the factual basis for this assertion is provided in the application at Schedule G of the combined amended application. The two affidavits are by:

- Affidavit by *{name deleted}*;
- Affidavit by *{name deleted}*.

For an assessment of the sufficiency of the factual basis provided by the applicants in the application, refer to my reasons in relation to s. 190B(5)(a).

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	Application **passes** the condition

The application outlines the factual basis for the assertion that traditional laws and customs exist that give rise to the claim native title in the two affidavits by *{name deleted}* and *{name deleted}* at attachment F of the combined amended application. A general description of the factual basis for this assertion is provided in the application at Schedule G of the combined amended application.

For an assessment of the sufficiency of the factual basis provided by the applicants in the application, refer to my reasons in relation to s. 190B(5)(b).

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

Reasons relating to this sub-condition	Application **passes** the condition

The application outlines the factual basis for the assertion that the claim group has continued to hold native title in accordance with traditional laws and customs in the two affidavits by *{name deleted}* and *{name deleted}* at attachment F of the combined amended application. A general description of the factual basis for this assertion is provided in the application at Schedule G of the combined amended application.

For an assessment of the sufficiency of the factual basis provided by the applicants in the application, refer to my reasons in relation to s. 190B(5)(b).

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	Application **passes** the condition

The combined amended 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	Application **passes** the condition

Schedule H of the combined amended application states "none known" in response to the request for details of any other applications of which the applicant is aware.

The application complies with this condition.

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	Application passes the condition

It is stated at Schedule I of the combined amended application that *"none yet issued as yet"*.

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.

190C3	***Common claimants in overlapping claims:*** ***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 190A.***

Reasons for the Decision

A search of the Geospatial Database and Register of Native Title Claims on 4 August 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, s190C(3) has no operation with respect to the application under consideration.

The combined amended application **passes** this condition of the registration test.

190C4(a) or 190C4(b)	***Certification and authorisation:*** ***The Registrar must be satisfied that either of the following is the case:*** ***(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

The application has not been certified pursuant to s. 190C(4)(a).

I must be satisfied therefore that each 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 pursuant to s190C4(b).

Evidence of authorisation pursuant to s190C4(b) is required because the requirements of s190C4(a) have not been met.

There are two limbs to s190C4(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 first limb

At attachment "R" of the amended application are four affidavits by four of the five named applicants, *{names deleted}* sworn over a period between 31st May and 15th June 1999.

Each of these four people swears to the fact that they are Ankamuthi people.

Although *{name deleted}* has not sworn a further affidavit at attachment "R", he has sworn an affidavit about physical traditional connection and association of himself and the claim group to the claim area at attachment "F" of the combined amended application. In that affidavit (which has been competently witnessed and sworn on 26/05/99) he states that is an Ankamuthi man, taking his identity as such from his father (paras.3 & 4).

By telephone confirmation from *{name deleted}*, representative for the applicants, on 21 September 1999, I have been informed that there are in existence genealogies that document the biological link between the named apical ancestors in Schedule A of the application and the applicants.

I accept, on the basis of the evidence outlined above, that all of the named applicants are members of the native title claim group, as required by the first limb of s190C4(b).

I am satisfied, that the requirements of the first limb of s190B4(b) are met.

The second limb

At part A, section 2 on page 2 of the amended application there is a statement in the following terms:

"The Ankamuthi People have authorised this application and the applicants to lodge it in meetings held in Injinoo and Cairns during 1997-1998".

This statement is elaborated upon in the authorisation affidavits at Attachment "R" of the combined amended application. It is apparent from the affidavits by *{names deleted}* at attachment "R", that the Ankamuthi have a traditional decision making process that must be complied with when dealing with land issues (para. 6). That traditional process is described in each of the four affidavits in the following way:

- the Elders and heads of families discuss the issue amongst themselves and their relatives and then the Elders reach a consensus among themselves after considering the views of others (para. 6);
- Under Ankamuthi customary law and tradition land is men's business and only male Elders may speak for land issues (para. 7).
- Further, under their customary law and tradition, the Elders decide land business for all Ankamuthi people, and a decision of the Elders is final and Ankamuthi people who are not male Elders cannot disagree publicly with the Elders about such a decision (para. 8).

The affidavits at Attachment "R" then detail how the applicants were authorised in accordance with the Ankamuthi traditional decision making process. It is stated to have occurred in this way:

- During 1996 and 1997 the Ankamuthi People discussed amongst themselves the need to lodge native title applications over their country (para. 9);
- These meetings affirmed the Elders' decision to authorise the applicants to pursue the applications and to seek determinations of native title (para. 10);

- At a further meeting of the Ankamuthi people in *{date & place deleted},* the decisions of the Elders authorise the applicants and to pursue these applications were supported by all Ankamuthi people present (para. 12) .

At para. 11 of each affidavit, each of the deponents states that the Ankamuthi people have complied with their own customary and traditional decision-making process that must be complied with and have authorised the applications.

On the basis of the statement at part A, section 2 on page 2 of the amended application, as elaborated upon in the affidavits at attachment R, I am satisfied that the second limb of s190C4(b) is satisfied in that the native title claim group have a process of decision making that under its traditional laws and customs has been complied with whereby the applicants are authorised to make the application and to deal with matters arising in relation to it.

This process involves male Elders making a "final" decision on the issue, after considering the view of others. In 1996-1997 the Ankamuthi held discussions amongst themselves about the need to lodge native applications over their country, and, then held a further meeting in *{date & place deleted}* at which the Elders' decisions to pursue the applications were supported, and as well, the applicants were authorised by all Ankamuthi People present. I note that Injinoo is relatively near to the one of the claimed parcels (Reserve 1 SO67) – refer to a map of that parcel prepared by the State's native title mapping unit (Native Services, Surveying and Mapping Subprogram DNR) and held in the Cairns Registry Map Cabinet in relation to the claim area comprised in the original application QC97/52.

The Tribunal has recently received information potentially adverse to the applicants' case that the application has been authorised by all other persons in the native title claim group, as required by s190C(4)(b). This information is contained in *{text deleted}*.

My findings on this material

To summarise, I am asked to make a finding that I can not be satisfied that the applicants have been authorised by all members of the native title claim group, because of an allegation that *{text deleted}*.

The material from the people who claim *{text deleted}* does not, in my view, displace the material before me that the applicants are authorised, as required by s190C(4)(b). I make this finding because *{text deleted}* is not sufficient for a contrary finding.

I find it particularly probative that *{text deleted}*.

I am not prepared, in the circumstances outlined above, to deny to the applicants, and the people they represent, the important statutory consequences that flow from registration of this claim under s190A, on the basis of the information from *{name deleted}*.

I am also mindful that *{text deleted}*. I simply am not able to make findings contrary to the applicants' evidence about authorisation, in the absence of clear factual information that goes to showing there are members of the claim group who have not authorised the application.

Response by the Applicant

It remains for me to consider the submission from the applicants' representative dated 17/09/1999. The primary thrust of it is to the effect that *{text deleted}*. With respect, I did not find the submission persuasive in reaching my decision. The concept of self identification in the case referred to in the submission (*Shaw and James v Wolf (1998) 83 FCR 113*) related to the interpretation of what it meant to be an "Aboriginal person" under the *Aboriginal and Torres Strait Islander Commission Act 1989 (C'th)*. By schedule A of the combined amended application the native title claim group is expressly defined according to descent from named apical ancestors. The concept of self-identification, or any other concept of identification such as recognition of the claim group as Ankamuthi by neighbouring groups is not stated as a requirement for membership of the group.

To conclude, *{text deleted}*.

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

- the statement at part A, section 2 on page 2 of the amended application, elaborated upon in the affidavits referred to above in attachment R constitute the requisite statement under s190C5(a);
- the affidavits referred to above adequately set out the grounds on which I should consider that s190C4(b) has been met.

The application **passes** this condition of the registration test.

B. Merits Conditions

190B2	***Description of the areas claimed:*** ***The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 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

Schedule B and Attachment C of the application describe the areas the subject of the combined amended application.

External Boundaries

The claim area is situated in the Western Cape York Peninsular and is comprised of four discrete parcels of land, identified in schedule B. The description identifies the four areas with a legal description allocated to the parcel, by reference to a lot number or other unique reference numbers that identifies land parcel clearly, according to the Queensland State Government's land tenure record system, are provided. In general, details of the land parcels are available on the public record and are sufficient to identify the location of the areas claimed on the surface of the earth. I will deal with each description in turn, as there are complexities in respect of certain of the descriptions used, because of a couple of drafting errors, and because of the use, in three cases, of a named river as the southern external boundary line. The reasons that follow also consider the maps describing the external boundaries.

MT 7024 MPH 41159 a mining tenure at Vyrilia Point, and that section of the lot in its southern area north of the Ducie River

A map of this part of the claim area is found in attachment C. It shows the two separate parts of the tenure, one to the north, and one to the south, both hatched in black. The two sections of the parcel are shown on the map to be separated by the parcel described as Lot 5 on WP53 (one of the claimed parcels) and a reserve described as "1 JD5"). The boundary of the southern section is drawn in fine black ink.

The Ducie River, being the southern external boundary line is drawn in a fine black pen. The parcels of land surrounding the tenure (three of which form part of the claim) are also delineated on the map in a fine black pen. The map also shows the location of a number of roads in the claim area, and these features also usefully serve to locate this part of the claim area, generally on the earth's surface. The map is not drawn to a scale, nor does it have co-ordinate points. However, the use of the State's unique tenure reference to describe it and its location on the map in its context with the other uniquely defined tenures enables all of its boundaries, with the exception of the Ducie River boundary to be determined with reasonable certainty. Refer to my reasons below, as to my findings in relation to the Ducie River boundary.

That part of MT 8 MPH 14466 north of the Ducie River

The same map referred to above in relation to the first parcel is used to identify this second claimed parcel. I find that the use of the State's unique tenure reference to describe it and its location on the map in its context with the other uniquely defined tenures enables all of its boundaries, with the exception of the Ducie River boundary to be determined with reasonable certainty. Refer to my reasons below, as to my findings in relation to the Ducie River boundary. The source of this first map is not indicated.

However, I see that the detail on it corresponds to the detail on a map provided to the Tribunal by the State of Queensland of these two mining tenures (refer map titled "Map Showing Land Areas Under Native Title Claimant Application QC97/53, prepared by DNR from land tenure information obtained from the Digital Cadastre Data Base). I therefore have no reason to doubt the accuracy of the information on this first map.

The Reserve at the western tip of Cape York RE 1 SO67

A second map of this parcel of land is found at Attachment C of the combined amended application. This map shows the boundaries of the parcel, drawn with a fine black pen. It is drawn to a scale. It has been prepared by the Queensland Department of Natural Resources based on their Basic Land Information Network (hence the description "BLINMAP").

Although it does not provide coordinate points, I am satisfied that the map provides a sufficient means by which it is possible to identify the location of the claimed parcel on the surface of the earth by the use of a "map window position" (containing limited geographical coordinates) and nearest locality details. In any event, I note that the use of the State's unique tenure description for the parcel sufficiently identifies the parcel for the purposes of s190B2.

Lot 5 WP53 and Lot 1 WP53 – all parts of these lots north of the Ducie River including ML40069, ML 40082 and ML 6025

A third map of these two claimed parcels is provided at attachment C of the combined amended application.

In fact, it is apparent from this third map, that all of the parcel known as "Lot 5 WP53" falls to the north of the Ducie River, and it is not necessary to describe the southern external boundary line with reference to the Ducie River. This is confirmed in a letter from the applicants' legal representative dated 23/08/1999.

The map has been prepared by the Queensland Department of Natural Resources from land tenure information obtained from the Digital Cadastre Data Base. This map shows the boundaries of the two parcels, drawn with a fine black pen. It is drawn to a scale. The Ducie River, being the southern external boundary line is drawn in a fine black pen, where it bounds the lot described as Lot 1 WP53. The map also shows the location of a road in the claim area, at the eastern boundary of Lot 1 WP53, and the Skardon River, at the northern boundary of the two claimed lots. These features also usefully serve to locate this part of the claim area, generally on the earth's surface. The map does not have co-ordinate points.

However, the use of the State's unique tenure reference to describe the parcels, the location of the parcels on the map in the context of named road and two rivers enables all of its boundaries, with the exception of the Ducie River boundary, to be determined with reasonable certainty. Refer to my reasons below, as to my findings in relation to the Ducie River boundary.

Lot 3 WP53

This parcel of land formed part of original application QC97/51. I note that the registration test officer has been informed orally by the applicant's legal representative that its omission from the combined amended application was an error (refer file note dated 23/08/1999). In fact, the error was realised on the hearing of the motion to amend and combined the applications. The order by the Federal Court on 21 July 1999 to allow the amendment of the application says that the parcel described as Lot 3 WP53 is to be included in the description of the claimed parcels at Schedule B of the combined amended application.

This parcel of land is clearly identified on the third map at attachment "C". Its boundaries are defined in their entirety by reference to the unique description allocated to it by the State's land identification system. In other words it is not one of the parcels described with reference to the Ducie River. The use of this description, coupled with the mapping of it in attachment "C" (as described above) enables its external boundaries to be identified with reasonable certainty.

Finally, I note that the second and third maps form part of a public record system upon which members of the community might reasonably rely to deal with land use issues. As each lot plan description is unique for all time, the reference to lot 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.

The Ducie River Boundary

The applicants have provided clarification as to the location of the Ducie River boundary in two further maps submitted by their legal representative on 23/08/1999 (refer *{name deleted}* letter dated 23/08/1999). The first map is another BLINMAP. It shows the three parcels that have their southern boundary with the Ducie River. It is drawn to a scale, and contains a comprehensive series of co-ordinate points around the margins. It also has boxes with the map window position and nearest locality details. The other external boundary lines are drawn with a fine black pen.

The Ducie River boundary is also drawn on this map, where it traverses the country from its entry into the sea, and as it travels east along its stated boundary with the claimed parcels. *{name deleted}* has stated that *" I have traced the line drawn by DNR on* {the third map at attachment C} onto this map at the same scale. A further large cadastral map has also been provided showing the claim area, and the location of the Ducie River as it traverses the three parcels east from the sea is highlighted in yellow. This is another map prepared by the State's mapping arm (then called "Sunmap"). The detail on this map appears to correspond with the detail on the maps at attachment C of

these three parcels, and on the second BLINMAP provided as clarification of the Ducie River boundary. There are latitude and longitude markings on this cadastral map that correlate to the markings on the second BLINMAP. The line of the Ducie River also corresponds to the line drawn on the maps at attachment "C", and on the second BLINMAP. These two additional maps certainly assist me in locating the Ducie River external boundary.

I note from a telephone conversation with the applicants' representative , *{name deleted}*, on 21 September 1999 that it is the northern bank of the Ducie River that is the southern boundary of the relevant land parcels. He stated to me that the Queensland Parliament had passed legislation some years ago that dedicated most of the rivers in Queensland to State of Queensland and said that the applicants were not claiming such rivers (see Schedule B of the amended application). The inference was that the Ducie River is one such river and therefore where reference in the application is made to "north of the Ducie River" the applicants mean north of the river area dedicated to the State of Queensland under the relevant legislation.

The information and map in the application insofar as the description of the Ducie River boundary is concerned would in most instances be insufficient to satisfy me under this section (and the corresponding s62(2)(b)).

However, the additional information referred to above in relation to the Ducie River boundary being a series of latitude and longitude points and a clear depiction of the river on the further maps provided, together with the use of the State's unique land parcel identifying numbers is sufficient to clarify with reasonable certainty the location of these three described parcels of land for the purpose of compliance under this section.

I have decided to accept the further maps as additional information, sufficient to clarify with reasonable certainty the location of these three described parcels of land for the purpose of compliance under this section. In this regard, I note that the additional information does not amount to an amendment of the claim area, but merely clarifies the location of one of the claimed external boundary lines.

In reaching this decision I have had particular regard to the obligations imposed on the Tribunal by s109 to *"pursue the objective of carrying out its functions in a fair, just, economical, informal and prompt way"* (s109(1)) and the provisions of s109(3) which state that the Tribunal, in carrying out its functions, is not bound by technicalities, legal forms or rules of evidence.

I have also taken into account the ease by which each parcel described as bounding the Ducie River to the north can be otherwise specifically identified by reference to the State's unique description, also referred to on the maps attached to the application.

However, I recommend that the two further maps be marked "additional information" and included as an attachment to the Register extract for this claim, and that the applicant file a re-engrossed application as soon as practicable to place these maps on the Court record.

On this basis, 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. These boundaries are described by way of a formula that excludes a variety of tenure classes from the claim area. The definition of the excluded tenure is drawn directly from s23B of the Act.

In determining whether this information complies with the requirements of 190B(2) in relation to s62(2)(a)(ii), that is, whether I am satisfied that this information is sufficient for it to be said with reasonable certainty whether native title rights or interests are claimed in relation to particular areas of land or waters within the external boundaries of the area claimed, I have considered that I must be "satisfied" on the balance of probabilities; that the provisions of s109 of the Native Title Act require the Tribunal to be fair, just economical, informal, and prompt, and it is appropriate that I perform my obligations in a similar manner and, as a general principle, the provisions relating to compliance with s 190A should be read beneficially.

In addition, I have turned my mind to some of the practical realities associated with tenure information and to what is reasonable in that context, including:

- the volume of tenure information associated with the claim area;
- the length of time needed to obtain and check all the relevant tenure;
- the cost to applicants of obtaining such tenure information;
- the inherent uncertainty in the reliability of tenure without full inquiry into the validity of grants and full details of all historical tenure;
- The fact that full details of all historical tenure are not easily obtainable.

Notwithstanding this analysis, it is my view that sufficient information is provided in relation to the areas excluded from the area claimed to allow the specific "parcels" of land to be identified. This may require considerable research of tenure data held by the particular custodian of that data, but nevertheless it is reasonable to expect that the task can be done on the basis of the information provided by the applicant.

I make one further comment about the classes of tenure excluded from the claim area. One of the stated exclusions is "*valid grants of freehold land or water"*. The relevant Attachment "C" map describes as Lot 5 WP53, Lot 3 WP53 and Lot 1 WP53 as "FH". I interpret this to mean a reference to the land as "freehold" land. I note also that the geospatial database for these areas records that a DOGIT has been granted over these lots. A DOGIT in Queensland is a grant of title by the State government to Aboriginal or Torres Strait Islanders, and, in some contexts, is referred to as a grant of freehold. The Current Interest Holders Schedule (refer folio 18 Working file for QC97/51) describes the holders of the "Mapoon DOGIT" comprised by these three parcels as *"trustees for Aboriginal Reserve Purposes at Old Mapoon"*.

It is my understanding that a DOGIT title is not transferable without ministerial consent, nor may it be mortgaged (refer to submissions on this point from the applicants' representative dated 23/08/1999). It therefore lacks some of the essential indicia recognised in Queensland land law for freehold title, namely, the capacity of freehold title to be alienated and dealt with freely by the owner of it. I find the description in the State provided schedule of current interest holders of the holders as "trustees" for a

specific purpose, also goes against a finding that the DOGIT areas are freehold in the ordinary sense of the word.

Finally, I have formed the view that the provisions of s23B(9)(a) and (b) are relevant to this DOGIT. It provides, relevantly, at subsection (b) that an act is not a previous exclusive possession act if it is the grant or vesting of any thing expressly for the benefit of or to or in a person to hold on trust expressly for the benefit of Aboriginal peoples or Torres Strait Islanders. Section 23B(9)(c) would also make any grant or vesting of any thing over land already covered by a grant described in subsection (b), not a previous exclusive possession act.

I find that the reference to "freehold" in the claim maps is a misnomer, and that the DOGIT grant (and the subsequent lease referred to in the State provided schedule of current interest holders) are not, by reason of the definition in schedule B which excludes from the claim area "valid grants of freehold land and water" excluded from the claim area.

Conclusion

I am satisfied that the information and maps provided by the applicants, read in conjunction with the exclusions specified by the applicants, are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular areas.

I am further satisfied that the information and maps submitted with the application meet the requirements of s.62 in that the external and internal boundaries of each of the areas the subject of the claim can be identified with reasonable certainty.

The application **passes** this condition.

190B3	***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 persons.

A description of the native title claim group is found at schedule A of the amended application. The native title claim group is simply described by reference to the *"the Ankamuthi People (also known as the Seven River Tribe), being the descendants of . . ."*.

Following from this is a list of seven names, being then described as "the A*pical ancestors of the Ankamuthi People"*.

The descendants of the named apical ancestors could be identified on inquiry and as a descendant, could then be ascertained as part of the native title claim group.

I am therefore satisfied that this description constitutes an objective means of verifying 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.

The application **passes** this condition of the registration test.

190B4	***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. The native title claim group claim that they are entitled to "*use, enjoyment and occupation of their lands and waters, in the case of some of the parcels in this application, their rights co-exist with the holders of other rights and interests in the land.*

Although this phraseology, on its own, is quite ambiguous, I find that if read in conjunction with the following statements in schedule B and schedule J, it means that the claim group does not claim exclusive possession over any part of the claim area covered by a previous non-exclusive possession act:

- Schedule B (describing the claim area) – *"the native title rights and interests claimed are subject to the laws of the state and commonwealth generally and to any other valid acts of adverse dominion"*
- Schedule J (describing the terms of a draft determination order) – *"the Ankamuthi People have the right to occupy, enjoy, and use the determination areas in accordance with and subject to their traditional laws and customs, and subject to the co-existing rights and interests of the statutory title holders"*.

Listed at schedule E are 5 categories of rights and interests (or specific activities in exercise of the core right to use, enjoyment and occupation of the land and waters) claimed relating to:

1. The discharge of cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities in relation to the native title land;
2. The establishment of residences on the native title land;
3. The determination of use rights in relation to activities which may be carried out by others on the native title lands;
4. Carrying out of economic life on the native title lands, including hunting, fishing, production and harvesting of natural resources
5. Access to and use of the natural resources on the native title lands.

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 it 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) and **passes** this condition of the registration test.

190B5	***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 is a view that the factual basis upon which it is asserted the native title claim group had and have an association with an area must be proved to the satisfaction of the Registrar, or delegate, in respect of each particular parcel or area of the land and waters claimed. The contention is that it is insufficient for the native title claim group to demonstrate that it previously had and still has connection to land or waters in a broader area of traditional country. (It is of course necessary for the area claimed in the application to be within the area asserted to be the broader traditional country.)
This contention has particular significance in circumstances where a claimant application is lodged in response to a s 29 Notice that proposes a future use on a very defined, and sometimes small, area of land. The claimant application may be made only in relation to the land that is subject to the s 29 Notice, rather than to the whole area of what is asserted to be the broader traditional country of the native title claim group.
Must the native title claim group be able to prove connection by to the particular area claimed in the application in order to satisfy this part of the registration test? Or is it sufficient for there to be proven connection to land or waters within the area asserted to be the broader traditional country of the native title claim group (providing that the area claimed in the application falls within the broader traditional country)?

The following views of Mr Justice Lee in *Ward v WA 159 ALR 483* are pertinent to this issue:
1. At the time sovereignty was asserted by the Crown the radical title in the land of a colony thereby obtained by the Crown was burdened by any native title that existed prior to sovereignty (499).
2. Native title may be extinguished by the Crown but continues until the Crown takes such action by legislature or executive as reveals a clear and plain intention to extinguish it (499).
3. Ancillary to a power to extinguish native title is a power to regulate the exercise of rights that flow from native title and regulation may involve curtailment or suspension of those rights, but not extinguishment (500, 508).
3. At common law native title will exist at sovereignty if an indigenous community had an entitlement to use or occupy at that time. That entitlement arises from local recognition that the presence of the community on the land reflected a particular relationship, or connection, between that community and the land. Use or occupation of the land sufficient to ground native title is adjudged looking at whether the degree of presence on the land is consistent with the needs of a community pursuing traditional practices, habits, customs and usages that form the way of life of the community (500).
4. The survival of a society, and particularly one which was nomadic, may depend on occupation that is sparse and wide-ranging, but the ever changing locale of a nomadic group is not inconsistent with occupation sufficient to ground native title (501).
5. Where native title has not been extinguished, either by the Crown or by the extinguishment of the group that possessed it, it will continue where connection with the land is substantially maintained by a community which acknowledges and observes, so far as practicable laws and customs based on the traditional practices of its predecessors (501).
6. The activities or practices may be a modern form of exercise of those laws and customs, and the laws and customs may have changed since sovereignty provided that the general nature of the connection between the indigenous people and the land remains (502).

7. Native title at common law is a communal right to land arising from the significant connection of an indigenous society with land under its customs and culture. It is not a mere 'bundle of rights' (508).
8.It is under the native title right to land that other native title rights are enjoyed and those other rights are parasitic upon or rely upon the native title (508, 510).
9. Skill and knowledge regarding medicines or food, and the practices of hunting and fishing can be strong evidence of a physical connection, and the maintenance of connection generally to the land (538).
10. Where native title is extinguished, rights that are parasitic or dependent upon it also fall with that extinguishment (510).
11. If native title to land is not extinguished, there is no extinguishment of rights that are parasitic or dependent upon it, but the extent to which those rights have been regulated, curtailed, subordinated or suspended may be required to be considered (510).

From the above it appears to me that native title could continue to be held by a native title group to all the traditional country, subject to valid extinguishing legislative or executive acts, where sufficient connection has been maintained to that traditional area. This may not be dependent on a native title group having to show physical connection to every parcel or tenement or allotment within that broader traditional area. It therefore seems to me that given the beneficial nature of the Act, its objects and its preamble, that I should take the view that so long as there is sufficient factual material to show that the native title claim group have, and the predecessors of those persons had, connection or association to the traditional land or waters of the claimant group, then that will be sufficient.

I will apply that view to the relevant parts of the registration test accordingly**.**

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 certain documents in addition to the information at schedule G of the combined amended application in support of the contention that this criterion is satisfied.

The evidence I have found to be probative in making my decision with regard to this section is from the following sources:

1. Affidavit of *{name deleted}* sworn on 26/5/99 at attachment F of the combined amended application.
2. Affidavit of *{name deleted}* sworn on 31/5/99 at attachment F of the combined amended application.
3. Extract from "Encyclopaedia of Aboriginal Australia" and the entries therein for "West Cape Region" and "Anggamudi". A copy of this document is found on each of the Working Files for QC97/51, QC97/52 and QC97/53. A map of the West Cape Region at page 1173 shows the general location of groupings of Aboriginal People, including the Anggamudi, whose traditional country is depicted as extending through most of the tip of Cape York. I accept that "Anggamudi" is another name for the "Ankamuthi" people. The entry for the Anggamudi refers to them as "people of the

West Cape region around the Ducie and Jardine Rivers . . ." – this description of their traditional country contains the four claimed parcels of land .

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

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, it is stated:

"The Ankamuthi People live in and visit country, gather food in country, work on country and carry out cultural and heritage protection on country.
Teach Ankamuthi children about Ankamuthi culture on country.
Collect food resources and gather their livelihood from natural resources on Ankamuthi country.
Maintain spiritual connection and talk to the spirits on country."

Both deponents state in their affidavits that they are Ankamuthi, taking their identity from their father, also an Ankamuthi man (from this I assume that they are brothers). I note that I have been informed by *{name deleted}* on 21 September 1999 that geneologies exist biologically linking the applicants with the named apical ancestors.

Both deponents were born at Injinoo (in 1928 and 1929 respectively) and have lived all their lives there. They speak of being Elders of the claim group. From the maps referred to in my reasons under s190B(2), I see that Injinoo is situated in the vicinity of one of the claimed parcels (the reserve at the top of Cape York). The *{phrase deleted}* also name other geographic features and places that appear on the maps of the claim area, eg. Vyrilia Point, (a camping and hunting place for their people), Port Musgrave, Namelata Creek, Mapoon and the Ducie/Skardon areas, it being implicit that all of this country is part of Ankamuthi traditional country.

They talk of a strong and continuing connection to the swamps around the mouth of the Jardine River. The Jardine River is depicted on the West Cape Region Map at page 1173 of the Encyclopaedia of Aboriginal Australia, and is also described as being in the traditional country of the Anggamudi (*or Ankamuthi*) group, at page 50 thereof.

The deponents describe in their affidavits the traditional activities (including hunting, ceremony, travelling the country and caring for country) they and their families (from one generation to the next) have carried out on their traditional country.

They talk of hunting and fishing in traditional ways on Ankamuthi traditional country; of being taught these ways by their father and grandfather, and of passing these skills onto their children. They talk of their descendants to this day hunting on country to get food for their families.

They talk of living in and building houses on country, using traditional materials, and of travelling on country. They talk of moving back on country with their families, when they disagreed with the missionaries at Mapoon.

They also talk of other experiences with traditional Ankamuthi activities/customs on their country, and of their association with matters and people Ankamuthi, namely:

- being taught to speak Ankamuthi by their parents and learning place names of sites in their country by his parents, grandparents and other Ankamuthi people. *{name deleted}* speaks of singing songs in Ankamuthi and teaching these to his nephews and children;
- when visiting sites of significance they must introduce himself to the spirits of those places in language;
- being taught to gather ochres and paint themselves for ceremonies.
- being taught about bush medicine and using various tree and plant products to cure colds, sores and other ailments – such as Ti-tree leaves boiled up and prepared;
- that their families have always mixed socially with other Ankamuthi families;
- of being involved in conservation, preservation and protection of country such as burning off;
- travelling about the country foraging for fire wood and being shown how to get witchety grubs and other foodstuffs;
- travelling to Mapoon by canoe and building canoes with ti-tree bark and paddles.

On the basis of:

- The evidence in the two affidavits by *{names deleted}*, as outlined above;
- The affidavits by the applicants at attachment "R" detailing the series of meeting of Ankamuthi people to authorise the application according to traditional Ankamuthi decision making processes when dealing with land issues,

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 s190B5(a).

The affidavits generally establish a long history of a community having a connection and association with country in which the claim area is located, dating back to the times of the *{names deleted}* parents and grandparents. Bearing in mind that *{names deleted}* are now over 70, this establishes a connection of the predecessors of the claim group to the claim area. This is further supported by the above extracted information from "Encyclopaedia of Aboriginal Australia" supporting the traditional presence of what I believe are the claim group's predecessors on the claim area prior to white settlement.

I rely also on the affidavits at attachment "R" of the combined amended application detailing the traditional processes adopted by the native title claim group in authorising this application.

On the basis of the evidence considered above, I am satisfied that there is a factual basis which supports the assertion that the native title claim group have, and their predecessors had, an association with the claim area.

190B(5)(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.

This subsection requires me to be satisfied that:

1. traditional laws and customs exist;
2. those laws and customs are respectively acknowledged and observed by the native title claim group; and
3. those laws and customs give rise to the claim to native title rights and interests.

Four of the applicants have each sworn affidavits at attachment R recounting the Ankamuthi traditional decision making process for dealing with land issues and how the Ankamuthi complied with that process in authorising this native title application. They talk of the Elders and the heads of families discussing the issues and reaching a decision that is final. They talk of a number of meetings at which the Elders' decision to pursue land claims was affirmed.

It is apparent from these affidavits that the Ankamuthi still acknowledge and observe traditional laws and customs relating to the making of decisions about land issues.

In the affidavits at attachment "F" *{names deleted}* talk of :

- taking their identity as Ankamuthi from their father;
- learning from their parents Ankamuthi language, and passing songs to their children and nephews;
- learning from their family traditional hunting and gathering techniques and activities;
- being taught about bush medicine and using various tree and plant products to cure colds and other ailments;
- observing the traditional custom of introducing themselves to the spirits in language when visiting sites of significance;
- travelling on country and building houses and canoes using traditional methods and materials.

These affidavits establish that they have acquired from their forbearers a large body of Ankamuthi traditional knowledge and customs relating to:

- language;
- the custom of introducing themselves to the spirits when visiting sites of significance;
- hunting and gathering;
- traditional medicinal uses of plants;
- use of ochres and paints for ceremonies;
- singing traditional songs;
- generally living on the country n traditional ways.

On the basis of the evidence recounted above I find that that there continue to exist traditional laws and customs acknowledged and observed by the native title claim group. I reach this finding because of the observance by contemporary Ankamuthi of traditional hunting and gathering activities, a knowledge of Ankamuthi language, sites of significance and stories; and the observance of traditional customs (such as announcing themselves to the spirits when on their country, singing, use of ochres and paint for ceremonies) and their acknowledgment of Ankamuthi laws and customs as to traditional decision making processes when dealing with land in authorising this application.

These factors, in my view, are sufficient evidence of the factual basis to support the assertion that traditional laws and customs exist that are respectively acknowledged and

observed by the native title claim group, and that those laws and customs give rise to the claim to native title rights and interests.

The requirements of s190B5(b) are therefore met.

190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

The evidence reviewed at 190B5(a) and (b) is relevant to whether the application meets the requirements of s.190B5(c).

On the basis of my findings in relation to the evidence outlined above in relation to the requirements of s190B5(a) & (b), I am satisfied that there is a factual basis which supports the assertion that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

In my view the evidence of *{names deleted}* describes a traditional process by which spiritual and cultural knowledge and rights and interests associated with their traditional country has been acquired, and is currently practiced by members of the claim group. I refer also to the evidence by the applicants in the affidavits at attachment R about the acknowledgment and observance by the Ankamuthi of their traditional laws and customs in the authorisation of this native title claim.

The requirements of s190B5(c) are therefore met.

Conclusion

The application **passes** all of the requirements of s190B5.

190B6	***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 that 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 was considered in *North Ganalanja 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: "At 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 and the affidavits by *{names deleted}* at attachment F.

The content of the affidavits 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 Ankamuthi people are entitled to use, enjoyment and occupation of their land and waters, in the case of some of the parcels in this application, their rights co-exist with the holders of other rights and interests in the land".

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 can not be made out because of the existence of a previous non-exclusive possession act, as that term is defined in s23F of

the Act. In this regard, refer to my reasons under s190B(4).

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

1. Discharge cultural, spiritual tradition and customary rights, duties, obligations and responsibilities on, in relation to, and concerning the native title land including to:

(i) preserve sites of significance to the native title holders and other Aboriginal people on the native title land;

{names deleted} paras. *{deleted}*

(ii) determine, give effect to, pass on, and expand the knowledge and appreciation of their culture and tradition;

{names deleted} para *{deleted}*

(iii) regard the native title land as part of the inalienable attachment of the native title holders to the native title land and ensure that the use of the native title land is consistent with that attachment;

I find that this is a right or interest which relies upon or is parasitic to the native title right to land or waters established by the native title claim group and that it is therefore established on a prima facie basis.

(iv) Maintain the cosmological relationship, beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the native title land and special and sacred sites, to ensure the continued vitality of culture, and the well-being of the native title holders;

{names deleted} para *{deleted}*

(v) inherit, dispose of or confer native title rights and interests in relation to the native title land on other in accordance with custom and tradition;

{names deleted} paras. *{deleted}*

(vi) determine who are the native title holders;

I have interpreted 'native title holders' here to mean who holds particular rights within the claim group.

{names deleted} assert that they inherit Ankamuthi heritage rights through their father. The affidavits at Attachment R regarding authorisation suggest that membership of the group is determined through traditional law and custom. There appears to be no discretion to deviate from these rules thus the native title claim group is only able to determine who are the native title holders within their group in accordance with traditional law and custom. This is in my opinion prima facie evidence of the above right

(vii) resolve disputes in relation to the native title land.

Affidavits at attachment R on the authorisation process.

2. Establish residences on the native title land

{names deleted} para. *{deleted}*

3. Determine use rights in relation to activities which may be carried out by others on the native title land including the right to grant, deny or impose conditions in relation to activities which may be carried out on the native title land.

   I find that this is a right or interest which relies upon or is parasitic to the native title right to land or waters established by the native title claim group and that it is therefore established on a prima facie basis. Refer to my reasons in respect of the right at 1(iii) above.

4. Exercise and carry out economic life (including by way of barter) on the native title lands including to hunt, fish and carry out activities on the native title land, including the creation, growing production or harvesting of natural resources.

   This right is clearly established by the evidence of *{names deleted}* that they and their families hunt, fish, forage for foods and firewood and use ochres for paint for ceremonial life on and from the land.

5. Have access to and use the natural resources of the native title land including the right to :-

(i) maintain and use the native title land;
(ii) conserve the natural resources of the native title land;
(iii) safeguard the natural resources of the native title land for the benefit of the native title holders;
(iv) manage the native title land for the benefit of native title holders;
(v) use the natural resources of the native title land for social, cultural, economic, religious, spiritual, customary and traditional purposes.

{names deleted} provide sufficient evidence throughout their affidavits to establish these rights on a prima facie basis.

In summary, on the material before me all of the claimed rights and interests including the generic " use, enjoyment and occupation of their land and waters …." Can, prima facie, be established.

The application **passes** this condition of the registration test.

190B7	***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 by 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.

The affidavits by *{names 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.

The application **passes** this condition of the registration test.

190B8	***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 this application

S61A(2) – Previous Exclusive Possession Acts (referred to as a "PEPA")

A PEPA is defined in s23B of the Act.

In Schedule B of the application any area to which a previous exclusive possession act, as defined in s23B of the Native Title Act, is excluded from the claim. It is further stated in schedule B that the native title rights and interest claimed are subject to the valid laws of the state and commonwealth generally and to any other valid acts of adverse dominion.

Note my earlier finding (s190B(2)) that the DOGIT areas are not Previous Exclusive Possession Acts as defined in s23B of the Act.

The exclusion clause meets the requirement of this subsection. I am satisfied that the application does not infringe S61A(2) of the Act in that the application does not cover any previous exclusion possession act attributable to the Commonwealth or State of Queensland.

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 combined amended application the native title interests claimed are expressed to *"co-exist with the holders of other rights and interests in the land"*.

For the reasons outlined in my reasons under s190B4 (and based on the above quoted express statements in schedules B and J) I am satisfied that the application does not claim exclusive possession of any area covered by a PNEPA.

The requirements of s61A(3) are therefore met.

S61A(4) – s47, 47A, 47B

The amended application makes no claim as to the application of any of these sections.

I am required to ascertain whether this is an application that should not have been made because of the provisions of s61A. In the absence of a statement specified in s61A(4)(b), it is not necessary to consider this section further.

It follows therefore that the application **passes** this condition.

190B9 (a)	***Ownership of minerals, petroleum or gas wholly owned by the Crown:*** ***The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:*** ***(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 applicants do not claim ownership of minerals, petroleum or gas wholly owned by the Crown"*

I am satisfied that this statement has the effect that the application complies with the requirements of S190B(9)(a).

190B9 (b)	***Exclusive possession of an offshore place:*** ***The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:*** ***(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and 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 offshore place, "not applicable".

It appears from the description of the claim area (refer my reasons under s190B2) that there are no offshore areas included in the claim.

The application **passes** this condition of the registration test.

190B9 (c)	***Other extinguishment:*** ***The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:*** ***(c) in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).***

Reasons for the Decision

The application, 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.

At schedule B of the combined amended application, it is stated that the native title rights and interests claimed are subject to the valid laws of the state and commonwealth generally and to any other valid acts of adverse dominion.

I am satisfied that the requirements of this section have been met.

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