National Native Title Tribunal

Registration test decision

Application name	Yuwibara People
Name of applicant	Gary Theodore Mooney, Jennifer Olive Darr, Melanie Roseveen Kemp
NNTT file no.	QC2013/007
Federal Court of Australia file no.	QUD720/2013
Date application made	29 October 2013

I have considered this claim for registration against each of the conditions contained in ss. 190B and 190C of the *Native Title Act 1993* (Cwlth).

For the reasons attached, I am satisfied that each of the conditions contained in ss. 190B and C are met. I accept this claim for registration pursuant to s. 190A of the *Native Title Act 1993* (Cwlth).

Date of decision: 9 January 2014

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Heidi Evans

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cwlth) under an instrument of delegation dated 30 July 2013 and made pursuant to s. 99 of the Act.

Reasons for decision

Introduction

[1] This document sets out my reasons, as the Registrar's delegate, for the decision to accept the application for registration pursuant to s. 190A of the Act.

[2] Note: All references in these reasons to legislative sections refer to the *Native Title Act 1993* (Cwlth) which I shall call 'the Act', as in force on the day this decision is made, unless otherwise specified. Please refer to the Act for the exact wording of each condition.

Application overview and background

[3] The Registrar of the Federal Court of Australia (the Court) gave a copy of the Yuwibara People claimant application to the Native Title Registrar (the Registrar) on 1 November 2013 pursuant to s. 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s. 190A of the Act.

[4] Given that the claimant application was made on 29 October 2013 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

[5] Therefore, in accordance with subsection 190A(6), I must accept the claim for registration if it satisfies all of the conditions in 190B and 190C of the Act. This is commonly referred to as the registration test.

[6] The application is affected by a s. 29 notice, namely EPC2561, which provides a notification date of 11 September 2013. It is my understanding, therefore, that I must use my best endeavours to apply the conditions of the registration test to the application by 11 January 2014.

[7] A preliminary assessment on the application was provided by the Tribunal pursuant to s. 78 to the applicant's legal representative on 24 September 2013.

Registration test

[8] Section 190B sets out conditions that test particular merits of the claim for native title. Section 190C sets out conditions about 'procedural and other matters'. Included among the procedural conditions is a requirement that the application must contain certain specified information and documents. In my reasons below I consider the s. 190C requirements first, in order to assess whether the application contains the information and documents required by s. 190C *before* turning to questions regarding the merit of that material for the purposes of s. 190B.

[9] Pursuant to ss. 190A(6) and (6B), the claim in the application must be accepted for registration because it does satisfy all of the conditions in ss. 190B and 190C.

Information considered when making the decision

[10] Subsection 190A(3) directs me to have regard to certain information when testing an application for registration; there is certain information that I *must* have regard to, but I *may* have regard to other information, as I consider appropriate.

[11] I am also guided by the case law (arising from judgments in the courts) relevant to the application of the registration test. Among issues covered by such case law is the issue that some conditions of the test do not allow me to consider anything other than what is contained in the application while other conditions allow me to consider wider material.

[12] The information and documents that I have considered in reaching my decision are listed below:

- Yuwibara People native title determination application (QC2013/007; QUD720/2013);
- Geospatial assessment and overlap analysis dated 5 November 2013 (GeoTrack: 2013/2146);
- Letters sent by the case manager to the State of Queensland (the State) and the North Queensland Land Council (the NQLC) pursuant to s. 66(2) and s. 66(2A), dated 5 November 2013;
- Future act notice for EPC2561;
- Geospatial overlap analysis produced from the iSpatial database on 9 January 2014;
- Email from the case manager dated 7 November 2013 regarding overlaps with other native title determination applications;
- Notes prepared by the Tribunal's Geospatial Services division dated 5 November 2013 regarding overlaps with other native title determination applications.

[13] I have *not* considered any information that may have been provided to the Tribunal in the course of the Tribunal providing assistance under ss. 24BF, 24CF, 24CI, 24DG, 24DJ, 31, 44B, 44F, 86F or 203BK, without the prior written consent of the person who provided the Tribunal with that information, either in relation to this claimant application or any other claimant application or any other type of application, as required of me under the Act.

[14] Also, I have *not* considered any information that may have been provided to the Tribunal in the course of mediation in relation to this or any other claimant application.

Procedural fairness steps

[15] As a delegate of the Registrar and as a Commonwealth Officer, when I make my decision about whether or not to accept this application for registration I am bound by the principles of administrative law, including the rules of procedural fairness, which seek to ensure that decisions are made in a fair, just and unbiased way. I note that the common law duty to afford procedural fairness may be excluded by express terms of the statute under which the administrative decision is made or by any necessary implication—*Hazelbane v Doepel* [2008] FCA 290 at [23] to [31]. The steps that I and other officers of the Tribunal have undertaken to ensure procedural fairness is observed, are set out below.

[16] On 5 November 2013, the case manager for the application wrote to the State and the NQLC (the relevant representative body for the area), providing them with a copy of the application pursuant to ss. 66(2) and 66(2A). The State was also invited to make submissions in relation to the

registration testing of the application, by 22 November 2013. No further correspondence was received from the State.

Procedural and other conditions: s. 190C

Subsection 190C(2)
Information etc. required by ss. 61 and 62

> The Registrar/delegate 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.

[17] The application **satisfies** the condition of s. 190C(2), because it **does** contain all of the details and other information and documents required by ss. 61 and 62, as set out in the reasons below.

[18] In reaching my decision for the condition in s. 190C(2), I understand that this condition is procedural only and simply requires me to be satisfied that the application contains the information and details, and is accompanied by the documents, prescribed by ss. 61 and 62. This condition does not require me to undertake any merit or qualitative assessment of the material for the purposes of s. 190C(2)— *Attorney General of Northern Territory v Doepel* (2003) 133 FCR 112 (*Doepel*) at [16] and also at [35] to [39]. In other words, does the application contain the prescribed details and other information?

[19] It is also my view that I need only consider those parts of ss. 61 and 62 which impose requirements relating to the application containing certain details and information or being accompanied by any affidavit or other document (as specified in s. 190C(2)). I therefore do not consider the requirements of s. 61(2), as it imposes no obligations of this nature in relation to the application. I am also of the view that I do not need to consider the requirements of s. 61(5). The matters in ss. 61(5)(a), (b) and (d) relating to the Court's prescribed form, filing in the Court and payment of fees, in my view, are matters for the Court. They do not, in my view, require any separate consideration by the Registrar. Paragraph 61(5)(c), which requires that the application contain such information as is prescribed, does not need to be considered by me under s. 190C(2), as I already test these things under s. 190C(2) where required by those parts of ss. 61 and 62 which actually identify the details/other information that must be in the application and the accompanying prescribed affidavit/documents.

[20] Turning to each of the particular parts of ss. 61 and 62 which require the application to contain details/other information or to be accompanied by an affidavit or other documents:

Native title claim group: s. 61(1)

[21] I understand that my consideration of the application against the requirement at s. 61(1) for the purposes of s. 190C(2) is restricted to the information contained in the application. With reference to Mansfield J's comments in *Doepel* at [36], therefore, I consider that it is only where on the face of the application itself, it appears that the native title claim group described in the application is part only of, or does not include all of the persons in the native title claim group that the application will fail to meet the condition. There is no requirement for me to consider whether, in fact, the group described is the correct native title claim group – *Doepel* at [37].

[22] A description of the native title claim group appears at Schedule A of the application. Having turned my mind to the content of that description, I do not consider that there is anything on the face of it that indicates that any persons have been excluded, or that the group described is only a sub-group of the actual native title claim group.

[23] The application contains all details and other information required by s. 61(1).

Name and address for service: s. 61(3)

[24] The names of the persons comprising the applicant appear immediately above Part A of the Form 1. The address for service of the applicant's legal representative appears at Part B.

[25] The application contains all details and other information required by s. 61(3).

Native title claim group named/described: s. 61(4)

[26] It is my understanding that my consideration at s. 61(4) is restricted to a question of procedure, that is whether the application contains the information required. I am not to be satisfied of the correctness of any description of the native title claim group, or whether that description is sufficiently clear, but merely satisfied that one is provided – see *Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (*Wakaman*) at [34]; *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [31] and [32].

[27] As stated above, a description of the native title claim group appears at Schedule A.

[28] The application contains all details and other information required by s. 61(4).

Affidavits in prescribed form: s. 62(1)(a)

[29] The application is accompanied by three affidavits sworn by each of the persons comprising the applicant. Those affidavits have all been signed, dated and are competently witnessed. In each of the affidavits, the deponent states that they are a member of the native title claim group, and then makes further statements pertaining to the matters prescribed by subsections (i) to (v) of s. 62(1)(a).

[30] It is my view that those statements sufficiently address the required matters and that the affidavits, therefore, meet the condition of s. 62(1)(a) for the purposes of s. 190C(2).

[31] The application is accompanied by the affidavit required by s. 62(1)(a).

Application contains details required by s. 62(2): s. 62(1)(b)

[32] The application contains all details and other information required by s. 62(1)(b).

[33] The application does contain the details specified in ss. 62(2)(a) to (h), as identified in the reasons below.

Information about the boundaries of the area: s. 62(2)(a)

[34] Schedule B of the application refers to an external boundary description that is contained in Attachment B. Schedule B also lists general exclusions, that is, areas not subject to the application that fall within the external boundary.

The application contains all details and other information required by s. 62(2)(a).

Map of external boundaries of the area: s. 62(2)(b)

[35] A map showing the external boundaries of the area covered by the application appears at Attachment C to Schedule C.

[36] The application contains all details and other information required by s. 62(2)(b).

Searches: s. 62(2)(c)

[37] Schedule D provides that the applicant's legal representative has not carried out any searches regarding non-native title interests on the applicant's behalf.

[38] The application contains all details and other information required by s. 62(2)(c).

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

[39] A description of the native title rights and interests claimed in relation to the land and waters of the application area appears at Schedule E of the application.

[40] The application contains all details and other information required by. 62(2)(d).

Description of factual basis: s. 62(2)(e)

[41] A general description of the factual basis upon which it is asserted that the native title rights and interests claimed exist is contained in Schedule F of the application. Schedule F also refers to Attachment F, the report of [Anthropologist 1 – name deleted], and the affidavit of Gary Theodore Mooney as containing relevant information.

[42] The application contains all details and other information required by s. 62(2)(e).

Activities: s. 62(2)(f)

[43] Schedule G of the application lists the activities currently undertaken by members of the Yuwibara People native title claim group on the land and waters of the application area.

[44] The application contains all details and other information required by s. 62(2)(f).

Other applications: s. 62(2)(g)

[45] Schedule H provides that the applicant is not aware of any other applications that have been made in relation to any part of the application area.

[46] The application contains all details and other information required by s. 62(2)(g).

Section 24MD(6B)(c) notices: s. 62(2)(ga)

[47] The application provides at Schedule HA that the applicant is not aware of any such notices that have been issued in relation to any part of the application area.

[48] The application contains all details and other information required by s. 62(2)(ga).

Section 29 notices: s. 62(2)(h)

[49] Schedule I refers to Attachment I as containing a list of relevant section 29 notices.

[50] The application contains all details and other information required by s. 62(2)(h).

Subsection 190C(3)
No common claimants in previous overlapping applications

> The Registrar/delegate 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) 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 the previous application being considered for registration under s. 190A.

[51] It is my understanding of the task at s. 190C(3) that the requirement for me to be satisfied in the terms prescribed by that condition only arises where there is another application that meets all of the criteria set out in subparagraphs (a) to (c) – see *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [9].

[52] Regarding whether there is an application that covers the whole or part of the area covered by the current application, I have referred to the geospatial assessment and overlap analysis (geospatial assessment) prepared by the Tribunal's Geospatial Services division (GeoTrack: 2013/2146) dated 5 November 2013 which provides that there is one overlapping application, namely the Widi People of the Nebo Estate application (QC2013/006; QUD492/2013). Consequently, there is an application of the type prescribed by subsection (a) of s. 190C(3) and that criterion is met.

[53] I now turn to consider whether that previous application also meets the criterion at subsection (b) of s. 190C(3). In determining whether the previous application was on the Register of Native Title Claims (the Register) at the time at which the current application was made, I note that the relevant date for my consideration is when the current application was made. I understand this to be the time at which the current application was filed in the Federal Court – see *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [12] to [22], [35], [41] to [52].

[54] The current application was filed in the Federal Court on 29 October 2013. Regarding whether the previous application was on the Register when the current application was made, from my own searches of the Tribunal's registers and databases, and from information provided by the case manager, I am aware that the previous application is a new application that was filed in the Federal Court on 29 July 2013. While being considered for registration, on 27 September 2013 the NQLC (the legal representative for the Widi People of the Nebo Estate applicant) filed an interlocutory application seeking leave for the application to be amended. The Court made an order granting leave to amend the application on 3 December 2013.

[55] At this time, the Registrar's delegate considering the original Widi People of the Nebo Estate application had not yet made a decision regarding registration of the application. Consequently, that previous application has never appeared in an entry on the Register of Native Title Claims (the Register). I can, therefore, be satisfied that the criterion at subsection (b) of s.

190C(3) is not met, and that there is no previous application that was on the Register at the time at which the current application was made.

[56] The application **satisfies** the condition of s. 190C(3).

Subsection 190C(4) Authorisation/certification

> Under s. 190C(4) the Registrar/delegate must be satisfied that either:
> (a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, 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: The word ***authorise*** is defined in section 251B.
>
> Under s. 190C(4A), the certification of an application under Part 11 by a representative Aboriginal/Torres Strait Islander body is not affected where, after certification, the recognition of the body as the representative Aboriginal/Torres Strait Islander body for the area concerned is withdrawn or otherwise ceases to have effect.

[57] I must be satisfied that the requirements set out in either ss. 190C(4)(a) or (b) are met, in order for the condition of s. 190C(4) to be satisfied.

[58] Schedule R provides that the application is certified by the North Queensland Land Council (the NQLC) and refers to Attachment R as containing that certification. Consequently, it is the requirements of s. 190C(4)(a) to which I have specifically turned my mind in my assessment of the application at this condition of the registration test.

[59] In *Doepel*, Mansfield J discussed the different tasks of the Registrar's delegate under the two alternative limbs of s. 190C(4) in the following way:

> Section 190C(4) indicates clearly the different nature of the conditions imposed upon the Registrar… The contrast between the requirements of subs (4)(a) and (4)(b) is dramatic. In the case of subs (4)(a), the Registrar is to be satisfied about the fact of certification by an appropriate representative body. In the case of subs (4)(b), the Registrar is required to be satisfied of the fact of authorisation by all members of the native title claim group – at [78].

[60] It is my view, therefore, that my role at s. 190C(4)(a) is restricted to a consideration of two matters. Firstly, whether there is an appropriate representative body that can certify the application, and secondly, whether the certification is valid in accordance with s. 203BE(4).

[61] The certification has been provided by the NQLC, and is dated and signed by the Director of that representative body on its behalf. The geospatial assessment provides that the area covered by the application falls entirely within the region for which the NQLC is the relevant Aboriginal/Torres Strait Islander Body.

[62] Regarding whether the powers of the NQLC as a representative body extend to the function of certifying native title determination applications, the certification at Attachment R provides that the NQLC are the representative body for the north Queensland region pursuant to s. 203AD

of the Act. Section 203AD provides that the appropriate Commonwealth Minister may, upon application by an eligible body, recognise that body as the representative body for the area. Section 203B(1) sets out the functions ascribed to such recognised bodies under the Act. I note that subsection (b) of s. 203B(1) includes '***certification functions*** referred to in s. 203BE'.

[63] It is my understanding of the law that a body recognised pursuant to s. 203AD is charged with all of the functions prescribed in s. 203B(1).

[64] In satisfying myself of the NQLC's status as a recognised representative body, I have also had regard to information maintained by the Tribunal regarding each of the representative bodies across Australia. The national map on the Tribunal's website provides that the NQLC is the representative body for the north Queensland region, and that it is a recognised body pursuant to s. 203AD. This confirms the information contained in the certification.

[65] On that basis, I am satisfied that the NQLC is an appropriate representative body that is able to certify the application.

[66] I now turn to consider whether the certification meets the requirements of a valid certification pursuant to s. 203BE(4). Section 203BE(4) provides:

> (4) A certification of an application for a determination of native title by a representative body must:
>
> (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met;
>
> (b) briefly set out the body's reasons for being of that opinion; and
>
> (c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3).

[67] Paragraphs (2)(a) and (b) relate to the representative body's opinion regarding authorisation of the applicant by all the members of the native title claim group, and ensuring that the application describes all of the persons in the group. Subsection (3) deals with the representative body making all reasonable efforts to reduce the number of overlapping applications for the area.

[68] The certification at Attachment R includes a statement that the NQLC certifies that it is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met, and then sets out those matters. I am satisfied, therefore, that the requirement of s. 203BE(4)(a) is met.

[69] The certification further includes the subheading 'Brief reasons for the NQLC being of that opinion', under which it sets out various information pertaining to the authorisation meeting held in relation to the application, and information regarding the way in which the members of the native title claim group were identified. In particular, the certification provides that:

- members of the Yuwibara native title claim group were called to attend an authorisation meeting, which was held on 27 June 2013 in Mackay;
- a traditional decision-making process involving discussion amongst the Elders and Heads of Families and consensus decision-making, was used by those in attendance to authorise the applicant persons to make the application and deal with all matters arising in relation to it;

- extensive anthropological research by consultant anthropologists was undertaken in the area, including research on the identity of the claim group and interviewing of knowledgeable elders;
- an anthropological report in respect of the claim and the claim group has been prepared and it has been considered by both members of the group and in-house NQLC anthropologists;
- the description of the native title claim group has been the subject of consideration and authorisation by the group, through which that description has been confirmed.

[70] I note that the requirement expressed in subsection (b) of s. 203BE(4) is that the certification 'briefly set out' the body's reasons for being of the opinion stated. In my view, the information contained in the certification is sufficient in meeting that requirement.

[71] Regarding overlapping applications and the requirement at s. 203BE(4)(c), the certification states that the area covered by the application is not covered by any other application, and that the NQLC does not intend to lodge any overlapping claim nor is it aware of any other person's intention to do so.

[72] As discussed in my reasons at s. 190C(3) above (at [49]), the geospatial assessment provides that the current application does, in fact, overlap the Widi People of the Nebo Estate application. I have been informed by the case manager that the NQLC is also the legal representative for that application, and that the NQLC has taken steps to minimise the number of overlapping applications in the area. On the basis of this information I have assumed that the representative body is aware of the overlapping application. It would appear, therefore, that the statement contained in the certificate in answer to the requirement of s. 203BE(4)(c) is factually incorrect.

[73] I do not, however, consider it my role at s. 190C(4) to test the truth of the statements contained in the certification. In *Wakaman*, Kiefel J referred to the finding of Mansfied J in *Doepel* in relation to the task at s. 190C(4)(a). In affirming the approach in *Doepel*, Kiefel J stated that:

> …His Honour later observed that, in determining whether the certificate was in accordance with s 203BE, the Registrar is required to address the terms of the certificate. The Registrar was not required to go beyond that point to be satisfied that the requirements of subs (4)(a) was met… In His Honour's view it followed that s 190C(4) does not leave some residual obligation upon the Registrar, once satisfied of the matters to which it expressly refers, to revisit the certification of the representative body. I respectfully agree – at [32].

[74] In light of these comments, it is my view that my consideration is limited only to the terms of the certificate. A valid certification is one that addresses each of the requirements set out in subsections (a) to (c) of s. 203BE(4). The requirement prescribed by subsection (c) is that 'where applicable, [the certificate] briefly set out what the representative body has done to meet the requirements of subsection (3)'. The certification at Attachment R contains a statement that sets out what the NQLC is aware of and has done in relation to overlapping applications. In my view, that is all that is required. It is not for me to look beyond the certificate to test the truth of that statement.

[75] I am therefore satisfied that the requirement at s. 203BE(c) is met and that the certificate contains the necessary statements and information such that the certification is valid pursuant to s. 203BE(4).

[76] For the reasons set out above, therefore, I am satisfied that the requirements set out in s. 190C(4)(a) are met because the application has been certified by each representative Aboriginal/Torres Strait Islander body that could certify the application.

Merit conditions: s. 190B

Subsection 190B(2)
Identification of area subject to native title

> The Registrar must be satisfied that the information and map contained in the application as required by ss. 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[77] It is to the information contained in the application as required by ss. 62(2)(a) and (b) that the wording of s. 190B(2) directs me, and to which I have turned my mind in my consideration of the application at this condition. As stated above, that information appears at Attachment B to Schedule B and Attachment C to Schedule C.

[78] Attachment B is titled 'Yuwibara People – External boundary description' and describes the application area as covering all land and waters within an external boundary referencing land parcels, topographic features, representative body, Local Government and native title determination boundaries, and coordinate points shown to six decimal points. The written description has been prepared by the Tribunal's Geospatial Services and is dated 15 October 2013.

[79] Schedule B states that native title determination application Barada Barna People (QC2008/011) is excluded from the application area. Schedule B also contains a list of general exclusion clauses, that is, areas falling within the external boundary of the application area that are not covered by the application.

[80] Regarding the use of general exclusion clauses to identify those areas within the external boundary that are not covered by the application, in my view, such an approach is acceptable for the purposes of s. 190B(2) – see *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [50] to [55].

[81] A map showing the external boundary of the application area appears at Attachment C to Schedule C. Attachment C is titled 'Native title determination application – Yuwibara' and is a colour copy of an A3 map that includes:

- the application area depicted by a bold blue outline;
- salebar, northpoint, coordinate grid and location diagram; and
- notes relating to the source, currency and datum of data used to prepare the map.

[82] The map has been prepared by the Tribunal's Geospatial Services and is dated 15 October 2013.

[83] Schedule C specifically provides that 'the application area does not include any land and waters within the external boundary of the Wiri Core Country Claim QUD372/2006'.

[84] The geospatial assessment prepared by the Tribunal's geospatial services in relation to the written description and map within the application concludes that they are consistent and identify the application area with reasonable certainty. Having turned my mind to that written description and map I agree with that assessment and am satisfied that it is possible, by reference to this information, to locate on the earth's surface the boundaries of the application area.

Consequently, I am satisfied that the information and map contained in the application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

[85] The application **satisfies** the condition of s. 190B(2).

Subsection 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.

[86] In *Doepel*, Mansfield J discussed the nature of the task of the Registrar's delegate at s. 190B(3) in the following way:

> Its focus is not upon the correctness of the description of the native title claim group but upon its adequacy so that the members of any particular person in the identified native title claim group can be ascertained. It, too, does not require any examination of whether all the named or described persons do in fact qualify as members of the native title claim group. Such issues may arise in other contexts, including perhaps at the hearing of the application, but I do not consider that they arise when the Registrar is faced with the task of considering whether to accept the claim for registration – at [37].

[87] Later on, His Honour elaborated further on this when he stated that 'the focus of s 190B(3) is whether the application enables the reliable identification of persons in the native title claim group' – at [51]. Kiefel J affirmed this approach in *Wakaman* – at [34].

[88] As the application identifies the native title claim group by way of a description, rather than naming the persons in the application, it is s. 190B(3)(b) which prescribes the relevant requirement for my consideration at this condition. That description appears as follows:

> The Yuwibara native title claim group is comprised of all those persons who are descended from the following ancestors:
>
> - Peter Nolan
> - Jane Morris, mother of Peter Smith and Frank Morris
> - Molly, mother of Bill Bargo (aka Bill Tonga) and Annie Bargo (aka Annie Tonga)
> - Johanna Hazeldean
> - Mungo, King of Hamilton, father of Spoonbill

[89] I note that the description does not refer to the possibility of descent being by means of adoption, and on that basis, I have understood that the word 'descended' requires that an individual is connected to the relevant ancestor by way of biological descent.

[90] In determining whether a person is a member of the native title claim group, therefore, what is required is an examination of whether that person is, in fact, biologically descended from one of the named ancestors in the list in Schedule A. The use of the apical ancestor model in describing those persons comprising a native title claim group, is not, in my view, controversial or problematic in this instance, and involves a straightforward application of a single rule by

which persons can claim membership, that is, that they are a descendant of one of the named apical ancestors. The fact that determining the persons comprising the group would involve some factual inquiry, does not, in my view, prevent that description being 'sufficiently clear' for the purposes of s. 190B(3) – *Western Australia v Native Title Registrar* [1999] FCA 1591 (*WA v NTR*) at [67].

[91] Consequently, I am satisfied that the persons in the group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[92] The application **satisfies** the condition of s. 190B(3).

Subsection 190B(4)
Native title rights and interests identifiable

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

[93] In considering the nature of a description that meets the requirement of s. 190B(4), Mansfield J in *Doepel* approved the delegate's approach in that instance when the delegate found that 'the test of identifiability' was 'whether the claimed native title rights and interests are understandable and have meaning' – at [99].

[94] Further to this, His Honour held that in approaching the description contained in the application, the Registrar's delegate was able to exercise a measure of evaluative judgment, and that 'it was open to the Registrar to read the contents of Schedule E together so that properly understood there was no inherent or explicit contradiction' in the description – at [123].

[95] The task at s. 190B(4), in my view, also requires that I have regard to the meaning of the term 'native title rights and interests' at s. 223(1), and a consideration of whether the rights and interests described can be understood as native title rights and interests. I have not, however, undertaken an assessment here of whether each of the individual rights and interests claimed in fact qualifies as a native title right or interest in accordance with that definition, and have reserved that task for the further merit condition at s. 190B(6) in my reasons below.

[96] A description of the native title rights and interests subject of the claim, as required by s. 62(2)(d), appears at Schedule E. I note that paragraph [1] of that description includes a claim to a right of exclusive possession, occupation, use and enjoyment to the exclusion of all others. In my view, such a broad claim to exclusive possession does not offend the condition at s. 190B(4) – see *Strickland* at [60].

[97] Paragraph [2] of Schedule E lists a number of non-exclusive rights and interests. Having turned my mind to that list, it is my view that those rights and interests are clear, have meaning and can be understood as native title rights and interests. In forming that view, I have considered the contents of the description at Schedule E together and am satisfied that there is no inherent or explicit contradiction in the description.

[98] On that basis, therefore, I am satisfied that the description contained in the application as required by s. 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

[99] The application **satisfies** the condition of s. 190B(4).

Subsection 190B(5)
Factual basis for claimed native title

> 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, and
> (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 interest, and
> (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[100] In undertaking the task at s. 190B(5), I am of the view that there is a correlation that exists between the requirements of s. 62(2)(e) and s. 190B(5), such that an application and accompanying affidavit/s which 'fully and comprehensively' addresses all the matters in s. 62 could provide sufficient information to enable the Registrar to be satisfied of all the matters referred to in s. 190B' – *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*) at [90]. I note, however, that I am not restricted to the information contained within the application in reaching the required level of satisfaction at s. 190B(5) – *Doepel* at [16].

[101] In *Doepel*, Mansfield J held that the role of the Registrar's delegate at s. 190B(5) is to determine 'whether the asserted facts can support the claimed conclusions' and that it is 'not to test whether the asserted facts will or may be proved at the hearing, or to assess the strength of the evidence' – at [17].

[102] I am of the view that the nature of the information required to satisfy the condition at s. 190B(5) must be in 'sufficient detail to enable a genuine assessment', and be 'more than assertions at a high level of generality' – *Gudjala 2008* at [92]. With this requirement for a genuine assessment in mind, I consider that the factual basis material must have relevance to the particular native title claimed, by the particular native title claim group over the particular land and waters of the application area – see *Gudjala 2007* at [39].

[103] I consider each of the three assertions set out in the three paragraphs of s. 190B(5) in turn in my reasons below.

The task at s. 190B(5)(a)

[104] The type of factual basis material necessary to support the assertion at s. 190B(5)(a) was considered by the court in *Martin*. French J indicated that broad statements that fail to identify the type of association (be it spiritual or physical), and that lack geographical particularity to the land and waters of the claim area were likely to be deficient – at [26]. Similarly, His Honour held that where the factual basis disclosed an association only with particular areas, it would also fail to satisfy the condition – at [26].

[105] The approach to the task at s. 190B(5)(a) enunciated in *Martin* was more recently affirmed in *Corunna v Native Title Registrar* [2013] FCA 372 (*Corunna*), which involved a similar fact scenario to *Martin* – see *Corunna* at [32] to [39].

[106] Further guidance regarding the type of factual basis necessary to support the assertion was given by Dowsett J in *Gudjala 2007*. His Honour suggested that the following kinds of information may be required:

- asserted facts about an association of the claim group as a whole with the area, although it is not a requirement that all members must have such an association at all times; and
- asserted facts about an association between the predecessors of the whole group and the area over the period since sovereignty – at [52].

The applicant's factual basis material – s. 190B(5)(a)

[107] The applicant's factual basis material is primarily contained in Attachment F of the application and consists of an extensive affidavit sworn by a member of the claim group, and a report titled 'Yuwibara People – Native Title Claimant Application Preliminary Connection Report', dated August 2013 and prepared for the North Queensland Land Council by [name deleted] (the connection report).

[108] Schedules F and G also contain information to which I have turned my mind in my consideration of the application at this condition.

[109] I have summarised below the asserted facts contained in the factual basis material which I consider relevant to the assertion at s. 190B(5)(a) regarding an association of the group and its predecessors with the area covered by the application.

- the members of the claim group continue to have a close association, including a spiritual association, with the application area – Schedule F at (i);
- pursuant to the group's traditional laws and customs, rights and interests in the application area are acquired by way of descent from ancestors understood as being persons who had fundamental rights of possession and ownership of that land – Schedule F and the connection report at [40] and [113] to [114];
- *barra* is the prefix used to identify the country with which an individual is associated and within which they possess rights and interests pursuant to the group's traditional laws and customs – the connection report at [42];
- this body of laws and customs has been passed down through the preceding generations by the claimants' predecessors to the claimants today and they continue to teach their children and grandchildren this system – the connection report at [40] and [42];
- members of the claim group continue to live within the application area – Schedule G at (a);
- members of the claim group continue to fish, hunt, gather natural resources from, hold ceremony on, and care for their traditional country – Schedule F at (iii), (iv) and (v);
- historical sources demonstrate that prior to and following white settlement of the area, Aboriginal groups occupied, used and enjoyed the country of the Pioneer Valley – the connection report at [8] to [20];
- a high concentration of Indigenous persons over the relatively small area within the Pioneer Valley as recorded in historical sources was largely due to the rich fertile environment that was able to support their economic and social livelihoods – the connection report at [7];
- settlement in the region surrounding Mackay was characterised by violent conflict and intense Aboriginal resistance. Forced dispossession facilitated by the Native Police resulted in high mortality rates for the Indigenous persons occupying the area – the connection report at [22] and [23];

- historical records indicate the first employment of Aboriginal people from the Mackay region was at Alexandra Plantation in 1868, the first sugar mill in the region – the connection report at [21];
- historical sources provide that the first Aboriginal reserve in the area was established just south of Mackay in 1871 by Bridgman. In 1886, based on his understanding from management of the reserve and the distinct tribal camps living within the reserve, Bridgman informed Curr that there were four tribes within a 50 mile radius of the settlement of Mackay – the connection report at [24] and [25];
- a further group within the area of the Pioneer Valley was noted by an early settler, described as the Eungella or Eungale tribe, inhabiting the region between Mirani and Netherdale and who considered [place name deleted] – the connection report at [26];
- together historical sources point to the existence of five *barra* groups in the region, namely the Yuwibara, Kungalbarra, Dhulgiynbarra, Googabarra and Gurraburra. Following the severe decimation of the Aboriginal tribes of the region in the post-contact period, however, the five barra groups combined into one enlarged barra grouping, which became known by the name of the barra group occupying the Port Mackay region, the Yuwibara or Yuibera – the connection report at [29].
- as a result of the merging of the five groups in the region, Yuwibara people now speak for and hold rights over the whole of the application area – the connection report at [30];
- when describing their country, claimants consistently refer to the area from the O'Connell River to Cape Palmerston and west to the Connors and Clarke Ranges. This description of Yuwibara country reflects the territory depicted by Capell in 1963 and Tindale in 1974 as the area with which the group are associated – see the connection report at [30], [32] and [114].
- four of the seven apical ancestors listed in Schedule A were born in the Mackay region prior to white settlement (occurring in 1862), and a consideration of written records and oral histories indicates that all seven ancestors are persons who were traditionally associated with the application area – the connection report at [34];
- the birth dates of the apical ancestors (where known) ranges from the 1830s to 1860s, and it is suggested that the parents of these persons formed part of the pre-sovereignty Aboriginal society occupying the area – the connection report at [34];
- at present there are no known descendants of three of the seven apical ancestors and on that basis, the claim group is comprised of four family groups descended from the remaining four apical persons – the connection report at [35].

[110] Further asserted facts pertaining to the association of the claim group and the group's predecessors with the area is given in the affidavit of a claim group member at Attachment F (the Attachment F affidavit). The claimant speaks in detail of the present association that he and his family have with the application area, including the fact that he continues to live in the area. He states that:

> I live on the beachfront buffer zone at [place name deleted] on Yuwibara country. I have camped permanently on this beachfront reserve for the past three years. I have put up a 8 by 10 metre tarpaulin and a six man tent. There is no electricity at this place and I do not use a generator. I cook my food on the two camp fires that I have made. I make the fire from wood that I find in around [*sic*] the area where I live. My family visit it me [*sic*] quite a lot and we have many at this place where we make a fire and cook and tell stories. I also take out my grandchildren and show them how to find bush tucker and where the fish traps are located on the beach. Occasionally I stay at my son's place

or other relatives at Bucasia if I need to go to town for any reason. Before that I lived in various places around Mackay, including Slade Point and Blacks Beach.

This area where I am now living I have been visiting and camping here for most of my life with my mother, [name deleted] and my Grandfather, [name deleted] – Attachment F affidavit at [2] and [3].

[111] The claimant speaks to his understanding of the way in which his rights and interests in the application area arise in the following way:

Being born on country is very important to us, but for those who aren't born on Yuwibara country, we still trace connection through our bloodline. The most important means of connection is to have a blood connection to a Yuwibara ancestor. We trace those connections through our parents, and grandparents as far back as living memory goes. My mother told me this was [name deleted] country. She told us this whole area from Mt Funnel/Cape Palmerston up to St Helens was our country – Attachment F affidavit at [11].

[112] This understanding the claimant explains was passed to him by his parents and grandparents. He states:

… On one occasion when we had a family gathering on at [place name deleted] [name deleted] pulled me aside and said something like, "look boy this is a fish trap and the old people use it for [*sic*] catch fish and crab". The fish trap is at the side of the mouth of [place name deleted]. It is still there today but some of it is covered with mud and sand. Sometimes he would wave his arm at a beach and say 'this is all your country'. He would tell me these things when we were walking from place to place – Attachment F affidavit at [12].

[113] Statements made by the claimant refer to the association of various Yuwibara families with the application area. One example is where he states:

When I was young, all our families came together to camp at various places all around the Mackay area, including Neils Beach, Williams Beach, Reliance Creek, Bucasia Beach, Bakers Creek and Habana Wharf – Attachment F affidavit at [35].

[114] And also:

A few years after my parents were married they moved to Innisfail so my father could cut cane. My mother [name deleted] was working as a cook, carer and house cleaner when we lived in Innisfail. A number of Mackay people went up to the Babinda/Innisfail area in the 1950s and 1960s to cut cane. The [name deleted] family and [name deleted] all went up there to work on the cane farms. [name deleted] is a Japanese man but he was raised by the [name deleted]'s at Habana. He grew up there with my mother. Even Grandad [name deleted] went up there to cut cane. That is where the work was at that time – Attachment F affidavit at [9].

[115] Various statements from the claimant include references to the lifestyles and practices of his predecessors on their traditional country. One example is where he states:

My mother told me that when she was young, her and her cousin [name deleted]) would travel by horse and buggy from the farm at Habana to Mt Funnel Station, south of Sarina, to visit mum's father, [name deleted]. Mum told me [name deleted] was working on Mt Funnel Station as a jackeroo. She also said Grandad [name deleted] father [name deleted], worked there. It used to be called Mt Funnel Station, now it is called Tedlands. It was one big station in the old days. When [name deleted] was working at Mt Funnel he used to go to Sarina for cricket and boxing. While Grandad [name deleted] was working on the station, mum lived with the [name deleted] family at Habana – Attachment F affidavit at [13].

[116] And also:

> In the old days, between the [place names deleted] there were all the old huts from the old people. They lived down there and they had a track up behind their huts. There were huts all over the place between [place name deleted] and [place name deleted]. Then the Council came along and started cleaning them all out, getting rid of everybody. The last huts were down at the back of the airport. There are only a couple of huts left down there now – Attachment F affidavit at [31].

[117] The fact that the claimants and their predecessors undertook various forms of employment across the application area is also spoken of by the claimant in his affidavit. For example, he states:

> [name deleted] was a drover back in the old days. He would take cattle through what they call the channel country from the Gulf to South Australia. He would drove cattle from places up the top, through Mareeba all the way to South Australia. They would go away for so many months, take the cattle down, and then come back and call in at home for a couple of weeks.
>
> [name deleted] was also working on Main Roads here in Mackay and then the Railway. He used to work with [name deleted]. I think [name deleted] might have been part Aboriginal/South Sea Islander. [name deleted] was friends with him – Attachment F affidavit at [14] and [15].

My consideration – s. 190B(5)(a)

[118] As set out above, there is a considerable amount of material before me that goes towards an association of the group and their predecessors with the area covered by the application. In the Attachment F affidavit, the claimant refers to many places where he and his family, other members of the group, and some of the group's predecessors have spent time. Using the Tribunal's iSpatial database, I have mapped each of these locations in relation to the application area, and have satisfied myself that almost all of the places referred to fall within the external boundary of the application area. My mapping research also showed that these places fall across the full extent of the application area and are not limited to one part of the application area only.

[119] In this way, I have formed the view that the factual basis is sufficient to support an assertion that the alleged association of the group and its predecessors is with the entire area covered by the application.

[120] Regarding an association of the members of the claim group presently with the area, the claimant speaks of the various activities undertaken by members of the group across the locations named. He shares his knowledge of the way in which he and his family and other Yuwibara persons use the land and waters of the area for fishing, hunting, gathering natural products, holding ceremonies and meetings, teaching younger generations about Yuwibara laws and customs and for caring for and protecting important sites within the area. For example, the claimant provides that he continues to live on the application area in a self-constructed shelter, and has done for most of his life – see Attachment F affidavit at [2] and [3].

[121] Another example of this information is in the following statement:

> About two years ago we had a cultural Emersion Camp for National Parks, Reef Catchment and Local Council down at Hay Point. We collected ochre for dancing and painted the men and women up. We performed separate men's and women's dances – Attachment F affidavit at [72].

[122] I note that the main bulk of the factual basis material speaking to a present association of the group with the area is from one claim group member only. Throughout his affidavit, however, he refers to 'the families', and names other members of the group – see for example

Attachment F affidavit at [9] and [35]. From these statements I have inferred that the claimant is expressing his knowledge of and familiarity with, persons across the four family descent groups that comprise the native title claim group today. Further to this, the connection report contains statements from a number of other claim group members regarding their knowledge of country and time they have spent at particular places within the application area – see for example the connection report at [101].

[123] From the information of this nature, I have formed the view that the factual basis is sufficient to support an assertion of a present association of the claim group as a whole with the area covered by the application.

[124] Regarding an association of the group's predecessors with the application area at the time of sovereignty, I note that statements within the factual basis material assert that the apical ancestors were born in the application area, and that their birth dates fell both prior to, and in the period shortly following white settlement in the area – see the connection report at [34]. White settlement is asserted to have occurred in 1862, sometime after the date of sovereignty in 1788. It is my view, however, that the factual basis addresses this gap, in the statements referring to historical sources which record the presence of Indigenous persons in the area at the time at which the coastline was being explored in 1770, and following, in the period prior to sustained settlement – see the connection report at [7] to [14]. The factual basis further asserts that, on the basis of these dates, the parents of the apical ancestors would have formed part of the pre-sovereignty Yuwibara society in occupation of the application area.

[125] In this way, I consider that the factual basis is sufficient to support an assertion that the apical ancestors were persons associated with the land and waters of the application area around the time of white settlement in the area, and that the parents and grandparents of those persons formed part of the society occupying the area at sovereignty. Consequently, I consider that the predecessors of the claim group had a physical association with the area from at least sovereignty. This is further supported, in my view, by asserted facts speaking to the laws and customs of the group, which provide that rights and interests in land derive from descent from an apical ancestor who is understood as being a person who had fundamental rights of possession, occupation and ownership of the area – see Schedule F.

[126] In considering whether the factual basis is sufficient in supporting an assertion of an association of the predecessors of the group with the area over the period since sovereignty, there are a number of factors to which I have had regard. Firstly, I note that the affidavit at Attachment F provides that there are only three generations separating the deponent and the apical ancestor from whom he is descended. Secondly, the deponent is able to name and give details of the life and movements on the application area of each of the persons comprising the intervening generations, not only for his own descent line, but he also speaks of predecessors in other family groups. He tells stories relating to particular predecessors, including his great grandfather (an apical ancestor) who lived and worked within the application area, and how they interacted with their country in accordance with Yuwibara laws and customs. Finally, the claimant explains the way in which these stories about his predecessors have been passed down to him by his parents and grandparents in accordance with the teaching pattern observed under the group's laws and customs.

[127] In light of this information, I consider that the factual basis is sufficient to support an assertion that members of the claim group possess knowledge of the on-going presence on, and use of, the application area by their predecessors, including back to the apical ancestors occupying the area around the time of sustained white settlement. In this way, I have formed the view that the factual basis is sufficient to support an assertion of an association of the predecessors of the group with the area over the period since sovereignty. The information within the factual basis pertaining to the ongoing employment of Yuwibara persons across the application area throughout the period from settlement to the present, in my view, further supports an assertion that the predecessors of the group had a physical association with the area over that period.

[128] Again, while the bulk of the information before me relating to an association of the predecessors with the area is from one claim group member only, I note that that claimant speaks to predecessors other than those in his own descent line, and that he makes a number of references to the 'old people', who I have inferred includes persons beyond his own family line. Further, the connection report includes statements about the predecessors of other individuals from other family groups within the Yuwibara people – see for example Attachment F affidavit at [97] and [105] and the connection report at [137]. Consequently, I consider the factual basis is sufficient to support an assertion of the association of the predecessors of the whole group with the area since settlement.

[129] I have also formed the view that the material supports an assertion that the association is both physical and spiritual. In his affidavit, the claimant speaks in detail of the way in which he and other Yuwibara persons have interacted with, and continue to interact with spiritual aspects of the landscape, and possess knowledge about how those forces are to be managed while on their country – see for example Attachment F affidavit at [81].

[130] In this way, in light of this information before me, I am of the view that the factual basis is sufficient to support an assertion that the native title claim group have, and the predecessors of those persons had, an association with the area.

[131] The application meets the requirement of s. 190B(5)(a).

The task at s. 190B(5)(b)

[132] The requirement at s. 190B(5)(b) is that I am satisfied that the factual basis is sufficient to support an assertion 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.

[133] Noting that the focus of the condition is the factual basis pertaining to the system of traditional laws and customs that give rise to the claim to 'native title rights and interests', it is my view that the task at s. 190B(5)(b) is to be understood in light of the definition of that term in s. 223(1). This is further supported by the use of similar terminology between the assertion at s. 190B(5)(b) and subsection (a) of s. 223(1) which provides that native title rights and interests are to be 'possessed under the traditional laws acknowledged and traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders'.

[134] The leading authority in relation to s. 223(1) is *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58 (*Yorta Yorta*). The High Court considered in detail the

meaning and content of traditional laws and customs, finding that the word 'traditional' in the context of the *Native Title Act* carried with it two elements: firstly, that the origins of the content of the laws and customs concerned were to be found in the 'normative rules of the Aboriginal and Torres Strait Islander societies' that existed prior to sovereignty, and secondly, that the system under which the rights and interests are possessed has continued in a substantially uninterrupted way since sovereignty – see *Yorta Yorta* at [46] and [87] and also at [47], [79] and [86].

[135] In this way, for the purposes of s. 190B(5)(b), I understand that the factual basis material is required to show how the laws and customs currently acknowledged and observed by the group are rooted in the traditional laws and customs of a society that was in existence prior to sovereignty.

[136] In *Gudjala 2007*, Dowsett J referred to the decision in *Yorta Yorta* in the context of the delegate's role at s. 190B(5)(b) and discussed the nature of the material required to satisfy the condition. His Honour's comments indicate that asserted facts speaking to the following matters may be necessary:

- that the laws and customs currently observed have their source in a pre-sovereignty society and have been observed since that time by a continuing society – at [63];
- that there existed at the time of European settlement a society of people living according to a system of identifiable laws and customs, having a normative content – at [65];
- an explanation of the link between the claim group described in the application and the area covered by the application, involving, where applicable, identification of the link between the apical ancestors named and the society existing at sovereignty – at [66] and [81].

[137] Dowsett J again returned to these issues following the 2008 Full Court decision in the matter (see *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*)), in *Gudjala People #2 v Native Title Registrar* [2009] FCA 1572 (*Gudjala 2009*). Regarding the requirement at s. 190B(5)(b), His Honour further suggested that the asserted facts within the material may need to address the following matters:

- identification of the persons who acknowledged and observed the laws and customs of the pre-sovereignty society – at [37];
- an explanation of how the current laws and customs are traditional, that is, the laws and customs of a pre-sovereignty society relating to rights and interests in land and waters, and more than a mere assertion that such laws and customs are traditional – at [52], [72] and [74];
- details of the claim group's acknowledgement and observance of laws and customs in relation to the land and waters of the claim area – at [74].

[138] With these principles from the case law in mind, I have turned to consider the factual basis material before me against the requirements of the condition at s. 190B(5)(b).

The applicant's factual basis material – s. 190B(5)(b)

[139] I have summarised below the information within the factual basis material that I consider to be relevant for the purposes of s. 190B(5)(b):

- Indigenous persons were observed occupying the Mackay region and the area covered by the application as early as 1770, prior to sovereignty – the connection report at [8];

- historical records indicate the presence of five separate territorial groups within the Mackay region and Pioneer Valley at the time of European settlement in the area – the connection report at [25] to [29];
- historical records demonstrate that these *barra* (landholding) groups defended their territory fiercely, and that this was most likely founded on an understanding that they had fundamental rights of ownership of their territory – the connection report at [43] and [102];
- due to the heavy decimation of the Aboriginal population in the post-contact period, these five groups merged into one larger *barra* group which became known by the name of the tribe that had traditionally occupied the Port Mackay area, namely Yuwibara – the connection report at [29];
- as a result, since settlement, the Yuwibara hold, and have held, territorial interests in the entirety of the Pioneer Valley/Mackay region, that is, the area subject of the application – the connection report at [30];
- this is consistent with recordings of Yuwibara territory by Capel and Tindale in the 1960s and 1970s, and is consistent with claimants' descriptions of their country – the connection report at [31] to [32] and Attachment F affidavit at [20] to [21];
- the traditional laws and customs of the Yuwibara are derived from a broader regional system of Aboriginal culture, known as Birri Gubba – the connection report at [36];
- the Birri Gubba cultural bloc includes the groups Yuwibara, Wiri, Biri, Jangga, Gia, Ngaro, Juru and Bindal – the connection report at [36];
- the Birri Gubba cultural bloc is a regional social network sharing common laws and customs, however written and oral sources confirm that there are specific social and cultural distinctions between each of the individual tribal groups – the connection report at [36];
- common beliefs, laws and customs held by the Birri Gubba cultural bloc include those relating to named *barra* groupings, a section system covering part of the east coast of Queensland, totemic affiliations relating to the section system, mythological beliefs such as the creator rainbow serpent [name deleted] and others – the connection report at [46];
- despite these shared aspects of law and culture, there are certain beliefs, laws and customs unique to Yuwibara society – the connection report at [47];
- the Yuwibara continue to exercise a body of traditional law and custom that has been passed down to them from generation to generation by their predecessors. This method of transmitting knowledge is another aspect of the system of laws and customs acknowledged and observed by the native title claim group – Schedule F and the connection report at [96];
- the Yuwibara system of laws and customs relates to caring for country, controlling access to country by members of the group, holding ceremonies on country and use of country – Schedule F;
- laws and customs surrounding tenure and interests in land provide that acquisition of such rights and interests is by way of descent from an ancestor traditionally associated with the area, who had fundamental rights of ownership in that area – the connection report at [40] and Schedule F;
- descent as the primary principle of traditional interests in country was a feature of the classical Yuwibara social system that has been passed down from generation to generation to the claimants today – the connection report at [40];

- due to historical circumstances in the post-contact period, laws and customs informing group membership and the acquisition of interests in land now provide for cognatic and non-unilineal descent – the connection report at [41];
- historical sources recorded the section system within Aboriginal society in the area as early as 1878 – the connection report at [48];
- contemporary laws and customs provide for the observance of totems flowing from the section system – the connection report at [52];
- totems are both a marker of identity and a cultural birth right passed down from one generation to the next, and the laws and customs surrounding totems and associated behaviours continue to be observed by the members of the native title claim group – the connection report at [51] and [57];
- Yuwibara laws and customs provide that decisions about country can only be made by those persons with a bloodline connection to country, that is, individuals who can trace their biological descent from a Yuwibara ancestor – the connection report at [66];
- laws and customs surrounding kinship relations and obligations was first observed and recorded in 1897, and these ties and obligations remain strong today, for example through the sharing of food and resources with other kin – the connection report at [68] to [74];
- evidence of laws and customs relating to age and gender-based authority appears in historical sources from 1878 and 1907 – the connection report at [78] and [81];
- today, claimants continue to adhere to laws and customs dictating the appropriate age of an individual when important cultural knowledge can be imparted to them by elders. Similarly, respect for the authority of elders, being persons with extensive knowledge of country, is evident in relationships between claim group members – the connection report at [82] to [84];
- laws and customs providing for the settlement of disputes prior to settlement operated through the section system, while today, such laws and customs provide for the resolution of disputes through the family groups – the connection report at [86] to [88];
- the system of traditional laws and customs of the group is informed by underlying mythological beliefs, including that the spirits of the predecessors and ancestors of the claimants continue to occupy the area. This dictates a practice of talking to the 'old people' when on country – the connection report at [89] and [90];
- avoidance of certain places such as burial sites and sacred sites, and respect for men's and women's places, is another aspect of the group's traditional laws and customs that was taught to them by their predecessors – the connection report at [97] to [100];
- avoidance of places was taught to the claimants as being due to the fact that bad or dangerous spirits inhabited those places – the connection report at [97];
- the requirement to seek permission to access the country and resources of another group, and for permission to be sought by non-Yuwibara persons to access the application area and its resources is another aspect of the laws and customs of the group. Associated behaviours were demonstrated to the claimants by their parents and grandparents. These behaviours and practices, founded largely on the belief that punishment will be inflicted on persons who do not adhere to these practices, continue to be observed by the claimants today – the connection report at [104] to [110];
- historical records regarding the way in which the Yuwibara defended their territory during the settlement period suggest pre-settlement adherence to laws and customs regarding permission – the connection report at [102].

My consideration – s. 190B(5)(b)

[140] It is my understanding that there can be no relevant traditional laws and customs for the purposes of s. 190B(5)(b) unless there was, at sovereignty or European settlement, a society living according to a system of identifiable laws and customs from which such traditional laws and customs are derived – *Gudjala 2007* at [66]. Having turned my mind to the factual basis material before me, I am satisfied that it is sufficient to support an assertion of such a society.

[141] European settlement of the area is asserted to have taken place in roughly 1862, and that at this time, there were already four of the apical ancestors occupying the application area. Further the factual basis asserts that the birthdates of the remaining apical ancestors was all within twenty years following settlement, resulting in a conclusion within the material that all of the apical ancestors by which the group is defined were either part of, or born into, the pre-settlement Yuwibara society occupying and enjoying the resources of the Pioneer Valley and Mackay region. Based on this information, I am satisfied that the factual basis is sufficient to support an assertion of a link between the claim group described (with reference to the apical ancestors named in Schedule A) and the application area.

[142] It is my understanding that the material asserts that the Yuwibara society at sovereignty, that is prior to settlement of the area, was comprised of five tribes or *barra* groups that together occupied the Pioneer Valley and the region surrounding Mackay. *Barra* is explained as being the suffix used to denote the country groups 'belonged to' – see the connection report at [42]. While these groups were delineated at sovereignty, in the post-contact period they merged to become one larger *barra* group known by the name of the group associated with the Port Mackay area. The material provides that they consequently acquired territorial interests in the whole of the application area. Historical sources from the period 1770 to the post-contact period in the late 1800s are quoted within the connection report in support of these assertions – see the connection report at [29].

[143] I consider that the factual basis also speaks to an assertion that that society was bound by a common acknowledgment and observance of a normative system of laws and customs. The connection report states that historical and anthropological sources provide that that system of laws and customs was derived from the broader social structure of the Birri Gubba cultural bloc which included the Yuwibara and a number of other groups in the region. The factual basis provides, however, that while some of the laws and customs of the Yuwibara were shared with the Birri Gubba cultural bloc (such as beliefs regarding the creator rainbow serpent [name deleted] and a section system and associated totems), the Yuwibara had their own distinct laws and customs distinguishing them within that regional bloc, including laws and customs regarding territorial rights and interests in the Pioneer Valley and Mackay region.

[144] Regarding the laws and customs of that society at sovereignty or European settlement, in my view, the factual basis is sufficient to provide an asserted 'snapshot' of that system. Firstly, the connection report refers to historical sources dated around the time of settlement asserting a system of land tenure where five *barra* groups occupied and held territorial interests equivalent to land ownership in various parts of the Pioneer Valley/Mackay region. The factual basis also asserts that these groups were distinct from their neighbouring tribes and were exclusively able to make decisions about access to, and use of the resources of the area.

[145] Statements within the factual basis assert that a main feature of the Birri Gubba system was the fundamental law of membership to the relevant groups (including Yuwibara) through blood descent. Sources dated in the late 1800s, around the time of settlement are referred to in support of this assertion. The factual basis also speaks to laws and customs acknowledged and observed by the Yuwibara society at settlement regarding sacred places and appropriate behaviours in relation to these places. These sources suggest and support an assertion that dangerous spiritual presences in the landscape were the basis of and dictated such behaviours – see for example the connection report at [26].

[146] In this way, I am satisfied that the factual basis is sufficient to support an assertion that there was, at the time of European settlement in the area, an indigenous society acknowledging and observing a system of laws and customs of a normative content.

[147] Similarly, I consider that the factual basis speaks in detail of the system of laws and customs acknowledged and observed by the group today. The Attachment F affidavit, and statements within that affidavit from a claim group member provide that the laws and customs of the native title claim group include rules of group membership by blood descent (including rights to make decisions about country), rules regarding seeking permission to enter Yuwibara country, the transmission of knowledge dictated by age and gender-based restrictions, respect for elders, sharing of food and resources, restrictions regarding access to sacred places, practices involving addressing ancestor spirits on country and obligations to protect and care for country.

[148] As to whether these laws and customs can be said to be rooted in pre-sovereignty laws and customs, and consequently, whether the factual basis can be found to be sufficient to support an assertion of a system of 'traditional' laws and customs, for the following reasons I consider that the factual basis is sufficient to support an assertion of such a system.

[149] Firstly, having turned my mind to the factual basis pertaining to the laws and customs acknowledged and observed by the claim group today, and the factual basis speaking to the laws and customs of the Yuwibara society at European settlement, it is my view that there is little change between the two systems asserted by that material. As set out above, the factual basis refers to a number of historical sources that speak to specific aspects of that system at settlement, and in my view, all of these aspects can also be seen in the system of laws and customs described by claimants as being acknowledged and observed today.

[150] An example of this can be seen in the connection report's reference to a historical source which describes the Eungale tribe (one of the five *barra* groups occupying the application area at settlement), who held [place name deleted] as sacred, being the place where their ancestors, the Aboriginal kings, now rest. The connection report states that for that reason, the son of the apical ancestor of that tribe who informed the author of the historical source refused to take him to that place – see the connection report at [26].

[151] In my view a number of aspects of law and custom can be seen in this depiction of the relevant society at settlement, including avoidance of sacred places, protection of and care for sacred places, acknowledgment of and respect for spiritual forces within the landscape, and an understanding of one's rights and interests in land arising by way of blood descent from Yuwibara forebears. I consider the following statements by a claimant regarding the operation of these particular aspects of Yuwibara laws and customs supports, and allows me to infer, an

assertion that there has been little change in the system of laws and customs acknowledged and observed by the group since settlement:

> When I see other people out on country, I let them know where they should not go. For example, burial sites and shell midden sites. It is important for us to preserve these sites. They were used by and belong to our old people; it is our link to our past and our people. It is important to us to protect and preserve these significant sites – Attachment F affidavit at [122].

[152] And also:

> When we are on country their spirits follow us around. Things happen daily out on country or even in our own homes and we know it is the old people. That is why, whenever I'm on country or out in the bush, I talk to the old people and let them know that I am there. I talk to them and tell them what I am doing there. If you don't identify yourself properly something will happen to you – Attachment F affidavit at [120].

[153] And also:

> …If someone is adopted within the Yuwibara group they have all the same rights because they still have that bloodline connection. But if they are adopted from outside the Yuwibara group, they can't make decisions about our country. Only people with bloodline connection to country can make those sorts of decisions. They can still go fishing and hunting and camping, but they can't make the important decisions about our country – Attachment F affidavit at [19].

[154] While there is less detail regarding the laws and customs of the society at settlement, I am satisfied that the historical sources referred to within the factual basis dated around the time of settlement provide a description of those laws and customs that is in sufficient detail to enable a genuine assessment and comparison of that system at settlement against the laws and customs observed today. Based on this material, I am satisfied that the factual basis is sufficient to support an assertion that the laws and customs acknowledged and observed by the group today are relatively unchanged from those acknowledged and observed by the society at settlement.

[155] The second reason upon which I consider that I am satisfied that the factual basis is sufficient to support an assertion of traditional laws and customs is that the material specifically addresses and gives details of any changes and transformations in the system of laws and customs acknowledged and observed by the group over the period from pre-settlement to the present day. One example of this is where the connection report speaks to laws and customs surrounding the transmission of knowledge dictated by age and gender restrictions. The factual basis asserts that in the pre-settlement Yuwibara society certain stages of the life cycle, such as initiation, informed the time at which important cultural knowledge and knowledge regarding laws and customs was passed to younger generations. Historical sources dated around the time of settlement are referred to in support of this assertion. The factual basis then asserts that while initiations no longer take place, age and gender continue to be the dominant factors dictating the time at which information is imparted to younger Yuwibara people. Statements made by claimants are used to illustrate the contemporary context – see the connection report at [81] to [83].

[156] I note that in relation to all such examples, the material provides sufficient support for an assertion that current laws and customs are and have always been informed by pre-settlement laws and customs and are merely transformations of those pre-settlement laws and customs – see for example the connection report at [77]. In many of the examples discussed, the material asserts

the significant decline in the Aboriginal population in the area as being the cause of these transformations – see for example the connection report at [62] and [63]. In my view, this material allows me further to consider that the factual basis is sufficient to support an assertion of a system of traditional laws and customs, being one which is at all times informed by, and rooted in principles of a pre-settlement normative system.

[157] Finally, I have formed the view that the factual basis is sufficient to support an assertion of traditional laws and customs due to the fact that the laws and customs surrounding the transmission of knowledge to younger generations are illustrated within the material in detail across the generations from the claimants back to the apical ancestors who formed part of the Yuwibara society at settlement. Throughout the connection report and in the Attachment F affidavit, claimants provide considerable details of what, how and when they were taught various aspects of their laws and customs, and about their country, by their predecessors. Claimants' statements and information within the connection report indicates that it was predominantly the elders within the group who transmitted this information, and that they were most often taught by their grandparents and elders from other Yuwibara families. As I have discussed in my reasons above at s. 190B(5)(a), the deponent of the Attachment F affidavit is able to name and give details regarding the lives of each of the intervening generations back to the apical ancestor from whom he is descended. Such details include stories of how those persons took part in transmitting knowledge to younger generations – see for example Attachment F affidavit at [39]. Further statements within the factual basis provide that members of the group continue to adhere to specific rules and practices surrounding the way in which knowledge is transmitted to younger generations. In my view, the information of this nature allows me to infer an assertion within the material that the laws and customs of the group have been continuously passed down in accordance with specific practices from generation to generation from the pre-settlement society to the native title claim group today.

[158] In this way, I consider that the factual basis is sufficient to support an assertion of laws and customs acknowledged and observed by the native title claim group that are rooted in pre-sovereignty laws and customs, and, consequently that can be said to be 'traditional' laws and customs.

[159] I am satisfied that the factual basis is sufficient to support an assertion 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.

[160] The application meets the requirements of s. 190B(5)(b).

The task at s. 190B(5)(c)

[161] The requirement at s. 190B(5)(c) is that I am satisfied that the factual basis is sufficient to support the assertion that the group have continued to hold their native title in accordance with 'those traditional laws and customs'. I understand the use of this phrase to be a direct reference to the system of laws and customs answering the description at s. 190B(5)(b). Where the factual basis has been found insufficient for the purposes of s. 190B(5)(b), therefore, I am of the view that the requirement at subsection (c) will similarly not be met.

[162] In my consideration of the factual basis material addressing an assertion regarding the way in which the group have *continued to hold their native title*, it is my view that the requirement is

analogous to the second element of 'traditional' laws and customs as discussed by the High Court in *Yorta Yorta*. That second element is that the native title claim group have continued to hold their native title rights and interests by acknowledging and observing the traditional laws and customs of a pre-sovereignty society, in a substantially uninterrupted way – see *Yorta Yorta* at [47] and [87].

[163] In *Gudjala 2007* Dowsett J also provided some guidance as to what may be necessary to meet the condition at s. 190B(5)(c). His Honour held that the factual basis may be required to contain information addressing the following:

- that there was a society that existed at sovereignty, or European settlement, that observed traditional laws and customs from which the identified laws and customs were derived, and which were traditionally passed on to the claim group;
- that there has been a continuity in the observance of traditional law and custom going back to to sovereignty or at least European settlement – *Gudjala 2007* at [81] and [82].

[164] I have already set out above at s. 190B(5)(b) the reasons for which I was satisfied that the factual basis is sufficient to support an assertion of a Yuwibara society at settlement occupying the application area, being a society comprised of five tribes who formed part of the broader Birri Gubba cultural bloc, but who were distinct from that bloc, maintaining their own distinct laws and customs giving rise to territorial rights and interests in the particular area of the application – see above at [140] to [146].

[165] I have also set out above at s. 190B(5)(b) the reasons for which I was satisfied that the factual basis is sufficient to support an assertion that the transmission of knowledge to younger Yuwibara persons is a key aspect of the system of traditional laws and customs acknowledged and observed by the group, and involves specific rules and practices regarding the way in which and the times at which knowledge is imparted. In my reasons, I also addressed why I am satisfied that the material is sufficient to support an assertion that this pattern of teaching has continued without interruption from the time of the apical ancestors inhabiting the application area, down through the generations to the members of the claim group today – see above at [157].

[166] Regarding whether this transmission of knowledge has occurred without substantial interruption, I also addressed in my reasons above, the way in which the material is sufficient to support an assertion that there have been certain changes or transformations in the laws and customs of the group since sovereignty, but that at all times, laws and customs have been informed by and derived from the traditional laws and customs acknowledged and observed by the Yuwibara forebears in the application area at the time of and prior to settlement – see above at [155] to [156]. In this way, I consider that the material is also sufficient to allow me to infer an assertion that the acknowledgment and observance of those traditional laws and customs by the group has continued 'substantially uninterrupted'.

[167] Consequently, I have formed the view that I am satisfied that the factual basis material is sufficient to support the assertion at s. 190B(5)(c), that the native title claim group have continued to hold their native title in accordance with the system of traditional laws and customs discussed above at s. 190B(5)(b).

[168] The application meets the requirements of s. 190B(5)(c).

[169] The application **satisfies** the condition of s. 190B(5) because the factual basis provided is **sufficient** to support each of the particularised assertions in s. 190B(5).

Subsection 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.

[170] The claimed native title rights and interests that I consider can be prima facie established are identified in my reasons below.

[171] In my consideration of the application against the requirement at s. 190B(6), with reference to the wording of that provision and the note that follows, it is not a requirement that all of the native title rights and interests claimed can be prima facie, established. It is, however, only those rights and interests that I consider can be, prima facie established, that will be included in an entry on the Register of Native Title Claims where the application is accepted for registration – see *Doepel* at [16].

[172] The meaning to be given to the term 'prima facie' I consider to be of key importance in undertaking the task at s. 190B(6). In *North Ganalanja Aboriginal Corporation v Queensland* (1996) 185 CLR 595 the High Court held that it was the ordinary meaning of the phrase, being 'at first sight; on the face of it; as appears at first sight without investigation', that was to be applied in the circumstances of that case – at [615] to [616] and [652]. In *Doepel*, Mansfield J affirmed the application of this ordinary meaning in relation to the role of the Registrar's delegate – at [134]. His Honour further provided that 'if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis – at [135].

[173] The focus of the task at s. 190B(6) is clearly those rights and interests comprising the claim to native title. In light of this, I have turned my mind to the definition of that phrase provided in s. 223(1), to consider whether each of the rights and interests claimed are, in fact, native title rights and interests' in accordance with the statutory definition.

[174] That definition provides that:

> (1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
>
> (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
>
> (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
>
> (c) the rights and interests are recognized by the common law of Australia.

[175] In this way, it is my understanding that the rights and interests claimed by the group must be shown to be possessed under their traditional laws and customs, rights and interests in

relation to land or waters, and rights and interests able to be recognised by the common law, that is, that have not been extinguished over the whole of the application area.

[176] As stated above, a description of the rights and interests claimed by the group appears at Schedule E of the application. I have addressed each of those rights and interests in relation to the requirements of s. 190B(6) individually below.

Right to exclusive possession

[177] Where the factual basis material is sufficient to support the assertion that the right to exclusive possession, occupation, use and enjoyment as against the whole world exists, it is my view that such a right can be, prima facie, established. Comments by the High Court in *Western Australia v Ward* [2002] HCA 28 (*Ward HC*) provide support for this view – see *Ward HC* at [51].

[178] In that case, the High Court considered the content and nature of the native title right to exclusive possession and occupation of land and waters, finding that:

> …a core concept of traditional law and custom [is] the right to be asked permission and to 'speak for country'. It is the rights under traditional law and custom to be asked permission and to 'speak for country' that are expressed in common law terms as a right to possess, occupy, use and enjoy the land to the exclusion of all others – at [88].

[179] In *Sampi v State of Western Australia* [2005] FCA 777 (*Sampi*), the Court held that the right to exclusive possession also carried with it the right to make decisions about access to and use of the land by others – at [1072].

[180] The fact that the native title right to exclusive possession should not be treated as a proprietary or usufructuary right was emphasised by the Court in *Griffiths v Northern Territory* [2007] FCAFC 178 (*Griffiths*). The Court held that classification of the right depended instead upon what the evidence discloses about [the right's] content under traditional law and custom – at [71]. The Court further indicated that what the material was required to show was how, under their traditional laws and customs, the group were effectively able to 'exclude from their country people not of their community' – at [127].

[181] Having turned my mind to the material before me, I consider that the following statements speak to a right of exclusive possession:

> I remember when I was young my grandfather speaking with other men who weren't Yuwi. The men wanted to go camping on our country. My grandfather told them to leave a bush or a stick in a certain location so that we would know they were there or that they had been there – Attachment F affidavit at [114].

[182] And also:

> It is important that people from other countries ask us for permission to come onto Yuwibara country. These cultural protocols must be respected. For example, non-Yuwibara people, including Torres Strait Islanders, Wiri People, and even people from Cape York, have come to me to get permission to go hunting on our country. This is the proper thing to do. I would have to do the same if I was on their country. This is one of our laws – Attachment F affidavit at [116].

[183] And also:

> It is our belief that if people don't ask permission, the old people will come back and give out their own punishment. The old people can cause trouble for anyone sneaking out on our country without

> permission. The old people might cause them to get sick, or they might cause deformities in other members of their family. Also if we don't keep a look-out for people trespassing on our country we can get punished too. If we get slack about looking after our country something bad could happen to a member of our family. I have always been told this. The old people are always out there watching us – Attachment F affidavit at [119].

[184] In addition to this, I note that the connection report refers to a number of sources that speak to the way in which the Yuwibara predecessors, occupying the application area at the time of white settlement, vehemently defended their territory – see for example the connection report at [43]. In my view, this further supports and speaks to a right of the group to exclusive possession of the land and waters of the application area.

[185] From this information, I understand that the material asserts that the claimants currently exercise a right to exclude those not of their community from their country, and that practices have developed amongst members of the claim group that give effect to this right. I also note that the deponent of the Attachment F affidavit speaks to the way in which the right was also exercised by his predecessors, including his grandfather, and that the right to be asked permission is one of the Yuwibara people's 'laws'. Noting my satisfaction above at s. 190B(5)(b) regarding the sufficiency of the factual basis to support an assertion that the claimants' knowledge of their system of traditional laws and customs has been passed down to them through the preceding generations to the claimants today, it is my understanding that the material asserts that the right to exclusive possession is seen as arising from and has been passed down in accordance with, that same system of laws and customs.

[186] For this reason, I consider that the right to exclusive possession is a native title right or interest held under the Yuwibara traditional laws and customs and that the right is, prima facie, established.

Right to hunt and fish, gather and use natural resources, and to have access to and use of water

[187] In the Attachment F affidavit the deponent speaks in detail of the way in which he and other Yuwibara persons use the application area, and have previously used the application area, for the purposes of hunting, fishing, gathering natural products and accessing water. The following statements are examples of this material:

> Most of the time we would head towards the coast and certain areas along the coast. This depended on the season, and the plants that were in season. We would take supplies with us, like rice, flour and sometimes dripping in a big square block. We would always camp close to water, and bring water back to our camp. We would collect bush tucker, like quandongs, on the journey to our camp, and catch seafood when we got there such as mullet, barramundi, bream, flathead, whiting, stingray and salmon and sometimes shark. Our camps usually lasted about four days, but sometimes they were longer. Our longer camps were usually at Christmas and Easter because that is when people got holidays. We went camping around Yuwibara country whenever we got the chance. Sometimes there would be up to fifty people in our camping group – Attachment F affidavit at [36].

[188] And also:

> We lived off the land and the sea. We collected and ate mangoes, guavas, taro, and berries from certain trees like the quandong. The quandong tree has a blue berry which we eat, but you have to beat the pigeons to it because they love it. We also eat the nuts of the Pandanus tree, we cook them in the fire first. There is a wild cherry tree that grows all over our country. You have to beat the birds to that too. You have to be up early with the birds to get your feed out of it. The girls learnt about

> gathering berries and fruits and other bush tuckers. They were taught what was in season and where to get it – Attachment F affidavit at [41].

[189] The deponent refers to the right being exercised, and having been exercised, in various locations across the application area – see for example Attachment F affidavit at [45] to [47].

[190] I note that in other statements, the deponent speaks to the way in which his predecessors taught him how to use and gather these resources while out on country, in accordance with the pattern of teaching of passing down knowledge from generation to generation. He also refers to the way in which these resources are accessed and obtained as being similar or the same as the methods and techniques used by the 'old people' – see Attachment F affidavit at [48] and [49]. In this way, I understand the deponent to assert that his right to engage in these activities on the application area is pursuant to the laws and customs of the group passed down to him by his predecessors, and that he understands that this same right was held and exercised in the same way by his predecessors.

[191] Consequently, I consider that the right is a 'native title right or interest' and in light of this type of material before me, that it is, prima facie, established.

Right to live on the land, to camp, erect shelters and to travel over and visit any part

[192] The following statements made by the deponent of the affidavit at Attachment F, in my view, speak to a right to live on the land, camp, erect shelters and travel across the application area:

> My mother told me that when she was young, her and her cousin [name deleted] would travel by horse and buggy from the farm at Habana to Mt Funnel Station, south of Sarina, to visit mum's father, [name deleted]. Mum told me Grandad [name deleted] was working on Mt Funnel station as a jackeroo. She also said Grandad [name deleted]'s father, [name deleted], worked there. It used to be called Mt Funnel Station, now it is called Tedlands. It was one big station in the old days. When Grandad [name deleted] was working at Mt Funnel he used to go to Sarina for cricket and boxing. While Grandad [name deleted] was working on the station, mum lived with the [name deleted] family at Habana – Attachment F affidavit at [13].

[193] And also:

> In the old days, between the [place names deleted] there were all the old huts from the old people. They lived down there and they had a track up behind their huts. There were huts all over the place between [place names deleted]. Then the Council came along and started cleaning them all out, getting rid of everybody. The last huts were down at the back of the [place name deleted]. There are only a couple of huts left down there now – Attachment F affidavit at [31].

[194] And also:

> The old people moved around Yuwibara country from camp to camp throughout the year with the seasons. They had lots of camps which were seasonal depending on the bush foods that were available at that time – Attachment F affidavit at [105].

[195] In addition to these statements, the connection report speaks to the way in which claimants understand that in accordance with their traditional laws and customs, their rights and interests in the application area arise by way of their descent from a person who had fundamental rights of possession and ownership around the time of, and prior to white settlement in the area (namely,

an apical ancestor). A right to possession and ownership, in my view, undoubtedly includes the right to live on, travel across, and camp on the application area.

[196] In this way, I understand that the material asserts that the right to live on, to camp, erect shelters, to travel over and visit places on the application area are rights held pursuant to the traditional laws and customs of the group. The right is, prima facie, established.

Right to do specific activities

[197] The right expressed at paragraph [2](c) of Schedule E specifies that the claim group seek the right to carry out the following activities on the land and waters of the application area:

- engage in cultural activities
- conduct ceremonies;
- hold meetings;
- teach the physical and spiritual attributes of places and areas of importance on or in the land and waters; and
- participate in cultural practices relating to birth and death, including burial rites.

[198] I consider the following statement to be an example of factual basis material speaking to a right to engage in cultural activities on the application area:

> I collect ochre at [place name deleted]. When my grandchildren come out to stay I take them out and we smash the orange ochre and paint them up. They love it. They don't want to wash it off at night when they go to bed. Then there [*sic*] parents get cranky because they get ochre all over their sheets and take them back home.
>
> You get different layers of clay – reddish coloured ochres and white clay. I've collected ochre at [place name deleted], south of Sarina. You get red, white and orange ochre along the beachfront at [place name deleted].
>
> We use white ochre for funerals. Red is for ceremonies, family gatherings, dancing and weddings. We mainly collect ochre around Christmas and Easter time when all the families get together – Attachment F affidavit at [70] to [72].

[199] I consider the following statement to be an example of factual basis material speaking to a right to conduct ceremonies on the application area:

> I remember there was a Corroboree ground on the [place name deleted] in the old days. It was a significant meeting and ceremonial place on our country. It is also the site of one of our ancestral burial grounds. Before when we had family outings everyone would meet at the [place name deleted]. We used to camp there – Attachment F affidavit at [100].

[200] I consider the following statement to be an example of factual basis material speaking to a right to hold meetings on the application area:

> We have a big gathering of all the families once a year during the Christmas and New Year break. We usually have it at [place name deleted] or [place name deleted]. It is a chance for all the families to get together and we sing, dance, and tell stories about our culture. We also take the young ones on walks and show them the signs of different animals and birds. We take them to shell midden sites. We teach them how to collect oysters and shell fish. We also teach them the customary way that we pay respect to the sea when we catch turtle and dugong… - Attachment F affidavit at [91].

[201] I consider the following statement to be an example of factual basis material speaking to a right to teach the physical and spiritual attributes of places and areas of importance on or in the land and waters:

> …On one occasion when we had a family gathering on at [place name deleted] and [name deleted] pulled me aside and said something like, "look boy this is a fish trap and the old people use it for [*sic*] catch fish and crab. The fish trap is at the side of the mouth of [place name deleted]. It is still there today but some of it is covered with mud and sand. Sometimes he would wave his arm at a beach and say 'this is all your country'. He would tell me these things when we were walking from place to place – Attachment F affidavit at [12].

[202] I consider the following statement to be an example of factual basis material speaking to a right to participate in cultural practices relating to birth and death, including burial rites:

> When we bury our people, whether it is at home, a cemetery, or re-burial, we always maintain our traditional ways. Twelve months after the funeral we have another ceremony that all the families come to. This ceremony is very dear to our families. After the second ceremony we don't talk about that deceased person anymore. At the funeral and the second ceremony we have a big feast and we all talk about good memories of the person, especially if it was one of our old people. Funerals are an important time for all our families to come together – Attachment F affidavit at [96].

[203] In my view, therefore, the factual basis speaks to the prima facie existence of all of the rights referred to at paragraph [2](e), in relation to the land and waters of the application area. Regarding whether those rights and interests are held in accordance with the system of traditional laws and customs discussed above in my reasons at s. 190B(5)(b), and whether they can therefore be considered 'native title rights and interests' for the purposes of s. 190B(6), in my view they can.

[204] In the statements pertaining to the exercise of these rights, the deponent refers to the 'traditional way' or 'customary way' things are done, and implies that this is a pattern which has been passed down to the claimants today that must be adhered to. Further to this, the deponent speaks of the way in which his understanding of these rights was passed to him by his predecessors, and he refers to the way these rights were exercised in the 'old days'. Together, I have formed the view that these statements allow for me to consider that the rights claimed are rights held pursuant to the traditional laws and customs of the group, and that they are, prima facie, established.

Right to have access to, maintain and protect places and areas of importance on or in the application area

[205] The right expressed in Schedule E refers to rock art, engraving sites and stone arrangements as examples of such important places. Places of importance are discussed by the deponent in the following statements from the Attachment F affidavit:

> There is a cave on a hill near [place name deleted] which has shell middens in it. It is on private property. There are signs up on their front gate saying no trespassing. About fifteen years ago the owner of that property used dynamite to blow the cave up so we couldn't visit it anymore. That was devastating for us, as we tried to care for and protect that place – Attachment F affidavit at [111].

[206] And also:

> Some of these fish traps are getting overgrown with mangroves, but I don't mind because that way they are hidden and sheltered and protected from damage. We decided to leave them like that for the time being so that no one will find them and desecrate them. We know where they are. In the old

> days our old people kept them cleared and used them regularly – claimant quote reproduced in the connection report at [128].

[207] And also:

> If you damage country something might happen to you, you will be punished by the spirits of our ancestors – Attachment F affidavit at [82].

[208] On the basis of this information, I consider the material to assert that the right to care for such places is exercised by the claimants today, and was exercised by the claimants' predecessors in the 'old days'. Noting that the location of these places is asserted within the material to form part of the cultural knowledge that has been passed down to the claimants through the preceding generations, and continues to be passed on to the claimants' children and grandchildren, a pattern followed pursuant to the group's traditional laws and customs, I consider that the right is a 'native title right or interest' and that it is, prima facie, established.

Right to make decisions about access by those acknowledging the group's traditional laws and customs

[209] In my view, the way in which this right is expressed involves an inherent conflict within its terms. This is primarily due to the fact that the right is claimed as a non-exclusive right, yet uses exclusive terminology which indicates that the claimants seek to exercise some element of control over the application area. The case law suggests that non-exclusive rights expressed in exclusive terms have been viewed as problematic by the Court. In *Ward HC*, the Court held that:

> It is necessary to recognise that the holder of a right, as against the whole world, to possession of land, may control access to it by others and, in general, decide how the land will be used. But ***without a right of possession of that kind, it may greatly be doubted that there is any right to control access to land or make binding decisions about the use to which it is put*** [emphasis added]. To use those expressions is apt to mislead – at [52].

[210] There have, however, been instances where the Court has drawn a distinction when dealing with these sorts of rights. In *De Rose v South Australia* [2002] FCA 1342 (*De Rose*), O'Loughlin J acknowledged the authority of *Ward HC*, yet indicated a willingness to recognise the non-exclusive right to grant access to the application area to Aboriginal persons governed by the laws and customs of the native title holders, and to refuse access to the application area to Aboriginal persons governed by the laws and customs of the native title holders – at [553]. His Honour did not, however, make a subsequent determination of native title in that matter.

[211] The consent decision of *Mundraby v Queensland* [2006] FCA 436 recognised the non-exclusive right to 'make decisions in accordance with the traditional laws and customs concerning access thereto and use and enjoyment thereof by aboriginal people' bound by the laws and customs of the native title holders.

[212] In my view, both decisions indicate that the Court's willingness to uphold such non-exclusive rights is limited to situations where those rights are qualified by the restriction of their exercise only over 'persons bound by the laws and customs of the native title holders'. It is my understanding that these persons are merely the other members of the native title claim group. It is clear in the present situation that the right is qualified or limited in this way, and for that reason, I consider that where the material supports the prima facie existence of the right, it is able to be recognised for the purposes of s. 190B(6).

[213] In my view, there is material that goes to a right of the members of the claim group to control the access of other members of the group to the application area. The following statement by a claim group member is an example of this material:

> Sometimes each of the different family groups would camp separately; they would break up and camp in different areas. I remember I would be sent to the other camps to get stuff like salt or sugar or to ask someone to borrow something. You had to wait to get permission to go into other people's camps. I remember I had to walk to the area covered by the other's camp's fire light and stopping there until I had permission to enter. Usually you would walk up to the area that is covered by the fire light and sing out and make sure people knew you were there. After that you would be asked to come in. I remember this was regarded as very important and I learnt this from a young age. My mother, father, and [name deleted], and many of the old people, said that you have to ask to go into other people's camps and all the areas where they belong, like their homes and their country. Even old people from other areas, other country, told me this. You could get a flogging and be sent to bed without anything to eat or drink if you broke this rule. I learnt this rule the hard way, like most kids I guess, but to this day I have followed those rules. You have to respect other people's camps, and areas, and pay that same respect to other people when you visit their country. I have taught what I have learnt to my children and grandchildren who are old enough to learn – Attachment F affidavit at [39].

[214] And another example is as follows:

> I remember there was a Corroboree ground on the [place name deleted] in the old days. It was a significant meeting and ceremonial place on our country. It is also the site of one of our ancestral burial grounds. Before when we had family outings everyone would meet at the [place name deleted]. We used to camp there – Attachment F affidavit at [100].

[215] These statements indicate, in my view, that the claimants have and continue to exercise a right to make decisions about access to the application area by the other members of the group, and that they do so pursuant to their traditional laws and customs.

[216] Consequently, I consider that the right is, prima facie, established.

Right to make decisions about the use and enjoyment of the land and its resources by those acknowledging the traditional laws and customs of the group

[217] In the same way as the above right, it is my understanding that this non-exclusive right has elements of exclusivity in the way it is expressed. Once again, however, I am of the view that the right has been qualified in that its exercise is limited to affect only those persons bound by the laws and customs of the group, that is, the members of the native title claim group. Consequently, where there is factual basis material that speaks to the existence, prima facie, of this non-exclusive right, I am of the view that it will meet the requirement at s. 190B(6).

[218] The following statements within the application I consider speak to a right to make decisions about the use and enjoyment of the land and its resources by the members of the group:

> With turtles, I was told by [name deleted] that some of the meat should be thrown back into the sea as thanks. We were also taught what size the tides should be for the best hunt, and also what times of the month they were fat like July or August – Attachment F affidavit at [61].

[219] And also:

> If there is a ceremony we will go out and get a dugong and make sure everyone gets a taste of it. It must always be shared out, and the old people get there [*sic*] share first. For example, if there is a wedding or funeral we'll go out and get a couple of turtles, but only one dugong. You only need one dugong to feed everyone. Depending on how you cook a dugong you can feed nearly three or four hundred people… - Attachment F affidavit at [63].

[220] I consider that the material of this nature provides a prima facie case for the existence of a right to make decisions about the use of the application area and its resources, held by the claimants in accordance with the traditional laws and customs passed down to them by their predecessors. Consequently, I consider that the right is, prima facie, established.

Right to share or exchange subsistence and other traditional resources

[221] The following statements within the factual basis material, in my view, speak to a right to share or exchange subsistence and other traditional resources

> When we had caught enough seafood for the families we would clean our catch down at the creek then head back home. The old people would cook whatever was available and then the older men would come back from their hunting trip with a whole variety of food too. That way there was plenty to share around – Attachment F affidavit at [54].

[222] And also:

> Once we had caught enough food to feed all the families we would pack up the camp and head home. Sometimes we would swap foods with our other families because it was the traditional way. We were always taught to share our food. If you went camping and fishing you always take enough home to share with everyone. In our old culture, you always shared, whether it was fruit, vegetables, fish or anything you had you shared it. When it came to sharing food, the old people were fed first. Sometimes if there was not enough food the old people would feed us kids – Attachment F affidavit at [68].

[223] From statements such as these, I consider that the material asserts that the right is exercised by the claimants today, and has been exercised by the claimants' predecessors, on the application area. Noting that the statements above refer to the sharing of resources as being in accordance with the 'traditional way', it is my understanding that the material also asserts that this practice is one that forms part of the knowledge and customs that have been passed down to the claimants by their predecessors through the preceding generations, in accordance with the group's traditional laws and customs. Consequently, I consider the right asserted to be a 'native title right or interest' and consider that it is, prima facie, established.

[224] The application **satisfies** the condition of s. 190B(6).

Subsection 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 be expected to currently 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.

[225] In my consideration of the application at s. 190B(7) and whether there is at least one member of the native title claim group that has a 'traditional physical connection' with some part of the application area, it is my view that the use of the word 'traditional' should be understood in light of the meaning of that term enunciated in *Yorta Yorta*, and requires that that connection is shown to be in accordance with the laws and customs of the group having their origin in the laws and customs of the relevant pre-sovereignty society – see *Gudjala 2007* at [89].

[226] In the *Yorta Yorta* decision, the High Court also indicated that demonstration of a traditional physical connection was also likely to require an actual presence on the land – *Yorta Yorta* at [184].

[227] Mansfield J discussed the nature of the task at s. 190B(7) in *Doepel* in the following way:

> Section 190B(7) imposes a different task upon the Registrar [to that imposed by s. 190B(5)]. It does require the Registrar to be satisfied of a particular fact or particular facts. It therefore requires evidentiary material to be presented to the Registrar. The focus is, however, a confined one. It is not the same focus as that of the Court when it comes to hear and determine the application for determination of native title rights and interests. The focus is upon the relationship of at least one member of the native title claim group with some part of the claim area… - at [18].

[228] In light of this, it is my view that the factual basis material must contain information which directly addresses the requirement of a traditional physical connection. I note that I am not, however, required to be satisfied that that connection in fact exists.

[229] Noting that the focus of the requirement is upon the relationship of at least one member of the group with some part of the claim area, it is the factual basis material that speaks to the traditional physical connection of one particular claim group member to which I have turned my mind in my consideration at s. 190B(7). That claim group member is Gary Theodore Mooney.

[230] In his affidavit at Attachment F, Mr Mooney states that he is a member of the native title claim group through his descent from Yuwibara apical ancestor Peter Nolan, who was his mother's father's father – Attachment F affidavit at [17].

[231] Mr Mooney was born in 1950 and currently lives in a tent structure he has erected on the beachfront at [place name deleted], within the application area – Attachment F affidavit at [1] to [2]. He further states that he has, throughout his life, continuously visited and camped at this location, with his mother and his grandfather – Attachment F affidavit at [3]. In this way, I am satisfied that the connection asserted is a physical one and that Mr Mooney has, and continues to have, an actual presence on part of the application area.

[232] Mr Mooney states that as a child, he was shown various sites and important places by his grandfather – Attachment F affidavit at [12]. He also describes his understanding of the extent of Yuwibara country, and the way in which he was taught this information by his mother, father and grandfather – Attachment F affidavit at [12], [20] to [21] and [23]. Mr Mooney also describes the way in which he learnt the requirement to seek permission to enter another family's camp or country, and the importance placed upon adherence to this practice by his predecessors – Attachment F affidavit at [39].

[233] From statements such as these, I consider that the factual basis indicates that knowledge regarding Yuwibara country, and Yuwibara laws and customs, was transmitted to Mr Mooney in accordance with the patterns of teaching pursuant to the group's traditional laws and customs (discussed in my reasons above at s. 190B(5)(b)).

[234] Mr Mooney states his understanding of the spiritual forces within his country, in particular his understanding that the Yuwibara ancestor spirits continue to occupy the area – Attachment F affidavit at [119] to [121]. He explains that he was taught appropriate ways to manage those spiritual forces when on country – Attachment F affidavit at [79] and [81]. He also describes feelings of safety and comfort associated with being on his country – Attachment F affidavit at [121].

[235] In line with this spiritual understanding of his country, and the presence of the Yuwibara forebears from who he is descended within the landscape, Mr Mooney explains the way in which the traditional laws and customs surrounding rights and interests in the application area operate. He clarifies that it is only those persons with a bloodline connection to country, that is, persons biologically descended from a Yuwibara forebear, who can make important decisions about country – Attachment F affidavit at [19].

[236] In my view, these statements demonstrate that Mr Mooney has a thorough knowledge of his country, and of the way in which various aspects of Yuwibara traditional laws and customs operate in relation to his country. It is apparent from these statements that this was all information that was passed to him by his predecessors in accordance with the traditional pattern of transmitting knowledge to younger Yuwibara persons.

[237] Consequently, I am satisfied that the connection that Mr Mooney has, and has had, with the application area is both a physical one, and one that is in accordance with the traditional laws and customs of the group.

[238] I am, therefore, 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.

[239] The application **satisfies** the condition of s. 190B(7).

Subsection 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.

Section 61A provides:

(1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.
(2) If :
(a) a previous exclusive possession act (see s. 23B) was done, and
(b) either:

(i) the act was an act attributable to the Commonwealth, or
(ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23E in relation to the act;

a claimant application must not be made that covers any of the area.

(3) If:

(a) a previous non-exclusive possession act (see s. 23F) was done, and

(b) either:

(i) the act was an act attributable to the Commonwealth, or
(ii) the act was attributable to a state or territory and a law of the state or territory has made provisions as mentioned in s. 23I in relation to the act;

a claimant application must not be made in which any of the native title rights and interests confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.

(4) However, subsection(2) and (3) does not apply if:

(a) the only previous non-exclusive possession act was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made, and

(b) the application states that ss. 47, 47A or 47B, as the case may be, applies to it.

[240] In the reasons below, I look at each part of s. 61A against what is contained in the application and accompanying documents and in any other information before me as to whether the application should not have been made.

Section 61A(1)

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

[242] The geospatial assessment provides that as at the date of that assessment there are no determinations of native title covering any part of the area covered by the application. I have referred to the Tribunal's iSpatial database as at the date of this decision and confirm that that situation is unchanged.

[243] In my view the application **does not** offend the provisions of s. 61A(1).

Section 61A(2)

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

[245] Part B of schedule B of the application lists general exclusion clauses, that is, areas falling within the boundary of the application area that are not covered by the application. Paragraph [1](b) provides that any area in relation to which a previous exclusive possession act was done is not included in the area covered by the application.

[246] In my view the application **does not** offend the provisions of s. 61A(2).

Section 61A(3)

[247] Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area

where a previous non-exclusive possession act was done, unless the circumstances described in s. 61A(4) apply.

[248] Schedule E lists those native title rights and interests subject of the claim. Paragraph [1] of that Schedule is a claim to a right of exclusive possession, however, I note that the way in which that right is phrased clarifies that it is only over land and waters where there has been no prior extinguishment of native title that the right is claimed.

[249] In my view, the application **does not** offend the provisions of s. 61A(3).

[250] The application **satisfies** the condition of s. 190B(8).

Subsection 190B(9)
No extinguishment etc. of claimed native title

> The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:
> (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
> (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or
> (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 ss. 47, 47A or 47B.

[251] I consider each of the subconditions of s. 190B(9) in my reasons below.

Section 190B(9)(a)

[252] Schedule Q states that there is no claim by the group for the ownership of minerals, petroleum or gas wholly owned by the Crown.

[253] The application **satisfies** the subcondition of s. 190B(9)(a).

Section 190B(9)(b)

[254] Schedule P states that no claim is made by the native title claim group for exclusive possession of all or part of an offshore place.

[255] The application **satisfies** the subcondition of s. 190B(9)(b).

Section 190B(9)(c)

[256] There is nothing before me in the application and accompanying documents that suggests that the native title rights and interests claimed have been otherwise extinguished.

[257] The application **satisfies** the subcondition of s. 190B(9)(c).

[258] The application **satisfies** the condition of s. 190B(9), because it **meets** all of the three subconditions, as set out in the reasons above.

[*End of reasons*]

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Yuwibara People
NNTT file no.	QC2013/007
Federal Court of Australia file no.	QUD720/2013

In accordance with ss. 190(1) and 186 of the *Native Title Act 1993* (Cwlth), the following is to be entered on the Register of Native Title Claims for the above application.

Section 186(1): Mandatory information

Application filed/lodged with:

Federal Court of Australia

Date application filed/lodged:

29 October 2013

Date application entered on Register:

9 January 2014

Applicant:

[*as per Extract from Schedule of Native Title Applications*]

Applicant's address for service:

[*as per Extract from Schedule of Native Title Applications*]

Area covered by application:

[*as per Extract from Schedule of Native Title Applications* – except for the following **nine** corrections that need to be made:

1. Eighth paragraph (point 1. (a)(iii)): The word 'interest' at the end of the paragraph should appear 'interests'.
2. Ninth paragraph (point 1. (a)(iv)): The word 'periods' should appear 'period'.

3. Eleventh paragraph (point 1. (c)): The term '[*sic*]' should be inserted after the word 'interest' (due to the fact that interest should be plural and this error is within the Form 1 itself).
4. Nineteenth paragraph (point 2. (g)): The term '[*sic*]' should be inserted after the word 'Act' (due to the fact that 'Native Act' should appear 'Native Title Act' and this error is within the Form 1 itself).
5. Twenty-second paragraph (point 3. (a)): The word 'section' is misspelled.
6. Twenty-third paragraph (point 3. (b)): The word 'of' should be inserted after the phrase 'is an area to which any'.
7. Twenty-third paragraph (point 3. (b)): The word 'Title' is misspelled.
8. Twenty-third paragraph (point 3. (b)): The word 'interest' should appear 'interests'.
9. Attachments: The Attachments should be labelled as follows:
    1. Attachment B – Description of Claim Area, 7 pages – A4, 29/10/2013
    2. Attachment C – Map of Claim Area, 2 pages – A4, 29/10/2013]

Persons claiming to hold native title:

[*as per Extract from Schedule of Native Title Applications*]

Registered native title rights and interests:

[*as per Extract from Schedule of Native Title Applications* – except for the following **four** corrections that need to be made:

1. First paragraph, first line: The word 'interest' is misspelled.
2. Second paragraph, first line (heading numbered 1): The word 'interest' at the end of the heading should be 'interests'.
3. Fifth paragraph, second line (first paragraph under the heading numbered 2): The word 'necessary' is misspelled.
4. Twelfth paragraph (point 2. (c) d.): The word 'physical' is misspelled.]

[*End of document*]