

# *National Native Title Tribunal*

## REGISTRATION TEST

### Edited Statement of Reasons for Publication on NNTT Website

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DELEGATE: Frank Russo

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Application Name: Gubbi Gubbi People #2  
Names of Applicants: Dr Eve Fesl  
Region: South Queensland      NNTT No.: QC99/35  
Date Application Made: 24 December 1999      Court No.: Q6034/99

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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).

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Frank Russo

7 September 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 24 December 1999. Amendment to the application was filed in the Federal Court on 11 October 2000, and leave granted to amend by Federal Court order of 8 November 2001.

Federal Court order of 3 May 2001 directed that Gubbi Gubbi #2 be separated into two parts, to be called Part A and Part B. Part A consists of that portion which overlaps QG6128/98 Jinibara People and QG6151/98 Undumbi People. The balance of the claim is designated Part B.

Amendments to the application (Parts A and B) were filed in the Federal Court on 30 August 2001, and leave granted to amend by Federal Court orders of 5 September 2001.

This application is affected by a notice of lodgement of application for a low impact exploration permit (application notice) issued pursuant to s486 of the *Mineral Resources Act 1989 (Qld)*.

## **Information considered when making the Decision**

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

- The National Native Title Tribunal's files for this application QC99/35
- Extracts from the Register of Native Title Claims and the Schedule of Applications Received for native title applications QC95/7 (Bond People #1 native title application), QC96/102 (Bond #2 native title application), QC97/30 (Butchulla People native title application), QC97/44 (Undumbi People native title application), and QC98/45 (Jinibara People native title application)
- Tenure information acquired by the Tribunal in relation to the area covered by this application
- The National Native Title Tribunal Geospatial Database
- The Register of Native Title Claims and Schedule of Native Title Applications
- The National Native Title Register
- Letter from Dalungbara Land Council [Person 1 – name deleted] dated 18 July 2000
- Letter from Undumbi Land Council Aboriginal Corporation [Person 2 – name deleted] dated 18 July 2000
- Letter from [Person 3 – name deleted] (Jnr) dated 7 August 2000
- Supplementary material provided directly to the Registrar for the purposes of registration, dated 15 September 2000
- Letter from Lonway Cultural & Recreational Centre [Person 4 – name deleted] dated 3 October 2000
- Electronic mail from [Applicant 1 - name deleted] dated 21 February 2001
- Statement signed by [Person 5 – name deleted] dated 21 March 2001
- Statement signed by [Person 6 – name deleted] dated 21 March 2001
- Statement signed by [Person 7 – name deleted] dated 10 March 2001
- Letter from [Person 8 – name deleted] dated 3 April 2001
- Letter from [Person 4 – name deleted] dated 3 April 2001
- Letter from [Person 9 – name deleted] (Snr) 4 April 2001
- Letter from [Person 10 – name deleted] dated 10 April 2001

- Letter from [Person 9 – name deleted] (Snr) 10 April 2001
- Statutory Declaration declared by [Applicant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 7 - name deleted])
- Statutory Declaration declared by [Applicant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 8 - name deleted])
- Statutory Declaration declared by [Applicant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 4 - name deleted])
- Statutory Declaration declared by [Claimant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 6 - name deleted])
- Statutory Declaration declared by [Claimant 2 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 5 - name deleted])
- Statutory Declaration declared by [Claimant 3 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 5 - name deleted])
- Statutory Declaration declared by [Claimant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 5 - name deleted])
- Statutory Declaration declared by [Applicant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 5 - name deleted])
- Statutory Declaration declared by [Applicant 1 – name deleted] on 23 April 2000 provided directly to the Registrar for the purposes of registration (response - [Person 2 - name deleted])
- Electronic mail from [Applicant 1 – name deleted] dated 27 April 2001

Copies of the documents provided to the Registrar directly for the purposes of registration of this application have been provided to the State. This is in compliance with the decision in *State of Western Australia v Native Title Registrar & Ors [1999] FCA 1591 – 1594*.

The State has not provided any comment in response to the material I have had reference to.

**Note:** Information and materials provided in the context of mediation on any of the native title determination applications by the applicants on behalf of their native title groups has not been considered in making this decision. This is due to the without prejudice nature of mediation communications and the public interest in maintaining the inherently confidential nature of the mediation process.

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

## A. Procedural Conditions

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### 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**

*Has the application been made on behalf of all the persons (the native title claim group) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed.*

The case of *Risk v. National Native Title Tribunal* [2000] FCA 1589 (10 November 2000) ('Risk's case') needs to be considered. In *Risk's* case, O'Loughlin J said the following:

*'By operation of subs 190C(2) the Registrar must be satisfied in relation to all the requirements contained in s 61. It follows that, when applying the registration test, the Registrar must consider whether (on the basis of the application and other relevant information) the application has been made on behalf of a 'native title claim group' [30]*

*'The [Native Title] Act now ensures that applications can only be lodged on behalf of properly constituted groups – not individuals or small sub-groups. This approach is consistent with the principle that native title is communally held . . . Subsection 61(1) imposes requirements not only in relation to the question of authorisation, but also in relation to the anterior question of whether the application has been made on behalf of a 'native title claim group' . . . An application which is not made on behalf of a 'native title claim group' cannot validly proceed . . .' [30] – [31]*

*'[T]he tasks of the delegate included the task of examining and deciding who, in accordance with traditional law and customs, comprised the native title claim group' [para. 60]*

*Risk's* case is authority for the proposition that to comply with the requirements of s61(1), the application must be made on behalf of a 'properly constituted group', and 'not individuals or small sub-groups', as happened in *Risk*.

The amended application before me is made on behalf of a group of people who call themselves and appear to be generally recognised as the Gubbi Gubbi People. Schedule A of the application describes the claim group as follows:

*"The Gubbi Gubbi biological descendants who are matrilineally descended from [Ancestor 1 - name deleted] born circa 1840 died circa 1882 and [Ancestor 2 - name*

*deleted]) born circa 1830, died circa 1893. Their female children were [Ancestor 3 – name deleted] born 1871, died 1919 and [Ancestor 4 – name deleted] born 1874, died circa 1922. (Their son was [Person 15 – name deleted] born circa 1869 and died circa 1910).*

*The surviving matrilineal descendants on whose behalf the claim is made are: [Claimant 4], [Claimant 5], [Claimant 1], [Applicant 1], [Claimant 3], [Claimant 6], [Claimant 2] and future descendants.”*

It appears from Schedule A that matrilineal descent is the principle means of recruitment under the Gubbi Gubbi traditional laws and customs into the native title claim group, which is supported by the statement, at Part A of the application, that *“In Gubbi Gubbi tradition, tribal name and custodianship of land is defined by matrilineal descent”*. Further support can be found at the attachment labeled ‘Part of Attachment “A”’, in which the applicant states the following:

*“Section 4(a) of the constitution provide for admission to ordinary membership of any Gubbi Gubbi person who can provide evidence that they are Gubbi Gubbi (blood relations through males). Sections 12(3) and 12(5) permit only those persons who are matrilineally descended to be elected as Office Bearers”.*

An extract from the constitution of the existing land management group ‘Gubbi Gubbi Dyunungoo Group’ and dated 18/03/99 is attached to the application and labeled ‘constitution’. Section 12(3) of the constitution states *“In accordance with Gubbi Gubbi law concerning custodianship, only those persons who are matrilineally descended may be elected as the three office bearers”*.

The applicant has provided, at attachment A to the application, a paper prepared by her (an anthropologist) for the Gubbi Gubbi Land and Cultural Association Inc. which details information by other anthropologists on the subject of matrilineal descent in Australia. The paper states that research had revealed that *“most of Southern-Queensland, all ..... used matrilineal descent to determine bloodlines and links to land”*. The paper further explains what matrilineal descent dictates and provides references for this being recorded as early as 1898 and being reaffirmed in a 1934 report called *“Tribes on Cherburg Settlement, Queensland”*. The paper also provides that there have been inaccurate reports, based on hearsay, that assigned patrilineage to Gubbi Gubbi, and in some cases this untruth has continued.

In a statutory declaration dated 5 September 2000, attached to the amended application and labelled Attachment “Part A 2” the applicant states the following:  
*“In accordance with custom, only those who are matrilineally descended from Gubbi Gubbi apical ancestors, may make decisions on land. Therefore, the constitution for Gubbi Gubbi Dyungungoo Group, a body corporate, which manages the property, has as its membership criteria – that ordinary membership is, in accordance with Gubbi Gubbi customary law, open to all Indigenous Australians who can, by production of evidence, prove that they are genealogically related to the Gubbi Gubbi by bloodline.*

...

*The composition of a body corporate for any future land, will be in accordance with our law that only matriline Gubbi Gubbi may make the final decisions concerning land...”*

I have been provided with the following documents from people objecting to the registration of this application on grounds that the claim group is not properly constituted:

- Letter from Undumbi Land Council Aboriginal Corporation ([Person 2 ]) dated 18/7/00
- Letter from [Person 3] (Jnr) dated 7/8/00

- Statement signed by [Person 5] dated 21/3/01
- Statement signed by [Person 6] dated 21/3/01
- Statement signed by [Person 7] dated 10/3/01
- Letter from [Person 8] dated 3/4/01
- Letter from [Person 4] dated 3/4/01
- Letters from [Person 9] (Snr) dated 4/4/01 and 10/4/01
- Letter from [Person 10] dated 10/4/01

In essence, the letters and statements received dispute that the Gubbi Gubbi application is comprised of a properly constituted native title claim group and dispute that the application was authorised by all the members of the Gubbi Gubbi People.

I have also been provided with letters and Statutory Declarations in response to this information from the applicant and members of the native title claim group.

[Person 5] states in his letter of 21/3/01 that he and his family have not authorised the Gubbi Gubbi claim and that not all Gubbi Gubbi people were included in the authorisation meeting. I note at attachment R to the application (minutes of meeting) that an [Person 5] attended the authorisation meeting on 24/11/99 and was recorded in the minutes as saying “*he was not against the motion but as he needed time to discuss this with his family, he would not add his name until this had been done*”. In the statutory declaration dated 23 April 2001 of [Claimant 1], a member of the native title claim group, declares that she is an Elder of the Gubbi Gubbi People and the delegated spokesperson for those descended from [Ancestor 4]. She further deposes that [Person 5] is a member of the family, being a descendant of [Ancestor 4] and explains his ancestry. She states that she was delegated to speak on behalf of [Person 13 – name deleted] and [Person 14 – name deleted] prior to his return to Queensland. She further deposes her belief that his action in opposing the registration is motivated by money. [Claimant 2] statutory declaration dated 23/4/01 states that he has been involved in seeking out Gubbi Gubbi people over a period of 10 years and explains that a number of people who thought they were Gubbi Gubbi were not as there were two women named [Ancestor 4]. He also states that [Person 5] is a blood relative and that the right to speak for the family is vested in other members. He further states that [Person 5] approached him a couple of days after the meeting and said that “we had spoiled everything – messed up their plans” which he later found out referred to a promise [Person 5] had been given if he could stop the Gubbi Gubbi application. Reference to the extent of the search to seek out Gubbi Gubbi people can also be found in the statutory declaration of the applicant (23/4/01). [Claimant 3], a member of the native title claim group has also provided a statutory declaration dated 23/4/01 in response to [Person 5] objection. He declares that [Person 5] was in attendance at the authorisation meeting at the time the vote was taken, but indicated that he did not wish to be involved in the claim, although he did not oppose the submission.

[Person 6] states on 21/3/01 that he and his family have not authorised the Gubbi Gubbi claim and that he had not given his permission to include any information about his family history or ancestors. [Claimant 1], in a statutory declaration dated 23/4/01 states that [Person 6] is the brother of [Person 5] and it is his choice not to become a party to the claim, however, as his family is their family they have a right to use the family history in this application.

[Person 8] states that he is the representative of his family who are members of the Gubbi Gubbi people and they were not included in the authorisation process. The applicant, in her statutory declaration dated 23/4/01 disputes these assertions. She declares that he and his family are not Gubbi Gubbi people and provides information relating to his descent. She further states that he

has not been able to provide any information that indicates any traditional ties to Gubbi Gubbi country. I note that [Person 8] is a named applicant in QC96/102, which overlaps the area claimed in this application. On examination of the RNTC, the claim group membership of QC96/12 is restricted to named people (some of whom bear the surname [Group 1-name deleted]), and descendants, with no reference to Gubbi Gubbi heritage. I also note that the claim group for QC95/7 (Bond People #1) is described as “[Person 8], [Person 11 – name deleted] on behalf of their families & other related families of the Gubbi Gubbi language group who would identify as being descendants of the people of Yarun (Bribie Island). In any case, I am not satisfied on the information before me that [Person 8] and his family are part of the Gubbi Gubbi claim group.

[Person 7] states on 10/3/01 that he is a Kabi person and a descendant of his great-great-grand father. He further states that he and his family have not authorised this claim, nor given permission to use his family history. The applicant, in a statutory declaration dated 23/4/01, reasserts that this application is made in accordance with traditional Gubbi Gubbi lore which accords rights to speak on land only to those people who are matrilineally descended, with this being supported by anthropological work and oral tradition through the Elders. She further states, amongst other things, that [Person 7] was admitted to the body corporate (to freehold land) on the understanding that he would provide evidence of his descendancy, although after three years this has not been provided.

The President of the Lonway Cultural & Recreational Centre Aboriginal Corporation in a letter dated 3/10/00 wrote to withdraw their objection relating to the Gubbi Gubbi [Group 2 – names deleted] Clan Group stating that they were satisfied with the claim in its present form and supported it. In a letter dated 3/4/01 [Person 4] (signatory of the Lonway Cultural & Recreational Centre Aboriginal Corporation letter) disputes that the application by the Gubbi Gubbi people is comprised of a properly constituted native title claim group and was not properly authorised. In a statutory declaration dated 23/4/01, the applicant provides dates of meetings and a comprehensive account of the discussions she has had with this family, including her offer to trace their family links. The applicant names a third party that had persuaded them to put in an objection. The applicant further declares that the author has not been able to provide evidence that he is of matrilineal descent and names three family members who do not have Gubbi Gubbi mothers. While claims were made by the author of the letter that they are aware of other clan groups that have not been included in this application, they do not name these groups.

The letters dated 4/4/01 and 10/4/01 from [Person 9] (Snr) are in the exact terms of the claims made in the above-mentioned letter, and I believe that the matters raised are adequately covered in the applicant’s statutory declaration dated 23/4/01.

The Undumbi Land Council Aboriginal Corporation in a letter dated 18/7/00 dispute the authorisation of this application and dispute that is comprised of a properly constituted group. The author of the letter names a member of the Gubbi Gubbi claim group who, the author states met with them and advised that this application excluded some twenty clan groups, was neither condoned or duly authorised and filed against the desire and direct instructions of the claim group outlined. I have been provided with a statutory declaration dated 5/9/00 from the person named in the Undumbi letter stating that they have never discussed the Gubbi Gubbi native title claim with the author of the letter or the Undumbi people, and that they had assisted the applicant in collating the material for the application. It is further stated that the remarks made in the letter are “*outright lies to which I take great exception*”. A statutory declaration dated 5/9/01 was provided to me by [Claimant 4] in which she stated that the traditional land of the author of the letter was Stardbroke Island, although his family had not lived there for a long time. The applicant, [name

deleted - PhD], who is an anthropologist has provided as part of her statutory declaration dated 6/9/00 an extract of a paper entitled “*Are Languages, Linguistic Works And Names Important In The Establishment Of Native Title Rights*” which states that because people speak the same language, it does not mean that they are blood-relations or that they necessarily hold rights to the same land. The applicant has also provided information on the [Person 2] genealogy which shows that he is not a Gubbi Gubbi matrilineal descendant.

[Person 3] (Jnr) of the clan Kubbi Kubbi Peoples says, in his letter of the 7/8/00, that he had read the objections outlined in the letter by the Undumbi People and agreed with them. In a letter from the applicant dated 17/9/00, she states that she has never met him and other claimants do not know him, noting that his support for the objections is based on hearsay.

The Registrar has received a letter from [Person 10] dated 10/4/01, which states that he is the representative of his family, who are members of the Jinibara People. He states that his family was not included in the authorisation process for Gubbi Gubbi People #2. I note that a search of the Register of Native Title Claims reveals that QC98/45 (The Jinibara People) overlaps with Gubbi Gubbi People #2. [Person 10] does not purport that members of his family are part of the claim group for Gubbi Gubbi People #2, but instead states that they are members of the Jinibara People. As such his letter is not relevant to the consideration of whether the claim group for the current application is properly constituted.

I have had regard to the information before me that disputes that this is a ‘properly constituted group’ and I have placed more weight on the statutory declarations of the applicant and members of the native title claim group and the written information that supports those declarations that has been provided to me in response to the adverse material. It is clear that relations between the claim group and others is fractured and subject to dispute. However, I am of the view that the character of the Gubbi Gubbi native title claim group for the purposes of s61(1) can not be said to be destroyed because of this.

Risk was concerned with a family of 8 people, it being quite clear that this family was part of a larger community of people who potentially held the claimed rights and interests in the area covered by the application. It was clear from the information available to the delegate that this small family could not on their own (and independently of the larger group to whom they traditionally belonged), hold rights and interest in the claimed native title area. As such it was not a properly constituted native title claim group, as required by s61(1), being one that was made up of individuals or small sub-groups.

I have an application made on behalf of a group of people who call themselves and generally appear to be recognised as Gubbi Gubbi People. Group membership depends on matrilineal descent from two named ancestors. I am of the opinion that the Gubbi Gubbi People #2 native title claim group would appear to be a properly constituted native title claim group, and is not a case affected by the *Risk* decision.

I will deal with issue of the applicant being authorised to make this application and deal with matters arising in relation to it in my reasons under s 190C(4)(b).

**Result:**            **Requirements met**

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

**Reasons relating to this sub-condition**

The applicant's name is detailed at Part A of the application. The details of address for service appear at Part B 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 which led to my conclusion (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**

**s.61(5)(a)**

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

**s.61(5)(b)**

The application was filed in the Federal Court as required pursuant to s. 61(5)(b) of the Act.

**s.61(5)(c)**

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 s.62 below.

**s.61(5)(d)**

As required by s.61(5)(d) the application is accompanied by the prescribed documents, being, an affidavit as prescribed by s.62(1)(a) and a map as prescribed by s.62(1)(b).

I refer to my reasons for decision in relation to s.62(1)(a) and (b) below. I note that s190C(2) only requires me to consider details, other information and documents required by s.61 and s.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) are 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**

An affidavit in relation to this condition has been received from the applicant and is attached to the application. The affidavit is sworn and a competent witness (Justice of the Peace) has witnessed this affidavit. I am satisfied that the affidavit satisfactorily addresses the matters required by s.62(1)(a) (i)-(v).

**Result: Requirements met**

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

**Comment on details provided**

The application contains some detail relating to “traditional physical connection” at Schedule M and in the Statutory declaration of [Claimant 4] dated 5 September 2000 attached to the amended application and labeled ‘refers to Sched. M’.

**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 that led to my conclusion that the requirement of s.190B(2) have been met, I am satisfied that the information and map in the application are sufficient to enable the area covered by the application to be identified with reasonable certainty.

**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 reason that led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information contained in the amended application and provided by the applicants 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**

A map showing the external boundaries of the area covered by the application is at Attachment B to the amended application. For the reasons that led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the map provided by the applicants sufficiently identifies 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**

Schedule D of the application states that “*No searches have been carried out to date*”. I am of the view that the application must contain details/results of searches conducted by or on behalf of the applicants, not those conducted by other parties. There is nothing on the face of the documents before me to indicate that the applicants have carried out any searches, the details/results of which require 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**

The native title rights and interests claimed by the applicant are described at Schedule E of the application. In accordance with s.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 law. I have outlined these rights and interests claimed in my reasons for decision in relation to s.190B(4).

**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.*

**Finding:** The application includes a general description of the factual basis upon which it is asserted that the native title rights and interests claimed exist. Specifically, the description addresses each of the three particular requirements in (i), (ii) and (iii).

Under this section I must have regard to information contained in the application **only** in order to be satisfied that the requirements of this condition are met.

Information relevant to this subsection is contained at Schedules F, G and M of the amended application and attachments F, G and M to the amended application.

Schedule F of the amended application provides a general description that the native title claim group has, and the predecessors of those persons had, an association with the area. The applicant states at Schedule F that:

- the native title claim group has a close association with the area
- two of the living senior elders were born on the banks of the Mary River,
- predecessors were born in other parts of the country including, Noosa, Bribie Island, Maroochydore, Yandina, and Pine River
- they maintain and perform ceremonies relating to the many Doorn and Kippa (bora) which are found in their country
- recording and protection of other Gubbi Gubbi indicators of occupation such as, fish traps, axe grinding quarries, and scarred trees from which implements were made.

At schedule M of the amended application the applicant states that she lives close to the Burpengary Creek.

Schedule F of the amended application refers to attachment F which includes the Statutory Declaration of [Claimant 4] dated 5 September 2000 and other information, including a copy of the “Gubbi Gubbi Language Program”, written by the applicant.

The Statutory Declaration of [Claimant 4] provides a general description of the existence of traditional laws and customs and the continued holding of native title in accordance therewith, including those relating to:

- she was born on the banks of the Mary River (para 1)
- living in traditional Gubbi Gubbi style,
- obtaining food from the river and land (para 2)
- using grass, reeds and fibres to make the roof of their home and lines and fish nets (para 2)
- Elders telling her stories of their people and creation stories (para 4)
- passing on these stories onto her children (para 4)
- taping songs in language so that other descendants of Gubbi Gubbi people can hear them (para 4) and
- Elders telling her that Gubbi Gubbi always received the tribal name and land through the mother (para 5)

I am satisfied that the information at Schedules F and M, and in the Statutory Declaration of [Claimant 4] meets the requirements of s62(2)(e) and is the requisite general description of the factual basis that is required by that section.

**Result:           The 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 and attachment G to the amended application provide general details of the activities which the native title claim group carries out in relation to the area claimed, which are consistent

with the rights and interests claimed in Schedule E of the application. It is my view that this description of activities is sufficient to comply with the requirements if s.62(s)(f).

**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**

In response to the request for these details, Schedule H of the amended application lists seven applications and refers to “Attachment B”, which provides information on agreements that have removed the overlaps with two of the applications listed.

A search of the Tribunal’s Schedule of Applications as at 6 September 2001, showed that five applications overlap the current application, which are as follows:

NNTT No	Name	Federal Court No.	Overlap area
QC95/007	Bond People #1	QQG166/97	5.535 sq km
QC96/102	Bond #2	QG6107/98	6.407 sq km
QC97/030	Butchulla People	QG6140/98	181.039 sq km
QC97/044	Undumbi People	QG6151/98	1,212.287 sq km
QC98/045	The Jinibara People	QG6128/98	1,307.797 sq km

I am satisfied that the application complies with the requirements of s.62(2)(g).

**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**

The applicant notes EPM13374 at Schedule I of the amended application.

**Result: Requirements met**

For the reasons outlined above, I consider that the application **passes** the conditions contained in s.190C(2).

**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**

Section 190C(3) requires me to be satisfied that any person who is a member of the Gubbi Gubbi People #2 native title claim group is not also a member of the native title claim group for any previous native title determination application (“the previous application”) where:

- (a) the previous application overlaps in whole or part the claim area covered by the Gubbi Gubbi #2 application (cf. s190C(3)(a)); and
- (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the Gubbi Gubbi #2 application was made (cf. s190c(30(b))); and
- (c) the entry in the Register was made, or not removed, as a result of consideration of the previous application under s 190A (cf. s190C(3)(c)).

This Gubbi Gubbi #2 application was filed in the Federal Court on 24 December 1999. For the purposes of s190C(3)(b) it was “made” on that day.

A search of the Tribunal’s geospatial database and the Schedule of Applications as at 16 March 2001, reveals that there were seven (7) native title determination applications on the Schedule of Application of which two are on the Register of Native Title Claims as a result of consideration pursuant to s.190A at the time the Gubbi Gubbi #2 application was made:

<b>NNTT No</b>	<b>Name</b>	<b>Federal Court No.</b>	<b>Overlap area</b>
QC96/102	Bond #2	QG6107/98	6.407 sq km
QC97/30	Butchulla People	QG6140/98	181.039 sk km

I note that Bond People #1 (QC95/7) has thus far not been required for consideration under s.190A of the Act.

**QC96/102 Bond #2 and QC97/30 Butchulla People**

I have considered Schedules A and O of the amended application and the Register details for these overlapping applications. My review of the material does not reveal the existence of any person named in these applications that would appear to be named also as either an ancestor, applicant or claim group member for the current Gubbi Gubbi #2 application.

I am satisfied from the information reviewed above that the native title claim groups in these overlapping applications are different to the Gubbi Gubbi People #2 native title group. I have not seen any information that would cause me to find that there are common members between the

groups. I am therefore satisfied pursuant to s190C(3) that no person in the Gubbi Gubbi People #2 native title claim group was a member of these previously registered native title claim groups.

**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 has not been certified pursuant to s.190C(4)(a). Evidence of authorisation pursuant to s190C(4)(b) is required because the requirements of s190C(4)(a) have not been met.

Under this section, I am only required to be satisfied that one of these conditions is met. I have therefore limited my consideration to compliance with s.190C(4)(b) – authorisation by the native title claim group.

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

1. each applicant 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*

The application at Schedule A describes the persons of the native title claim group as:

*“The Gubbi Gubbi biological descendants who are matrilineally descended from [Ancestor 1] born circa 1840, died circa 1882, and [Ancestor 2] born circa 1830, died circa 1893.....*

*The surviving matrilineal descendants on whose behalf the claim is made are ..... [Applicant 1]..... and future descendants”.*

Statutory declarations from each of the named surviving ancestors can be found at attachment R to the amended application filed on 30/8/01. Each has declared that 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. I am satisfied therefore that the requirements of the first limb of s190C(4)(b) are met on the basis of the evidence outlined above.

*The second limb*

A prerequisite to compliance with s190C(5) is provision by the applicant of a:

- statement to the effect that the requirement in s190C(4)(b) is met; and
- brief statement setting out the grounds on which I should consider that the requirements of s.190C(4)(b) are met.

Statements of the kind required by s190C(5) are found in attachment R to the amended application and in the applicants s62(1) affidavit accompanying the amended application.

In *Risk v National Native Title Tribunal [2000] FCA 1589* O’Loughlin J noted that under the Native Title Act applications can only be lodged on behalf of properly constituted groups and that authorisation must come from all the persons who hold the common or group rights and interests. He noted that the applicant does not have to be individually authorised by each member of the claimant group. It is sufficient that the applicant has been authorised to make the claim in accordance with a process of decision making recognised under the traditional laws and customs of the claimant group.

The Act, at s.251B, recognises that applicants may be authorised using a decision making process that is either:

- (a) under traditional laws and customs of the group; or
- (b) agreed to and adopted by the native title claim group.

Schedule R of the application states that:

“The applicant is the great-grand-daughter of [Ancestor 1] and is matrilineally descended from her. In accordance with Gubbi Gubbi lore and the directive of Senior Elders and other descendants the applicant as Hon Secretary of the Gubbi Gubbi Land and Cultural Assn. Inc., was asked to make the application at a meeting the minutes of which have been confirmed and a copy of which is attached as Attachment R.”

Paragraph (iv) of the applicant’s s.62 affidavit (24/12/99) deposes that she is “*authorised by all (my emphasis) the persons in the native title claim group to make the application and to deal with matters arising in relation to it*”. Paragraph (v) of the applicant’s affidavit describes the basis on which the applicant was authorised in the following terms:

“I am an Elder of the Gubbi Gubbi People and Hon Secretary of the Gubbi Gubbi Land and Cultural Assn. Inc., an organisation managed by, and which acts on behalf of Gubbi Gubbi people. I was requested at a meeting held on 24<sup>th</sup> November, 1999, to make the application. This was passed by resolution- the Minutes of the meeting are included in Attachment R”.

At Attachment R to the amended application the minutes of the meeting of the Gubbi Gubbi Land and Cultural Association Inc sets out the resolution as follows: “That the Secretary prepare and lodge a claim on behalf of all those Gubbi Gubbi people who were legitimately Gubbi Gubbi”.

Part A of the application and Attachment R to the application also includes an extract expressed to be the Rules of the Constitution under which decisions are made by the Gubbi Gubbi Land and Cultural Association Inc. This usefully describes the group’s decision making process. The Rules state:

**“Procedures at general meeting**

27(1) Unless otherwise provided by these rules, at every general meeting –

- (a) the president shall preside as chairperson, or if there is no president, or if the president is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the vice-president shall be the chairperson or if the vice-president is not present or is unwilling to act then the members present shall elect 1 of their number to be chairperson of the meeting; and
- (b) the chairperson shall maintain order and conduct the meeting in a proper and orderly manner; and
- (c) every question, matter or resolution shall be decided by a majority votes of the members present, and
- (d) every member shall be entitled to 1 vote and in the case of an equality of votes the chairperson shall have a second or casting vote”

I have been provided with a statement dated 21/3/01 by an [Person 5] stating that he and his family have not authorised this claim and that there are other people who speak for the land that were not included in the authorisation meeting. I have also been provided with a statement by a [Person 6] who states he is a descendant of [Person 16 – name deleted] and [Ancestor 4] and he and his family have not authorised the Gubbi Gubbi claim.

I note that the minutes mention six of the named descendants as per the description at schedule A of the native title claim group as either being in attendance or who were spoken for at the authorisation meeting of 24/11/99. At attachment R to the application the remaining named descendant has provided a statutory declaration stating that they have authorised the making of this application. However, the minutes also make reference to three other people who are not named, but may fall within the description of the claim group, being descendants. One of these, [Person 5], states that though he was not against the motion he needed time to discuss this with his family, he would not add his name until he had done so.

Statutory declarations (as detailed in my reasons at s 61(1)) have been provided to me by several members of the native title claim group in relation to [Person 5] statement. The essence of these declarations is that:

- [Person 5] is a matrilineal descendant
- [Person 5] was at the meeting and chose not to vote or add his name to the application as he needed time to discuss with his family
- [Person 5] had time to consult with family, as informal discussions had taken place at gatherings which [Person 5] had been present at in previous months
- The right to speak for the family is vested in another named senior member

I note that [Person 5] is saying that he did not authorise this application, however I find that he did attend the meeting and the evidence contained within the minutes of the authorisation meeting and the statutory declarations of others that attended the meeting contradicts his statement in that the information provided to me shows that he was not against the motion to file the application, but chose not to include his name at that time. The minutes also record the prime reason for calling the meeting was to give approval for the Secretary to prepare and lodge an application on behalf of those Gubbi Gubbi families who wished to be part of the claim and who had legitimate claims to kinship as Gubbi Gubbi. Further discussion regarding false claims that are being lodged by people who were not Gubbi Gubbi for economic goals is recorded. The minutes then record the following *“Also that our absence from the paperwork as being Native Title traditional owners was giving some appearance of legitimacy to the “claim jumpers’ as [Person 5] referred to them”*.

I note that [Person 5] and [Person 6] are brothers. While I have no information before me that states that [Person 6] was invited to this meeting, I have inferred that he was aware of the meeting based on the fact that his brother [[Person 5] attended the meeting and based on the statutory declaration of [Claimant 1]. [Claimant 1] states in her statutory declaration dated 23/4/01 that [Person 6] is [Person 5] brother and his decision not to become a party to the claim is his personal choice. At attachment R to the amended application a further statutory declaration by [Claimant 1] dated 17/6/00 states that in relation to the application by matrilineal descendants of the Gubbi Gubbi people, she confirms her authorisation for the applicant to make this application.

Clarifying notes attached to the minutes at attachment R note that:

- not all members of the native title claim group were present at the meeting, but had given their views via their representative; and
- those present represented by delegation the senior spokesperson for the families descended from [Ancestor 1] via her daughters.

Based on the evidence before me, I prefer the information contained in the application, being the rules of the association, minutes of the meeting and statutory declarations. I am inclined to the view that the concerns raised by the {Persons 5 and 6} that they have not authorised this application do not in themselves invalidate the authorisation of this application.

I have also had regard to the following documents in which statements have been made that this application has not been properly authorised. In addition I have considered the information provided to me by the members of the claim group in response to these assertions.

- Letter from Undumbi Land Council Aboriginal Corporation ([Person 2]) dated 18 July 2000 indicating that this application was not duly authorised as per discussions with a member of the NT claim grp ([Claimant 2])
- Letter from [Person 3](Jnr) dated 7 August 2000, on behalf of the Kubbi Kubbi Peoples indicating that this application was not duly authorised
- Letter from Lonway Cultural & Recreational Centre ([Person 4]) dated 3 October 2000 withdrawing objections and supporting claim
- Statement signed by [Person 5] dated 21 March 2001 indicating his family have not authorised the Gubbi Gubbi claim and that there are more people who belong to this group
- Statement signed by [Person 6] 21 March 2001 indicating that he is a Kabi person and descendant of [Person 16] and [Ancestor 4], he and his family have not authorised this claim
- Statement signed by [Person 7] dated 10 March 2001 indicates that he is a Kabi person and descendant from [Person 12]of Yandia and has not authorised this claim.
- Letter from [Person 8]dated 3 April 2001 indicating member of the Gubbi Gubbi people and not included in the authorisation process
- Letter from [Person 4] dated 3 April 2001 indicating that the [Group 2] clan group are Gubbi Gubi people and have not authorised this application
- Letter from [Person 9] (Snr) dated 4 and 10 April 2001 indicating that the [Group 2] clan group are Gubbi Gubbi people and have not authorised this application
- Letter from [Person 10] dated 10 April 2001 indicating that he is a member of the Jinibara people and his family have not authorised this claim

I refer to my reasons and the conclusion that I reached in relation to s61(1)above. Weighing up this evidence, I found in favour of the material supplied by the claim group and was unable to find that the Gubbi Gubbi People #2 claim group is not a properly constituted claim group. I also find that there is insufficient evidence before me to support the claims made by others that the applicant was not authorised to make this application and deal with matters arising.

While I am not privy to details of consultations, gathering and meetings of members of the claim group prior to the meeting of 24/11/99, the information before me supports the finding that:

- The applicant is a Gubbi Gubbi elder and holds a position of seniority and authority in the group
- The group has been involved in a process of searching for relatives over a period of seven years
- The group, which includes other Gubbi Gubbi Elders, has authorised the applicant to make the application and deal with matters arising in relation to it
- That the decision making process was in accordance with the rules of the association

It follows that I am satisfied that the members of the native title claim group have authorised the applicant to make the application to deal with matters arising in relation to it in accordance with the process agreed in the rules of the association. I am satisfied that the requirements of s190C(5) are met.

**Result:            Requirements met**

## **B. Merits Conditions**

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### **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 external boundaries of the claim area are described at attachment B of the amended application. The description is by way of a detailed written description of the external boundary, excluding the area claimed by three named applications. They have also provided a list of coordinates of 5692 points defining the external boundary.

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

#### Map

The map of the claim area, was prepared by the National Native Title Tribunal and is at attachment B to the amended application. The map depicts the external boundaries of the claim area and includes reference to the Australian Geodetic Datum (AGD) 1984. This is sufficient to meet the requirements of s62(2) and s 190B(2)

I am satisfied that the map submitted with the application meets the requirements of s.62(2)(b) as the boundaries of the area covered by the application can be identified

#### Internal Boundaries

The internal boundaries are described at Schedule B of the amended application and at attachment B to the application . These boundaries are described by way of a formula that excludes a variety of tenure classes from the claim area in the following terms:

*“Within the external boundary described above, native title rights are claimed only in relation to the lands and waters within:*

1. *Unallocated State Land*
2. *State Forest*
3. *Reserves, including Timber Reserves*
4. *National Parks*

*Excluded from the claim area are freehold and all scheduled interests under Schedule 1 Part 3 – Qld, except where Section 47 applies. Where a cultural heritage or sacred site was concerned we would seek the benefit of section 47.*

*Other areas excluded from the external boundaries are; Glass House Mountains – QG6083/98; QG6145/98 Tairbelang Bunda QG6032/99 Wakka Wakka No.2.*

*Section 23B defines previous exclusive possession act as follows –*

- 1. grant of freehold estate or certain leases etc. on or before 23.12.1996*
- 2. an act is a previous exclusive possession act if :*
  - (a) it is valid (including because of Division 2 or 2A of Part 2); and*
  - (b) it took place on or before 23 December 1996; and*
  - (c) it consists of the grant or vesting of any of the following;*
    - i. a scheduled interests;*
    - ii. a freehold interest*
    - iii. a commercial lease that is neither an agricultural lease not a pastoral lease;*
    - iv. an exclusive agricultural lease or an exclusive pastoral;*
    - v. a residential lease;*
    - vi. a community purpose lease, except for those leased to, or for the benefit of, Aboriginal peoples and Torres Strait Islanders*
    - vii. what is taken by subsection 245(3)(which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to "1 January 1994" were instead a reference to "24 December 1996";*
    - viii. Any lease (other than a mining lease) that confers a right of exclusive possession over particular lands and waters.*
- 3. If;*
  - (a) By or under legislation of a State or Territory, particular land and waters are vested in any person; and*
  - (b) A right to exclusive possession of the land or waters is expressly or impliedly conferred on the person by or under the legislation"*

*Attachment B to the application contains the following:*

*"The vesting is taken for the purposes of paragraph (2)(c) to be the vesting of a freehold estate over the land or waters.*

- (7) An act is a previous exclusive possession act if:*
  - (a) it is valid (including because of Division 2 or 2A); and*
  - (b) it consists of the construction or establishment of any public works that commenced to be constructed or established on or before 23 December 1996.*

*The area of this application does not include an area where native title has been validly extinguished except to the extent that extinguishment is required to be disregarded under section 47, 47A or 47B.*

*This application does not include any areas subject to a previous exclusive possession act defined under section 23B of the Native Title Act save where the Act and/or the common law allows those lands to be part of a Native Title Determination Application*

*We claim only legal rights under the legislation, within this definition this means, that within our boundaries, only Unallocated State land; State Forest; Reserves including timber reserves, and National Parks are claimable by us."*

*It is my view that the description of areas excluded 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. 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 applicants. I find that the description in the application of the internal boundaries of the claim area provide a reasonable level of certainty.

### Conclusion

For the reasons given above, I am satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

**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**

The application does not name all of the persons in the native title claim group and the requirements of s.190B(3)(a) can not be met.

Alternatively, s.190B(3)(b) requires the Registrar to be 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.

The amended application contains a description of the persons in the native title claim group at Schedule A of the application. To meet the requirements of s190B(3)(b), the persons in the group must be described sufficiently clearly, so that it can be ascertained whether any particular person is a member of the native title claim group.

The native title claim group is said to consist of:

*“The Gubbi Gubbi biological descendants who are matrilineally descended from [Ancestor 1] born circa 1840, died circa 1882, and [Ancestor 2] born circa 1830, died circa 1907. Their female children were [Ancestor 3] born 1871, died 1919 and [Ancestor 4] born 1874, died circa 1922. (Their son was [Person 15] born circa 1869 died circa 1910)*

*The surviving matrilineal descendants on whose behalf the claim is made are [Claimant 4], [Claimant 5], [Claimant 1], [Applicant 1], [Claimant 3], [Claimant 6], [Claimant 2], and future descendants.”*

It is apparent from the information at Schedule A that a person may be reckoned as a member of the native title claim group through being matrilineally descended (through one’s mother) from [Ancestor 1] and [Ancestor 2].

I am satisfied that this description of the persons in the native title claim group provides a clear mechanism for determining who is a member of the native title claim group. The criteria to be fulfilled is that a person must be:

- matrilineally descendant from [Ancestor 1] and [Ancestor 2]
- one of the named surviving descendants or matrilineally descendant from the named females.

The requirements of s190B(3) are satisfied.

**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 native title rights and interests described in Schedule E of the application can be readily identified.

The description of the native title rights and interests claimed 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” [see s62(2)(d) of the Act].

The native title rights and interests claimed are described in schedule E of the application.

I find that the claimed rights and interests as described in Schedule E of the application are clearly and readily identifiable. The rights claimed do not consist merely of a statement that all native title rights and interests are claimed that exist or that have not been extinguished at law.

The application meets the requirements of s.190B(4) and s.62(2)(d).

**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 s190B(5) that:

- a description of the native title rights and interests claimed in relation to the area affected by the application is provided in the application.
- a 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.

I am satisfied that a description of the claimed native title rights and interests is provided in the application (see schedule E of the application and my reasons under s190B(4)). The factual basis for the three assertions in s190B(5) is provided in Schedules F, G and M of the application and attachments F, G and M to the application.

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

It is clear from Schedules F, G and M, and attachments F, G and M to the application that the Gubbi Gubbi people have an association with the claim area and are descended from Gubbi Gubbi people who also had an association with the claim area.

The applicant states at Schedule F of the application that:

- two living senior elders were born on the banks of the Mary River
- they lived in traditional housing and have maintained connection to country
- predecessors were born on parts of the country including, Noosa, Bribie Island, Maroochydore, Yadina, and Pine River

The applicant states at Schedule G of the application that Gubbi Gubbi hold formal and cultural meetings on country, camp on country and continue their connection with the land in a physical and spiritual sense. At schedule M of the application the applicant states that the Gubbi Gubbi people continued to maintain their connection to their country, during the period in which they were removed under the *1897 Restriction of the Sale of Opium and Protection of Aboriginals Act*, by visiting country and paying respect to special sites. The applicant also states that she lives near Burpengary Creek.

At attachment F to the application, [Claimant 4], a member of the native title claim group, states in her Statutory Declaration dated 5/9/00, that:

- she was born on the banks of the Mary river and lived with her mother, her sister [Ancestor 4] whose husband was [Person 16] and their daughter, [Person 13], my cousin.
- Elders told her stories of their people and creation stories

At attachment M to the application, [Claimant 4] states in her Statutory Declaration dated 5/9/00, that:

- she is a senior woman of the Gubbi Gubbi people and her mother, [Ancestor 3] was the daughter of [Ancestor 2] and [Ancestor 1] (para 1)
- she was born on the banks of the Mary River (para 1)
- group name and custodianship of the land is through the female line (para 1)
- she and her brother learnt their culture, language, songs and stories from their parents and Uncles and Aunts (para 2)
- she walked many miles with her family through their country (para 3)
- her grandmother was born at Bribie Island (para 5)

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

This subsection requires me to be satisfied 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.

It is clear from the Statutory Declarations, schedules F, G and M and attachments F, G and M referred to above that there exist traditional laws and customs observed by the native title claim group that gives rise to the claim to native title rights and interests.

[Claimant 4] (5/9/00) at para. 4 states that she learnt about her culture through songs and stories in their language, and has taught her children how to greet one of the special places in language. It is apparent from her statutory declaration that she passes on knowledge of her country and her people's traditional laws and customs to her children and others (paras 4, 6 and 10). She further states that her daughter has prepared teaching programs for their people to learn their language, and that she has recorded the songs they sang which tell the stories about preparing for specific festivals (para 6). She also describes how they made fishing nets and the process of gathering the resources required (para 11). The possession of such stories about the claim area, and the passing on of this knowledge from generation to generation through the traditional custom of story telling and song directly supports the rights of the claim group to possession and occupation of the claim area. These customs therefore give rise to the native title rights and interests claimed.

The applicant states at schedule G that:

- Gubbi Gubbi work and liaise with the Environmental Protection Agency and National Parks in relation to planning and protection of areas
- they run cultural awareness programs for officers and groups from these agencies
- Gubbi Gubbi people hold formal and cultural meetings within their country
- Gubbi Gubbi liaise with several Shire Councils in relation to protection of the environment and cultural heritage in their area

At Schedule M of the application the applicant states that Gubbi Gubbi people visit country, live on country and pay respect to special places.

**(c) 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. For the reasons set out in 190B(5)(b)

and having regard to the same material I am satisfied that there is a factual basis for the claim group continuing to hold native title in accordance with those traditional laws and customs.

I note particularly :

- Schedule F which states the different types of Gubbi Gubbi involvement in their country through cultural heritage and environmental protection work. The applicant also states that Gubbi Gubbi continue to maintain their connection with the land in a physical and spiritual sense.
- The applicant states at Schedule M that Gubbi Gubbi visit and live on their land and pay respects to special places.
- [Claimant 4] (5/9/00) describes passing on her knowledge to her children and others, and her continuing traditional connection to their country.

The statement at Schedule R of the application that the applicant was asked to make the application “in accordance with Gubbi Gubbi lore and at the directive of the Senior Elders and other descendants” also supports the assertion that the native title claim group continue to hold the native title in accordance with those traditional laws.

Further information is contained at Schedule T of the application which states that the two senior elders of the Gubbi Gubbi were born in the traditional manner, lived in traditional shelters and pursued a traditional economy prior to the implementation of the 1897 Act. To maintain their connection during incarceration they passed on their cultural heritage to their children, and other family members.

I am satisfied that the material in the affidavit of [Claimant 4] and the application is sufficient to support the assertions in s190B(5) that:

- the Gubbi Gubbi people have, and the predecessors of those persons had, an association with the area
- there exist traditional laws acknowledged by, and traditional customs observed by, the Gubbi Gubbi people that give rise to the claim to native title rights and interests
- the Gubbi Gubbi people have continued to hold the native title in accordance with those traditional laws and customs.

**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 s.190B6 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 s.223 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 s.190B5. I will draw on the conclusions I made under that section in my consideration of s.190B6.

Under s.190B(6) 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 Galanja 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 Oxford English Dictionary (2nd ed) 1989]."*

I have adopted the ordinary meaning referred to by their Honours in considering this application, in deciding which native title rights and interests claimed can prima facie be established.

I have considered the same material against this section as was detailed in my reasons relating to s.190B(5).

The claimed native title rights and interests are found at Schedule E of the application. The rights claimed are:

*The Gubbi Gubbi people ..... are entitled to possession, occupation, management, use and enjoyment of the land, waters and resources which are the subject of the application:*

Established – within the limits of the law. The application and attachments F, G and M to the application provides sufficient evidence of members of the native title claim group exercising and/or having these rights, some of which are detailed below:

- visiting, living, travelling over claim area
- members being born on the claim area
- acquiring and passing on rights and interests in the land according to traditional law and customs
- managing, conserving and protecting country by engaging in cultural heritage work on the land
- passing on knowledge and culture to younger Gubbi Gubbi children

The following 9 more specific rights and interests are also listed:

1. *The right to have access to and use the natural resources in, on and above the area including the right to-*
  - *Maintain and use the area*
  - *Conserve the natural resources in, on and above the area*
  - *Safeguard the natural resources of the claim area in conformity with Gubbi Gubbi traditional, which ensures biographical diversity and sustainability*
  - *Manage the area for the benefit of current and future generations*
  - *Use the natural resources in, on and above the area for social, cultural, economic, spiritual, ceremonial, and traditional purposes*

The application and statutory declaration of [Claimant 4] (5/9/00) at attachment M to the application provide sufficient evidence of the members and the native title claim group exercising and/or having these rights, some of which is detailed below:

- Maintaining many Doorn and Kippa (bora) (Schedule F)
- Protection of other indicators of Gubbi Gubbi prior occupation such as fish traps, canoe, axe grinding quarries (Schedule F)
- Involvement in cultural heritage work (Schedule G)
- Running cultural awareness programs (Schedule G)
- Paying respects to sacred sites (Schedule M)

**This right is accepted for registration.**

2. *To determine access rights in relation to entry to specific areas by others, including the right to grant, deny, or impose conditions in relation to entry to the area*

I could not find evidence in the application or attachments to the application to support this right on a prima facie basis.

**This right is not accepted for registration.**

3. *The right to determine use rights in relation to activities that might be carried out by others on the area, including the right to grant, deny or impose conditions in relation to activities that may be carried out in the area*

I could not find evidence in the application or attachments to the application to support this right on a prima facie basis.

**This right is not accepted for registration.**

4. *The right to exercise and carry out economic life (including by way of barter), on the area, including hunting, fishing, creating, growing, producing or harvesting of natural resources*

The application and attachment M to the application provides sufficient evidence of members of the native title claim group exercising and/or having these rights, some of which are detailed below:

- Making of fishing nets using stringy bark
- Using wattle or iron bark to form dye
- Making furniture from lawyer cane gathered from the rainforest

**This right is accepted for registration.**

5. *The right to discharge cultural, spiritual, traditional and customary rights, duties obligations and responsibilities on, in relation to, and concerning the area, including to*
  - *Preserve sites of sacred significance to the Gubbi Gubbi people and other indigenous people in the area*
  - *Determine, give affect to, pass on or expand the knowledge and appreciation of the culture and tradition*
  - *Regard the area as the inalienable affiliation of the Gubbi Gubbi people and ensure that the use of the area is consistent with that affiliation*
  - *Maintain beliefs, practices and institutions through ceremony and proper and appropriate custodianship of the area and special sacred sites*
  - *As a matter of customary law, own and control information comprising and concerning the traditional lore, law and customs of the Gubbi Gubbi people in relation to the area*

Attachments F, G and M to the application provides sufficient evidence of members of the native title claim group exercising and or having these rights, some of which are detailed below:

- Maintaining many Doorn and Kippa (bora) (Schedule F)
- Protection of other indicators of Gubbi Gubbi prior occupation such as fish traps, canoe, axe grinding quarries (Schedule F)
- Involvement in cultural heritage work (Schedule G)
- Run cultural awareness programs (Schedule G)
- paying respects to sacred sites (Schedule M)
- passing on of stories to descendants through song (attachment F)
- promotion of art and culture within the Caboolture and Kallangar areas (attachment F)

**This right is accepted for registration.**

6. *The right to inherit, dispose of, or confer rights and interests in relation to the area on others in accordance with custom and tradition*
7. *The right to decide who is entitled to rights and interests in relation to the area*

The application and attachments F, G and M to the application provides sufficient evidence of members of the native title claim group exercising and/or having these rights. For example, there is evidence that in Gubbi Gubbi tradition, tribal name and custodianship of land is defined by matrilineal descent (see part A of application; statutory declaration [Claimant 4] at Attachment M)

**These rights are accepted for registration.**

8. *The right to resolve disputes in relation to the area*
9. *The right to prohibit any unauthorised use, or use inconsistent with Gubbi Gubbi lore, law or custom of the area of the resources in, on or above it.*

I could not find evidence in the application or attachments to the application to support these rights on a prima facie basis.

**These rights are not accepted for registration.**

The following statements are made under the rights and interests which are enumerated in Schedule E:

*“National Parks within the claim area are claimed with a view to establishing ILUAs with a view to joint-management with the Queensland Government. Gubbi Gubbi do not intend to claim hunting rights in National Parks within their country. They believe that the flora and fauna and water creatures in those areas must be protected from hunting by anyone.*

*The Gubbi Gubbi seek to establish ILUAs in regard to their areas of Crown Land, eg State Forests and reserves.”*

Rather than being expressions of rights or interests claimed, the above statements are expressions of the claim group’s intention in relation to National Parks and other areas of Crown land.

I also note that the claimed rights and interests are subject to these qualifications:

1. The area of this application does not include an area where native title has been validly extinguished except to the extent that extinguishment is required to be disregarded under section 47, 47A or 47B. (Attachment B)
2. This application does not include any areas subject to previous exclusive possession act defined under section 23B of the Native Title Act save where the Act and/or common law allows those lands to be apart of a Native Title Determination application (Attachment B)
3. This application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined in section 23F of the Act save where the Act and/or the common law allows such a claim to be part of a Native Title Determination application (Attachment B)
4. The applicants do not claim any offshore place (Schedule P)
5. The applicants do not claim ownership of any minerals, petroleum or gas wholly owned by the Crown (Schedule Q)

I have formed the view that the claimed rights and interests of ‘possession, occupation, use and enjoyment’ are prima established, within the limits recognised by the law. In this regard, the qualifications referred to above satisfy me that rights and interests not recognised at law are not claimed in the application.

Section 190B(6) requires that at least some of the claimed rights and interests must be prima facie established. As the rights of ‘possession, occupation, management, use and enjoyment’ are prima facie established, the requirements of this section are met

**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 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.

Schedules G and M of the application and attachments G and M to the application establish that members of the Gubbi Gubbi people:

- have traveled over many parts of the claim area
- have attended and participated in cultural meetings within their country
- engage in cultural and environmental protection work in the claim area
- visit country and pay respect to special sites
- applicant lives on country – near Burpengary Creek

The Statutory declarations declared by [Claimant 4] (05/9/00) establishes that she:

- is descended from Gubbi Gubbi ancestors
- is a senior Gubbi Gubbi woman
- has attended and participated in the bunya nut festivals
- understands and speaks the Gubbi Gubbi language
- has inherited group name and rights to custodianship of land through the female line of her ancestors

Based on this evidence, I am satisfied that members of the claim group have, and more specifically, [Claimant 5] has, the requisite traditional physical connection.

**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 National 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**

At attachment B to the amended application any land or waters covered by a previous exclusive possession act, as defined in s23B of the Native Title Act, is excluded from the claim area.

I am of the view that the exclusion by class of areas covered by the tenure described in s23B (ie. PEPAs) enables me to find that s61A(2) does not apply to this application, and I may be satisfied that the requirements of s190B(8) in relation to PEPAs, are not contravened.

### **S.61A(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 the requisite statement in attachment B of the amended application.

### **S.61A(4) – s47, 47A, 47B**

This application does not presently claim the benefit of s 47: see schedule L. This does not offend the provisions of s61A(4)

### **Conclusion**

For the reasons identified above the application and accompanying documents do not disclose and it is not otherwise apparent that because of Section 61A 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**

Schedule Q of the application states that the applicants “are not claiming resources owned by the Crown”.

**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**

Schedule P of the application states that the applicants “are not claiming an offshore place”.

I note that the area description and map depicted the area claimed indicate that offshore waters are included in the area claimed. I note however that attachment B states that the “ area of this application does not include an area where native title has been validly extinguished...”

I am therefore satisfied that the requirements of this condition are met.

**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 that the native title rights and interests have otherwise been extinguished. A search of the Register of Indigenous Land Use Agreements as at 29/8/01 reveals that native title over the claim area has not been extinguished by agreement (in fact no agreements were on the Register that affected any part of the claim area).

**Result: Requirements met**

*End of Document*