

National Native Title Tribunal

REGISTRATION TEST

REASONS FOR DECISION

(edited)

DELEGATE: Susan Walsh

Application Name: Mamu People

Names of Applicants: Mr John Edwards, Mr Victor Maund Aboriginal name Jun Boi, Mr Alfred Joyce, Mrs Niree Appo, Mr Stephen Brooks, Mr Dean Purcell, Mr Robert Major, Mr Billy Tinkum

Region: FNQ

NNTT No.: QC01/15

Date Application Made: 6 April 2001

Federal Court No.: Q6014/01

The delegate has considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act 1993* (Cwlth).

DECISION

The application IS ACCEPTED for registration pursuant to s.190A of the *Native Title Act 1993* (Cwlth).

Susan Walsh

9 May 2001

Date of Decision

Delegate of the Registrar pursuant to sections 190, 190A, 190B, 190C, 190D

Brief History of the Application

This application was filed in the Federal Court, Queensland District Registry, on 6 April 2001. A notice of motion to amend and form of amended application was filed in the Court on 3 May 2001. On 4 May 2001 Deputy District Registrar Robson granted leave to the applicants to amend the application in that form. It is the amended application to which I have had regard in making this decision. The application has been made in response to a low impact exploration permit (application notice) issued pursuant to the *Mineral Resources Act 1989 (Qld)* – see schedule I of the application.

Information considered when making the Decision

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

- The National Native Title Tribunal’s administration files, legal service files and registration testing files for QC01/15.
- Tenure information acquired by the Tribunal in relation to the area covered by the application (if any).
- The National Native Title Tribunal’s files and related materials for Native Title applications that overlap the area of this application (if applicable).
- The National Native Title Tribunal’s Geospatial Database.
- Information from the Tribunal’s Geospatial Mapping and Analysis Branch regarding the written description and map of the external boundaries of the claim area.
- The Register of Native Title Claims and Schedule of Native Title Applications.
- The National Native Title Register.

All references to legislative sections refer to the Native Title Act 1993 unless otherwise specified.

A. Procedural Conditions

s.190C(2)

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

s.61(1) The native title claim group includes all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.

Reasons relating to this sub-condition

At Schedule A of the application it is stated that the native title claim group identifies as and is recognised by other Aboriginal groups in the area as Mamu. It is also stated in schedule A that membership of the native title claim group is made up of all those persons who are descendants of the Mamu ancestors named in schedule A. Schedule A contains what would appear to be a comprehensive list – there are over 50 ancestor names on this list.

Attachment F1 is a statement signed by an anthropologist (*name deleted*). The evidence of (*name deleted*) is that he was engaged by the applicants' legal representatives to conduct research for a native title determination application by the Mamu People, including their identity, so as to produce a description of the group by reference to apical ancestors. On the basis of his research and interviews with known Mamu, (*name deleted*) states that he produced genealogies. (*name deleted*) states that the claim group description in schedule A identifies the current day Mamu persons.

I do not have any other information that indicates that this group does not include, or may not include, all the persons who hold native title in the area of the application. I am satisfied that the group described includes all the persons who, according to their traditional laws and customs, hold the native title claimed.

Result: Requirements met

s.61(3) Name and address for service of applicants

Reasons relating to this sub-condition

The names of the applicants are detailed in Part A. The address for service appears at page 15 of the application.

Result: Requirements met

s.61(4) Names the persons in the 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

Schedule A of the application describes the native title claim group. For the reasons that lead to my conclusions (below) that the requirements for s.190B(3) have been met, I am satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Result: Requirements met

s.61(5) Application is in the prescribed form, lodged with the Federal Court, contains prescribed information, and is accompanied by any prescribed documents

Reasons relating to this sub-condition

The application is in the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations* 1998. The application was filed in the Federal Court as required pursuant to s.61(5)(b) of the Act.

The application meets the requirements of s.61(5)(c) and contains all information prescribed in s.62. I refer to my reasons in relation to those sections. As required by s.61(5)(d) the application is accompanied by supporting affidavits as prescribed by s.62(1)(a) and a map (maps) as prescribed by s.62(2)(b). I refer to my reasons in relation to those sections of the Act.

I note that s.190C(2) only requires me to consider details, other information and documents required by sections 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. For the reasons outlined above, it is my view that the requirements of s.61(5) have been met.

Result: Requirements met

Details required in section 62(1)

s.62(1)(a) Affidavits address matters required by s.62(1)(a)(i) – s.62(1)(a)(v)

Reasons relating to this sub-condition

There are eight applicants. Each applicant has sworn an affidavit – see the eight affidavits at attachment R1 to R8 of the application.

The affidavits are all dated, signed by each deponent and competently witnessed. I am satisfied that the affidavits sufficiently address the matters required by s62(1)(a)(i)-(v).

I note that each affidavit refers in para. 5 to paragraph (d) – the reference to (d) is an obvious typographical error; the correct reference should be ‘4’. This minor error does not have the effect that the affidavits do not meet the requirements of this section.

Result: Requirements met

s.62(1)(c) Details of traditional physical connection (information not mandatory)

Comment on details provided

Details relating to traditional physical connection are found in the affidavit by the claim group member, (*name deleted*), at attachment F2 of the application.

Result: Provided

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

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

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s190B(2) have been met, I am satisfied that the information and maps in the application are sufficient to enable the area covered by the application to be identified.

Result: Requirements met

s.62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered by the application

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s190B(2) have been met, I am satisfied that the information contained in the application is sufficient to enable any areas within the external boundaries of the claim area which are not covered by the application to be identified.

Result: Requirements met

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

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s190B(2) have been met, I am satisfied that the maps contained in the application show the external boundaries of the claim area.

Result: Requirements met

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

Reasons relating to this sub-condition

At schedule D of the application the applicants state that no searches have been conducted. There is no indication in the material that is before me that the applicant has conducted any searches requiring disclosure in the application.

Result: Requirements met

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

Reasons relating to this sub-condition

Schedule E contains an adequate description of the claimed native title rights and interests. The description does not amount to a mere assertion that the native title rights and interests are all the native title rights and interests that may exist, or that have not been extinguished at law. For the reasons given in my conclusion that the applicants have met the requirements of s190B(4) I am also satisfied that the requirements of this section are met.

Result: Requirements met

- s. 62(2)(e) *The application contains a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist and in particular that:*
- (i) the native title claim group have, and the predecessors of those persons had, an association with the area; and*
 - (ii) there exist traditional laws and customs that give rise to the claimed native title; and*
 - (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.*

Reasons relating to this sub-condition

The application contains a general description of the factual basis upon which it is asserted that the native title rights and interests claimed exist. The ‘general description’ required by this section is found in the application at Schedule F. Refer to my reasons under s190B5 for a summary of this material.

Result: Requirements met

- s.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

Schedule G contains a general statement that the activities in relation to the land or waters currently being carried out by the native title claim group is consistent with the rights and interests claimed at Schedule E. Schedule G refers to the information attached to the application at attachment F2 (name deleted). The affidavit at attachment F2 provides details of activities carried on by the native title claim group.

Result: Requirements met

- s.62(2)(g) *Details of any other application 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

Schedule H states that as far as the Applicants are aware, there are no such applications or determinations.

Result: Requirements met

s.62(2)(h) Details of any s.29 notices given pursuant to the amended Act (or notices given under a corresponding State/Territory law) in relation to the area, which the applicant is aware of

Reasons relating to this sub-condition

Details are provided at Schedule I and a copy of the notice is provided at attachment I of the application of a notice issued under the Mineral Resources Act 1989 (Qld). I am satisfied that the application complies with s62(2)(h).

Result: Requirements met

For the reasons identified above the application contains all details and other information, and is accompanied by the affidavits and other documents, required by ss.61&62.

Aggregate Result: Requirements met

s.190C(3)

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

This application was filed in the Federal Court on 6 April 2001 and for the purposes of s190C(3)(b) it was “made” on that day.

A search of the Geospatial database and Register of Native Title Claims reveals that there are no overlapping applications that cover the area of this application.

I am therefore satisfied that this application does not offend the provisions of s.190C(3).

Result: Requirements met

s.190C(4)(a) or s.190C(4)(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 is not certified pursuant to s190C(4)(a). Consequently I must be satisfied that the requirements of s190C(4)(b) are met.

The applicants are members of the native title claim group

The application contains the following information relevant to this first limb of s190C4(b):

- A statement at the commencement of the application, prior to the naming of the applicants ‘The following members of the claim group have been Authorised by the claim group to bring this claim on behalf of the Mamu people.
- A statement on page 3 of the application under the heading ‘Authorisation’ that the applicants are members of the native title claim group.
- Attachment F1 (statement by (*name deleted*), para. 8(ii)) where (*name deleted*) states that he is able to say from his research as the anthropologist and instructions given to him at the authorisation meeting that the persons so authorised as applicants are members of the claim group, according to the description in schedule A of the application.

I am therefore satisfied on the basis of this information in the application that the applicants are members of the native title claim group. The above recited information amounts to the statement required by s190C5(a) and the brief setting out of the grounds required by s190C5(b) in relation to this first limb of s190C4(b).

The applicants 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.

It is stated at the commencement of the application that the applicants have been authorised by the native title claim group to bring this claim on behalf of the Mamu people. It is stated on page 3 of the application under the heading ‘Authorisation’ that the applicants, as members of the native title claim group, are holders of native title rights and interests in the claim area and are authorised by the Mamu People under their traditional laws and customs to make the application and are also authorised by the group

to deal with matters arising in relation to the application. It is stated in this section of the application that the applicants were authorised at a meeting of Mamu people held at Wangan on 1 April 2001.

The application at page 3 and also at schedule R refers to the applicants' s62 affidavits found at attachments R1-R8 of the application, and to a further document found in the application at attachment R9 (*name deleted*), as setting out the grounds for the statement that the applicants are authorised to make and deal with the application.

The applicants' s62 affidavits all state that the basis for the statement that he/she is authorised is that the native title representative body (who I assume to be the applicants' legal representative, NQLCAC) contacted the members of the group; who then discussed the question of authorisation of the application in accordance with traditional law and custom and that the application was agreed to and the applicant was authorised as one of the applicants.

Further information about the authorisation process is found in the application at attachment R9 – see signed statement by (*name deleted*). (*name deleted*) states that he is employed by the applicants' legal representative as a planning and research officer and that he has been involved with work on behalf of the Mamu and with them in negotiations relating to areas within their traditional country (including attending Mamu meetings) in the 6 months leading up to the authorisation meeting held by the Mamu People on 31 March and 1 April 2001. (*name deleted*) states that he understands and believes to be true that the majority of the Mamu People reside in the regional centre of Innisfail (I see from the map of the claim area in attachment C that this is a town located near the coastal boundary of the claim area, and within the claim area).

It appears from (*name deleted*) statement that the proposed authorisation meeting at which the applicants claim they were authorised was advertised in two newspapers that circulate in the region of the claim area – the Cairns Post and the Innisfail Advocate. (*name deleted*) also states that the applicants' legal representative sent out notices to the Mamu People whose names appeared on the legal representative's database of the proposed meeting. (*name deleted*) that he attended the authorisation meeting and that in attendance were Mamu elders and people from Innisfail, Ravenshoe, Palm Island and Mareeba. (*name deleted*) describes what took place at this meeting. He tells of the decision to describe the claim group so that the application identified the Mamu families and their interrelation to each other and by reference to apical ancestors. He tells of the decision that the applicants for the Mamu claim should represent the families which make up the Mamu people. He states that the decision to authorise the applicants to make and deal with the application was on the basis of both laws and traditions of the Mamu people whereby Elders make decisions and by consensus of the Mamu People at the meeting.

The above-referred statements in the application amount to compliance with s190C5(a). The information at page 3 of the application under the heading 'Authorisation' and attachment R9 (*name deleted*) amounts to a brief setting out of the grounds, as required by s190C5(b).

This information discloses that the Mamu people held a well-publicised meeting over the course of 2 days at which the native title claim group made a decision to authorise the applicants to make the application and to deal with matters arising in relation to it, in accordance with their traditional laws and customs.

I am therefore satisfied that the applicants are authorised to make the application and to deal with matters arising in relation to it by all the persons in the native title claim group, thereby meeting the requirements of s190C4(b).

Result: Requirements met

B. Merits Conditions

s.190B(2)

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 and waters.

Reasons for the Decision

External Boundaries

The claim area is located in North Queensland within the Local Government areas of Cairns, Johnstone and Eacham. The written description for the external boundary is found in para. A of schedule B and attachment B1 of the application. The written description is supplemented with a map showing the external boundary at attachment C of the application.

It is stated in schedule B that the term 'land' in the application means land to the high water mark only. In this regard it is apparent from the written description that part of the external boundary is located on the eastern coast of Australia. The description of the coastal boundary extending to the high water mark only enables it to be said with reasonable certainty where that section of the boundary is on the surface of the earth. It is stated in schedule B that the application does not claim any areas of sea and that it does include some islands offshore of the Coast, which islands are named in attachment B1 and shown on the map of the claim area in attachment C. I am satisfied that the reference in schedule B to land in the application meaning land to the high water mark is applicable to the islands claimed in the application, such that the boundary of the islands claimed in the application extends to the high water mark only.

It is my view that the information in the attachments describing the islands subject to claim should be read in the light of, and subject to the limitations, outlined in schedule B. In my view there is no inconsistency between the information in schedule B relating to

the high water mark extent of the land boundary and the information in attachments B1 and C relating to the islands that are also included in the claim area – it is clear that the limitation of the boundary in respect of land to the high water mark, extends to land on the claimed islands as well.

The written description defines the external boundary by metes and bounds from a specified starting point. Approximate geographic coordinates are provided, and are in metres and referenced to Australian Geodetic Datum 1966 (AGD66) Australian Map Grid Zone 55. It is stated that these coordinates are intended as a guide only.

The map is A4 in size, and contains a series of coordinate references. The names of towns, rivers, creeks and adjoining claim boundaries, being information referred to in the written description, all appear on the map. The map also contains a legend identifying codes for the reference points named in the written description and the entire extent of the external boundaries of the claim area.

The written description and map appears to me to satisfactorily locate the external boundaries of the claim area on the earth's surface. In reaching this decision I have had regard to expert assessment from the Tribunal's Geospatial and Mapping division that the description and map of the external boundaries in the application, as amended by order dated 4/5/01 is consistent and complies with the requirements of s190B2 (see memo dated 1/5/01 and email dated 9/5/01).

It follows that I am satisfied that external boundaries of the claim area can be identified with reasonable certainty, having regard to the written description and map that is contained in the application.

I am satisfied that the physical description of the external boundaries meets the requirements of s62(2)(a)(i) and that the map shows the boundaries of the claim area in compliance with the requirements of s62(2)(c).

Internal boundaries

The internal boundaries are described in schedule B of the application. These boundaries are described by a formula that excludes a variety of tenure classes from the claim area, in the terms of s23B of the Act, being the section of the Act that defines Previous Exclusive Possession Acts and certain exceptions thereto. It is also stated in schedule B that the area covered by the application excludes land or waters where the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsections 47(2), 47A(2) or 47B(2)) pursuant to s190B(9)(c).

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 claim area.

The applicant has detailed a series of land tenure types that are excluded from the area of the application and, at para. E, has detailed a number of tenure types that are excepted from the general class exclusion. This form of class exclusion (and exceptions) follows the wording of s23B. In my view it amounts to information that enables the internal boundaries of the application area to be adequately identified. This may require considerable research of tenure data held by the State of Queensland, but nevertheless it is reasonable to expect that the task can be done on the basis of the information provided by the applicants.

I am also satisfied that the information in the application regarding the internal boundaries of the claim area meets the requirements of s62(2)(a)(ii).

The requirements of s62(2)(a), s62(2)(b) and s190B2 are met.

Result: Requirements met

s.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

Section 190B(3)(a) does not apply as all the persons in the group are not named in the application.

It is necessary therefore for the application to meet the requirements of s190B(3)(b). In order to meet this condition of the registration test the description of the group must be sufficiently clear so that it can be ascertained whether any particular person is a member of the native title claim group.

The description of the persons in the group is found at Schedule A of the application. The membership of the group is said to be all those persons who are descendants of the named Mamu ancestors. Each ancestor is described with a first or Christian name and a surname.

I am satisfied that the descendants of the named persons (having regard to the ancestors named in schedule A) could be identified with minimal inquiry and as such, 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.

I am therefore satisfied that the condition in s190B(3)(b) is met.

Result: Requirements met

s.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

Under this limb, I must be satisfied that the description of the native title rights and interests (found at Schedule E of the application) is sufficient to allow the claimed rights and interests to be readily identified.

Additionally, it is a requirement of s62(2)(d) that the application contain a description of the native title rights and interests claimed and that this description must not merely consist of a statement to the effect that the native title rights and interests are “all native title interests that may exist, or that have not been extinguished at law”. I am satisfied that the description of the claimed rights and interests meets the requirements of s62(2)(d).

The description contained at Schedule E of the application, describes the native title rights and interests as:

‘The native title rights and interests claimed are those of and flowing from the right to exclusive possession, occupation, use and enjoyment of the claimed area as against the whole world, pursuant to the traditional laws and customs of the claim group’.

The claimed rights and interests are qualified by these statements in the application:

- schedule E – *‘Where the area is covered by a valid, previous non-exclusive possession act (s.23F) the native title claim group does not claim possession, occupation, use and enjoyment of the area to the exclusion of all others’*
- schedule Q – *‘The native title claim group does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown in a manner which is inconsistent with continuing native title rights residing in those substances’*
- schedule B – *‘The area covered by the application excludes land or waters where the native title rights and interests claimed have otherwise been extinguished (except to the extent that extinguishment is required to be disregarded under subsections 47(2), 47A(2) or 47B(2)) pursuant to s190B(9)(c)’*

I consider the description in schedule E of the application enables the claimed rights and interests to be readily identified – they are circumscribed in that they must relate specifically (ie the terminology ‘of and flowing from’) to the right to exclusive possession, occupation, use and enjoyment of the claim area as against the whole world

pursuant to the traditional laws and customs of the claim group, and subject to any valid previous non exclusive possession acts, in which case the applicants do not claim exclusive possession. This description in the application enables the rights to be readily identified and satisfies the requirements of s190B(4).

Result: Requirements met

s.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

I must be satisfied pursuant to s190B5 that a sufficient factual basis is provided to support the assertion that the rights and interests claimed in the application exist.

In particular, I must be satisfied that the factual basis provided to support the assertions that:

- the native title claim group have, and their predecessors had, an association with the area claimed;
- traditional laws and customs, acknowledged and observed by the native title group, exist;
- the native title claim group continue to hold native title in accordance with those traditional laws and customs;

is sufficient to support those assertions: see *Martin v Native Title Registrar* [2001] FCA 16.

A general description of the factual basis is provided in schedule F of the application. It refers to these matters:

- the Mamu people having a close association (including a spiritual connection) with the claim area according to their traditional law and custom,
- passing onto their descendants traditional laws and customs, stories and beliefs concerning traditional country, including the claim area;
- continued use of the claim area for traditional hunting and fishing, gathering of traditional bush medicines and other materials;
- continued care by Mamu people for their traditional country, including the claim area, according to traditional laws and customs passed down from forebears and predecessors;

- continued exercise of a body of traditional laws and customs being passed down across generations from forebears and predecessors, including traditional laws and customs dealing with caring for country, controlling access to country, holding of ceremonies on traditional country, use and care of traditional country, applying to the claim area as it is part of the group's traditional country.

Further information to support factual basis for the assertions is found in this material:

- attachment F1 (*(name deleted)*, consultant anthropologist)
- attachment F2 (affidavit by claim group member, *(name deleted)*).

The factual basis provided supports an assertion that the Mamu People have an association with the claim area and are descended from people who also had an association with the claim area. See:

- *(name deleted)* paras. 1-4, 11-13, 16-17, 20
- *(name deleted)* para. 9

(b) existence of traditional laws acknowledged by, and traditional customs observed by, the native title claim group

This subsection requires me to be satisfied of the factual basis that traditional laws and customs exist; that those laws and customs 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.

On the basis of the description of the factual basis in Schedule F and the information in attachments F1 (*(name deleted)*) and F2 (*(name deleted)*) I am satisfied that the factual basis provided supports this assertion. This information supports an assertion that the native title claim group continue to observe a system of traditional laws and customs that forms the basis of their claim to native title rights and interests in the claim area. See:

- *(name deleted)* paras. 5-10, 11-13, 16-19, 22
- *(name deleted)* paras. 10, 11

(c) the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied of the factual basis that the native title claim group continues to hold native title in accordance with their traditional laws and customs. For the reasons set out in 190B(5)(b) and having regard to the same material I am satisfied that the factual basis provided is sufficient to support the assertion that the claim group continue to hold native title in accordance with those traditional laws and customs.

Consequently, and taking the above matters into consideration, I am satisfied that the factual basis provided sufficiently supports the assertions outlined in s190B5.

Result: Requirements met

s.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

Under s190B(6) I must consider that, prima facie, at least some of the native title rights and interests claimed can be established.

‘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 recognized under the common law of Australia.

These requirements are relevant to the matters I have considered relating to s190B(4). I also have regard to the conclusions I have made in relation to s190B(5) requirements. I am satisfied that the requirements as set out in s223 are met. That is the native title rights and interests are able to be readily identified and there is a factual basis upon which specific assertions as to incidents of those native title rights and interests are sufficiently supported.

At Schedule E to the application it is stated:

The native title rights and interests claimed are those of and flowing from the right to exclusive possession, occupation, use and enjoyment of the claimed area as against the whole world, pursuant to the traditional laws and customs of the claim group.

Where the area is covered by a valid, previous non-exclusive possession act (s.23F) the native title claim group does not claim possession, occupation, use and enjoyment of the area to the exclusion of all others.

I have had regard to the affidavits and statements attached to the application at attachments F1, F2, and R1 to R9. This material supports a finding that:

- there exist traditional laws and customs acknowledged and observed by the claimant group that give rise to the native title rights and interests claimed (F1 para 10, the applicants’ authorisation affidavits at attachments R1 to R8, the statement by *(name deleted)* at attachment R9, the information in *(name deleted)* affidavit that he has learned about his people’s traditions and customs from his elders, and practices these things on country);

- a member of the native title claim group's involvement in heritage clearances of country forming part of the claim area is based on the current observance of native title under traditional law and custom (F1 para 11);
- members of the native title claim group carrying out activities in accordance with native title rights to use and enjoyment of the claim area (F2);
- a member of the native title claim group has lived at various places in the area of the claim, and knows and associates with other Mamu people (F2);
- a member of the native title claim group has been shown in accordance with Mamu traditional law and custom what is "Mamu country", that only Mamu people can speak for Mamu country, and that at a meeting on the (*deleted*) 2001 (*names deleted*) people met with the Mamu native title claim group and agreed on mutual boundaries (F2).

On the basis of this information, I am satisfied that rights and interests of 'exclusive possession, occupation, use and enjoyment', with the stated qualifications, can be prima facie established, within the limits of that recognised by the common law. The stated qualifications to this claim (see my reasons under s190B4 for the text of the qualifications that appear in the application) satisfy me that rights are not claimed where these are not recognised at law.

Result: Requirements met

s.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 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 the 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 a holder of a lease.*

Reasons for the Decision

Under s190B(7) I am 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. Consequently I will make reference in my conclusion to one member of the native title claim group.

I refer to the affidavit of (*name deleted*) at attachment F2 of the application. I have had regard to his sworn testimony providing information:

- that he is a Mamu person,
- that he is a relative of a named Mamu ancestor,

- about living on the claim area, and hunting and fishing for bush tucker to feed his family,
- about knowing traditional walkways and camping places in Mamu country
- about being taught about traditional laws and customs by his elders, and being shown his country when being taken out to hunt and fish
- how he respects what his elders taught him, and observes traditional laws and customs,
- describing a meeting with neighbouring groups to make out mutual boundaries.

I am satisfied that the deponent is a member of the native title claim group. The deponent provides information to support the assertion that he has an association and connection with the claim area that is continuous and is current.

On the basis of the information in (*name deleted*) affidavit, I am satisfied that he has the requisite traditional physical connection with the claim area.

Result: Requirements met

s.190B(8)

No failure to comply with s.61A:

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

Reasons for the Decision

For the reasons that follow I have concluded 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 determination of native title in relation to the area claimed in this application.

S61A(2) Previous Exclusive Possession Acts

In Schedule B of the application, any area that is covered by a previous exclusive possession act, as defined in s23B of the Native Title Act, is excluded from the claim area.

S61A(3) Previous Non-Exclusive Possession Acts

I am satisfied that the applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts – refer to my reasons under s190B4 for the full statement in Schedule E of the application that makes it clear that exclusive

possession is not claimed where the area is covered by a non-exclusive possession act defined in s23F.

Conclusion

For the reasons as set out above I am satisfied that the application and accompanying documents do not disclose and it is not otherwise apparent that pursuant to s61A the application should not have been made.

Result: Requirements met

s.190B(9)(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 the right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;*

Reasons for the Decision

At Schedule Q of the application it is stated that ... *The native title claim group does not claim ownership of minerals, petroleum or gas where they are wholly owned by the Crown in a manner which is inconsistent with continuing native title rights residing in those substances.*

This exclusion is consistent with the requirements of s190B(9)(a).

Result: Requirements met

s.190B(9)(b)

Exclusive possession of an offshore place:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise 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

No offshore places are claimed in this application – refer to para. A of schedule A. In relation to the 'land' component of the claim it is stated that the external boundaries extend to the high water mark only. It is also stated that the application does not claim any areas of sea. See also the statement in schedule P that the claim area does not include any offshore areas.

Result: Requirements met

s.190B(9)(c)

Other extinguishment:

The application and accompanying documents must not disclose, and the Registrar must not be otherwise 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 does not disclose and I am not otherwise aware of any other extinguishment of native title rights and interests in the area claimed. I note also the statement in Schedule B of the application that native title rights and interests are not claimed where they have otherwise been extinguished pursuant to this section, except in the limited circumstances permitted by s47, s47A and s47B. I am satisfied that the requirements of this section have been met.

Result: Requirements met

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