



Registration Decision

Application name	Djungan People #5
Name of applicant	Desmond Grainer, Errol Neal, William Mossman
Federal Court of Australia No.	QUD811/2018
NNTT No.	QC2018/005
Date of Decision	10 January 2019

Claim accepted for registration

I have decided that the claim in the Djungan People #5 application satisfies all of the conditions in ss 190B and 190C of the *Native Title Act 1993* (Cth).¹ Therefore the claim must be accepted for registration.

Heidi Evans

*Delegate of the Native Title Registrar*²

¹ All legislative sections are from the *Native Title Act 1993* (Cth) (the Act), unless stated otherwise.

² Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under an instrument of delegation dated 27 July 2018 and made pursuant to s 99 of the Act.

Reasons for Decision - edited

CASES CITED

Corunna v Native Title Registrar [2013] FCA 372 (*Corunna*)
Griffiths v Northern Territory of Australia [2007] FCAFC 178 (*Griffiths*)
Gudjala People #2 v Native Title Registrar [2007] FCA 1167 (*Gudjala 2007*)
Gudjala People # 2 v Native Title Registrar (2008) 171 FCR 317; [2008] FCAFC 157 (*Gudjala 2008*)
Martin v Native Title Registrar [2001] FCA 16 (*Martin*)
Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 214 CLR 422; [2002] HCA 58 (*Yorta Yorta*)
Northern Territory of Australia v Doepel (2003) 133 FCR 112; [2003] FCA 1384 (*Doepel*)
Sampi v State of Western Australia [2005] FCA 777 (*Sampi*)
State of Western Australia v Strickland [2000] FCA 652 (*Strickland FC*)
Stock v Native Title Registrar [2013] FCA 1290 (*Stock*)
Strickland v Native Title Registrar [1999] FCA 1530 (*Strickland*)
Western Australia v Native Title Registrar [1999] FCA 1591 (*WA v NTR*)
Western Australia v Ward [2002] HCA 28 (*Ward HC*)

BACKGROUND

- [1] The application was filed on behalf of the Djungan People native title claim group. It covers an area of approximately 199.9 square km, in the Tablelands region of Far North Queensland, north-west of Mareeba.
- [2] The Registrar of the Federal Court (the Court) gave a copy of the application and accompanying affidavits to the Native Title Registrar (Registrar) on 13 November 2018 pursuant to s 63 of the Act.
- [3] If the claim in the application satisfies all the registration test conditions in ss 190B and 190C, then the Registrar must accept the claim for registration.³ If it does not satisfy all the conditions, the Registrar must not accept the claim for registration.⁴
- [4] I have decided that the claim does satisfy all of the registration test conditions and my reasons on each condition follow below.

Information considered

- [5] Section 190A(3) sets out the information to which the Registrar must have regard in considering a claim under s 190A and provides that the Registrar ‘may have regard to such other information as he or she considers appropriate’.
- [6] I have had regard to information in the application.

³ See s 190A(6).

⁴ See s 190A(6B).

- [7] I have also considered information contained in a geospatial assessment and overlap analysis prepared by the Tribunal's Geospatial Services in relation to the area covered by the application, dated 19 November 2018 (the geospatial report).
- [8] I note there is no information before me obtained as a result of any searches conducted by the Registrar of State/Commonwealth interest registers.⁵ Further, no submissions were provided by the Queensland Government (the State) regarding the registration testing of the application.

Procedural fairness

- [9] On 15 November 2018, a Senior Officer of the Tribunal wrote to the State advising of the receipt of the application and inviting the State to make submissions regarding the application of the registration test to the claim. No submissions were received from the State.
- [10] This concluded the procedural fairness process.

Merits of the claim (s 190B) – Conditions met

Identification of area subject to native title – s 190B(2) condition met

- [11] I am satisfied the claim meets the requirements of s 190B(2). The information provided about the external boundary and internally excluded areas are sufficient to identify with reasonable certainty the particular land or waters over which native title rights and interests are claimed.

What is required to meet this condition?

- [12] For the application to meet the requirements of s 190B(2), the Registrar must be satisfied that the information and map contained in the application identify with reasonable certainty the 'particular land and waters' where native title rights and interests are claimed. The two questions for this condition are whether the information and map provides certainty about:
- (a) the external boundary of the area where native title rights and interests are claimed; and
 - (b) any areas within the external boundary over which no claim is made.⁶

Does the information about the external boundary meet this condition?

- [13] Schedule B refers to Attachment B, which provides that the application area is that part of Lot 170 on Plan CP887723 falling within the boundaries of the Djungan Small Scale Miners ILUA (QI2015/040). Schedule B further describes the boundaries of the application area by metes and bounds, referencing Lot on Plan, the centreline of Cattle Creek, an unnamed track and coordinate points. It has been prepared by the Tribunal's Geospatial Services and is dated 28 August 2018.
- [14] A map showing the external boundary of each of the three parcels comprising the application area is contained in Attachment C. It too has been prepared by the Tribunal's Geospatial Services on 28 August 2018, and includes:

⁵ See s 190A(3)(b).

⁶ *Doepel* at [122].

- the application area depicted with bold dark blue outline;
- tenure identified by Lot on Plan and name;
- general topographic background;
- scalebar, location diagram and coordinate grid; and
- notes relating to the source, currency and datum of data used to prepare the map.

[15] The geospatial report concludes that the description and map are consistent and identify the application area with reasonable certainty. Having considered the information before me about the area, I agree with the assessment.

Does the information about excluded areas meet this condition?

[16] Schedule B specifically excludes areas subject to the following native title determinations:

- QUD6208/1998 (QCD2011/008) Muluridji People;
- QUD6022/1998 (QCD2012/004) Djungan People #2; and
- QUD6116/1998 (QCD2012/005) Djungan People #3.

[17] Schedule B also includes a list of general exclusions, that is, areas within the external boundary that are not included in the application area. This method of describing excluded areas is sufficient to satisfy the requirement at s 190B(2), and I consider that historical tenure searches could confirm the excluded areas with certainty.⁷

Identification of the native title claim group – s 190B(3) condition met

[18] I am satisfied the claim meets the requirements of s 190B(3)(b).

What is required to meet this condition?

[19] For the application to meet the requirements of s 190B(3), 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.

[20] The only question for this condition is ‘whether the application enables the reliable identification of persons in the native title claim group’: whether the claim has been made on behalf of the correct native title claim group is not relevant.⁸

Does the description of the persons in the native title claim group meet this condition?

[21] The description of the persons comprising the native title claim group in Attachment A is sufficiently clear so that it can be ascertained whether any particular person is in that group.

[22] The description in Attachment A provides that the Djungan People native title claim group is ‘comprised of the descendants (including through adoption or raising up in accordance with

⁷ *Strickland* at [50] to [55].

⁸ *Doepel* at [51] and [37]; *Gudjala 2007* at [33].

traditional laws and customs) of the following apical ancestors: [list of eight named individuals and four couples].’

[23] It is my understanding, therefore, that there is only one criterion by which an individual is a member of the group. That is, they must be either biologically descended, or descended by means of adoption, from one of the individuals or couples named in Attachment A.

[24] I do not consider that there is anything controversial or ambiguous about this description. A description of a claim group framed by reference to apical ancestors is the most common means of describing a group accepted by the Court. While determining at any one point in time who the persons comprising the group are would take some factual inquiry, I do not consider that this makes the description unclear for the purposes of s 190B(3).⁹ The named ancestors provide an objective starting point for such an inquiry such that I am satisfied the description meets the requirements of this condition.

Identification of claimed native title – s 190B(4) condition met

[25] I am satisfied the description in Schedule E is sufficient for me to clearly understand and identify the itemised rights as ‘native title rights and interests.’

What is required to meet this condition?

[26] For the application to meet the requirements of s 190B(4), the Registrar must be satisfied that the application’s description of the claimed native title rights and interests is sufficient to allow the rights and interests to be readily identified. The question for this condition is whether the claimed rights are described clearly, comprehensively and in a way that is meaningful and understandable, having regard to the definition of the term ‘native title rights and interests’ in s 223 of the Act.¹⁰

Does the description of the native title rights and interests meet this condition?

[27] The description of the native title rights and interests claimed by the native title claim group is clear and the rights claimed are understandable as native title rights and interests.

[28] Schedule E refers to Attachment E, which is a document titled, ‘Description of native title rights and interests’. Paragraph one sets out a description of a right to exclusive possession of the application area, as against the whole world. Paragraph two provides a list of non-exclusive rights and interests claimed by the native title claim group.

[29] The description before me is clear, and I consider that the rights and interests described can be understood as native title rights and interests, with reference to the definition of that term in s 223(1). I have not, however, undertaken a consideration of whether each individual right or interest meets the requirements of that definition, as I consider that a more appropriate task at s 190B(6), in assessing whether the claimed native title rights and interests can be established on a prima facie basis.

[30] In my view, the description allows for the rights and interests claimed to be readily identified.

⁹ *WA v NTR* at [67].

¹⁰ *Doepel* at [99] and [123].

Factual basis for claimed native title – s 190B(5) condition met

[31] I am satisfied that the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the assertion. In particular, there is a sufficient factual basis for the three assertions of subsections 190B(5)(a), (b) and (c).

What is needed to meet this condition?

[32] For the application to meet the requirements of s 190B(5), the Registrar must be satisfied there is sufficient factual basis to support the assertion that the claimed native title rights and interests exist. In particular, the factual basis must support the following assertions:

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

[33] The question for this condition is whether the factual basis is sufficient to support these assertions. To answer that question, I must assess whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determine whether there is ‘evidence that proves directly or by inference the facts necessary to establish the claim’.¹¹

[34] Section 62(2)(e) requires only a ‘general description’ of the factual basis. However, where the facts provided are not at a sufficient level of detail to enable a genuine assessment of the application by the Registrar, the application may not be able to satisfy the condition. The material must comprise ‘more than assertions at a high level of generality’.¹²

[35] To satisfy the condition, the material must contain sufficient details addressing the particular native title, claimed by the particular native title claim group, over the particular land and waters of the application area.¹³

[36] Through reliance on the statements contained in the affidavits sworn by the applicant persons pursuant to s 62(1)(a) that accompany the application, that each deponent believes the statements contained in the application to be true, I have accepted the asserted facts as true.¹⁴

[37] The factual basis material is contained in Schedule F and Attachment F.

What is required to provide a sufficient factual basis for s 190B(5)(a)?

[38] To meet the requirement at s 190B(5)(a), the factual basis must support the assertion that ‘the native title claim group have, and the predecessors of those persons had, an association with the area.’ Generally, to satisfy this requirement:

¹¹ *Doepel* at [16]-[17]; *Gudjala 2008* at [83] and [92].

¹² *Gudjala 2008* at [92].

¹³ *Gudjala 2007* at [39].

¹⁴ *Gudjala 2008* at [91] to [92].

- it is not necessary for the factual basis to support an assertion that all members of the native title claim group have an association with the area at all times;¹⁵
- it is necessary that the material is sufficient to support that the group as a whole presently has an association with the area and to also support an association with the area by the predecessors of the whole group over the period since sovereignty, or at least since European settlement;¹⁶ and
- the materials must support that the association both presently and by the group's predecessors relates to the area as a whole.¹⁷

Reasons for s 190B(5)(a)

[39] The application area forms the western part of the Glen Russell Holding (pastoral holding), located immediately adjacent to the western border of the Hann Tableland National Park and generally northwest of Mareeba. It is surrounded, in the north by the Kondoparinga pastoral station, and in the west by the Mount Mulligan pastoral station. The town of Thornborough lies 8 km west of the edge of the application area.

[40] Through my searches of the Tribunal's geospatial database, and from information included in the application, I am aware that the Federal Court has made four determinations of native title in favour of the Djungan People (the same native title claim group that has brought the current application). These are the native title determination applications:

- Djungan People #1 (QCD2012/003; QUD208/1997);
- Djungan People #2 (QCD2012/004; QUD6022/1998);
- Djungan People #3 (QCD2012/005; QUD6116/1998); and
- Djungan People #4 (QCD2012/006; QUD6036/2001).

[41] These determinations all lie to the west and to the north of the application area, but sit immediately adjacent to, that is, they border, the application area.

[42] Attachment F describes Djungan country as encompassing the area between the Walsh River in the south and the Mitchell River in the north, extending as far east as the Hann Tableland and as far west as the junction of the Mitchell River and Big Watson Creek (in the northwest) and the junction of the Walsh River and Doolan Creek (in the southwest).¹⁸ It further states that '[f]or the past 120 years, recording of the traditional extent of the country of the Djungan tribe have consistently been placed on the Hodgkinson River, and its tributaries [and] watershed', which it explains includes the application area.¹⁹

[43] A detailed description of the historical and anthropological sources relating to the Aboriginal occupants of the region, and specifically, the Djungan people, is given in Attachment F.²⁰ This includes information about various groups who were recorded as being associated with the

¹⁵ *Gudjala 2007* at [52].

¹⁶ *Gudjala 2007* at [51] and [52].

¹⁷ See *Martin* at [23]–[26], affirmed in *Corunna* at [35]–[39] and [42]–[44].

¹⁸ At [2].

¹⁹ At [38].

²⁰ At [4] to [12].

region, and observations of the lifestyles and practices of the local people. All of the sources cited refer to more than one group name or label identifier being associated with the region including the application area. After a consideration of each of these sources, Attachment F concludes, however, that '[l]ater ethnographic and linguistic works such as Dixon (1970) strongly support the proposition that the three names Wakooras [Wakara], Wun-yurikas [Waniura] and Chunkunberries [Djungan] represented inter-changeable indigenous labels for one social grouping placed in the Hodgkinson river drainage area, today known as the Djungan people.'²¹

- [44] Noting the determinations of native title in favour of the Djungan people that surround the application, it is clear that the Court has satisfied itself regarding the ethno-historical material in support of the Djungan people and their traditional connection to the region. From the information in Attachment F, I am also satisfied the factual basis is sufficient in supporting an assertion that the traditional country of the Djungan people extends as far east as the Hann Tableland, including the application area. I note that there are no applications that overlap the present application.
- [45] In addition to the information referred to above, Attachment F provides information about each of the apical ancestors and some of their immediate descendants, including places with which those individuals are recorded as being associated, and the dates of those records.²² From the material before me, I understand that first European contact in the area took place in the early 1870s, and that settlement followed in the decades after.²³ I consider the information about the apical ancestors supports an assertion that they were persons who were present in and had an association with, the region including the application area at least at the time of settlement, if not before.
- [46] For example, Attachment F states that '[g]overnment records indicate apical ancestor Charles James Archer (Senior) was born at the Hodgkinson River circa 1880 and passed away in 1954 at the 'Aboriginal Reserve, Mt Mulligan.'²⁴ It further provides that with Jessie Riley, he had three children, all born on Djungan country.²⁵ Other places with which the apical ancestors are said to be recorded as being associated with, namely places they were born or had children or lived, include Mount Mulligan, Dimbulah, Thornborough, Chillagoe, Tolga, and Gorge Creek. Having considered the location of these places, I note that none falls within the boundary of the application area, but some are very close to the border of the area, and they are generally spread across the geographical extent of the region that the application area is situated in the middle of. I have also had regard to the ethno-historical material addressing the extent of Djungan country, and in light of that material, and the information about the apical ancestors, I consider it reasonable to infer that they were persons who spent time on, and travelling through, the application area such that they had an association with the area.

²¹ At [11].

²² At [14] to [26].

²³ See at [4] and [14].

²⁴ At [21].

²⁵ At [21].

- [47] I consider this inference further supported by the material that speaks about the predecessors of the group, and places with which they were associated, over the period since settlement. For example, Attachment F provides that one of Charles and Jessie's sons, [name deleted], was deported to Yarrabah in the late 1930s, but in the mid-1940s he managed to return to Mount Mulligan with his family.²⁶ According to Attachment F, [name deleted]'s son [name deleted] remembers following the traditional walking track that connected Mount Carbine where they were living at the time (north of the application area) to Chillagoe (south west of the application area).²⁷ Having considered the location of these townships and the path between them, I consider it reasonable to infer that this traditional walking track passed through the application area and that predecessors of the claim group would have spent time on the area camping along this journey.
- [48] Attachment F also explains that many of the predecessors of the group were able to maintain a physical presence on their traditional country, including the application area, by way of gaining employment on pastoral stations such as Kondoparinga, and in mining settlements in the Hodgkinson River drainage area such as Thornborough.²⁸
- [49] In light of the material before me discussed above, I am satisfied the factual basis supports an association of the predecessors of the group with the area at and over the period since European settlement.
- [50] Regarding an association of the members of the claim group presently with the area, Attachment F provides that 'Djungan people continue to occupy, access and conduct activities on Thornborough, the Hodgkinson River, Kondoparinga, Mt Mulligan and Glen Russell Stations'.²⁹ The material explains how the various descendant family groups of the apical ancestors continue to assert their ancestral connections to places in Djungan country, how they 'continue to practice law and custom' and 'look after country'.³⁰ Further detail is given through a number of examples. For instance, Attachment F describes how one claimant performed a smoking ritual during a 'cultural trip' with Djungan children along the traditional walking track between Mt Carbine and Chillagoe that predecessors of the group used to travel.³¹ Attachment F also provides that claimants have erected temporary shelters on pastoral properties in the area, including Kondoparinga (bordering the application area), which they use and visit to keep an eye on, and care for, their traditional country.³² In light of this material before me, I consider the factual basis sufficient in supporting an assertion that members of the group today have an association with the land and waters of the application area.
- [51] It follows that I am satisfied the factual basis is sufficient to support an assertion that the members of the native title claim group have, and the predecessors of those persons had, an association with the application area.

²⁶ At [21].

²⁷ At [21].

²⁸ At [12].

²⁹ At [2].

³⁰ For example, at [20] and [22].

³¹ At [44].

³² At [51].

What is required to provide a sufficient factual basis for s 190B(5)(b)?

[52] To meet s 190B(5)(b), the factual basis must support the 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’. The wording of s 190B(5)(b) is almost identical to paragraph (a) of the definition of ‘native title rights and interests’ within s 223(1) of the Act. Dowsett J approached this in *Gudjala 2007*³³ by considering s 190B(5)(b) in light of the case law regarding s 223(1)(a), particularly the leading decision of the High Court in *Yorta Yorta*.³⁴

[53] According to the High Court’s decision in *Yorta Yorta*, a law or custom is ‘traditional’ where:

- (a) it ‘is one which has been passed from generation to generation of a society, usually by word of mouth and common practice’;³⁵
- (b) the origins of the content of the law or custom concerned can be found in the normative rules of a society³⁶ which existed before the assertion of sovereignty by the Crown;³⁷
- (c) the normative system has had a ‘continuous existence and vitality since sovereignty’;³⁸ and
- (d) the relevant society’s descendants have acknowledged the laws and observed the customs since sovereignty and without substantial interruption.³⁹

[54] Dowsett J found that a sufficient factual basis must therefore demonstrate that the laws and customs relied on by the claim group ‘have their source in a pre-sovereignty society and have been observed since that time by a continuing society.’ His Honour held that a ‘starting point must be identification of an indigenous society at the time of sovereignty’, and concluded that a sufficient factual basis must also establish a link between the native title claim group described in the application and the area covered by the application, which involves ‘identifying some link between the apical ancestors and any society identified at sovereignty.’⁴⁰

I understand that it is not appropriate that I impose too high a burden when assessing these matters, having regard to the limited nature of the enquiry when assessing the factual basis condition of s 190B(5).⁴¹

Reasons for s 190B(5)(b)

³³ *Gudjala 2007* at [26] and [62] to [66].

³⁴ *Yorta Yorta*.

³⁵ *Yorta Yorta* at [46].

³⁶ The term ‘society’ in this context is ‘understood as a body of persons united in and by its acknowledgment and observance of a body of law and customs’—*Yorta Yorta* at [49].

³⁷ *Yorta Yorta* at [46].

³⁸ *Yorta Yorta* at [47].

³⁹ *Yorta Yorta* at [87].

⁴⁰ See *Gudjala 2007* at [63] and [66] respectively. Although the Full Court found error in Dowsett J’s evaluation of the factual basis materials, the Full Court did not disagree with his Honour’s assessment of what a sufficient factual basis for this assertion must address—see *Gudjala 2008* at [71]–[72]. The Full Court also agreed with Dowsett J that one question a sufficient factual basis must address is whether ‘there was, in 1850–1860, an indigenous society in the area, observing identifiable laws and customs’—*Gudjala 2008* at [96]. (1850–1860 is the time of European settlement of the Gudjala application area.)

⁴¹ See also *Stock* at [64] where His Honour held that ‘it must be borne in mind that the provisions of the NTA dealing with registration are not, nor could they be, concerned with the proof that native title exists’.

- [55] The starting point at s 190B(5)(b) is the identification of a society of people in the application area acknowledging and observing shared laws and customs at sovereignty, or at least European settlement. Regarding this society, as discussed above at s 190B(5)(a), Attachment F sets out a summary of various ethno-historical sources that speak to the persons who occupied the application area around the time of settlement in the late 1870s and 1880s.
- [56] Also as discussed above, Attachment F provides that there were a number of tribes, identified in the records under various names, who inhabited the application area and surrounding region. One of these sources, dated 1926, is by Richards, who spent considerable time in the area, and was the partner of one of the Djungan apical ancestors, Dinah.⁴² As set out in Attachment F, Richards observed three tribes in relation to the area, two of which had coalesced by 1890, and the third of which merged with the other two, in the area centred on Mt Mulligan (then Woodville).⁴³ Attachment F also refers to the field-based research of anthropologist Lauriston Sharp in 1935, who identified the ‘Wakura’, ‘Tjanjan’ and ‘Waniura’ as contiguous tribes possessing the same form of totemic organisation.⁴⁴ As above, the material explains that later works ‘strongly support the proposition that the three names Wakooras [Wakara], Wun-yurikas [Waniura] and Chunkunberries [Djungan] represented interchangeable indigenous labels for one social grouping based in the Hodgkinson river drainage area, today known as the Djungan people.’⁴⁵ In this way, I am satisfied the material addresses those persons comprising the society in the area at the time of settlement.
- [57] As to the laws and customs acknowledged and observed by that society, as above, the material refers to a source recording a single system of totemic organisation among the group.⁴⁶ Attachment F states elsewhere that at sovereignty, the system of land tenure observed by the Djungan people was based on descent from known Djungan ancestors who were known to have been connected to the land and waters of Djungan country.⁴⁷
- [58] It is also clear from the information about the apical ancestors that the practice of passing on knowledge about country and about laws and customs was a key aspect of the system of laws and customs acknowledged and observed by the society at settlement. For example, Attachment F explains that apical ancestor Topsy played an important role in passing on Djungan laws and customs to the children of her son, [name deleted]. This included knowledge about sites within Djungan country that should be avoided, or which had a particular spiritual significance.⁴⁸ Attachment F also explains that apical ancestor Mick Richards visited his daughter after her removal to Mona Mona Mission, teaching her about Djungan laws and customs, and her ancestral connections.⁴⁹
- [59] Attachment F also talks about the spiritual stories and beliefs of the society in the area at settlement, recorded in certain sources. It explains that Richards, in 1926, wrote about the

⁴² At [8] and [16].

⁴³ At [8].

⁴⁴ At [9].

⁴⁵ At [11].

⁴⁶ At [9].

⁴⁷ At [13].

⁴⁸ At [15] and [33].

⁴⁹ At [26].

creation story connected to Mount Mulligan or *Ngarrabulkan*, considered to be the spiritual centre of the Djungan people and located just west of the application area.⁵⁰ Along with this creation story, the material speaks about places within Djungan country that were avoided by Djungan ancestors, including the apical ancestors in the area around settlement, due to a belief in powerful spirits residing in that area. For example, apical ancestor Topsy Wason taught her descendants to avoid a certain waterhole due to the presence of a dangerous spirit, *birru*, in that place.⁵¹ Also set out in Attachment F, is Richards' findings about the role of the 'witch doctor' or 'Rhoonyoo', who was 'the most important man in the tribe', indicating that there were certain roles and authority structures within the society in the area around the time of settlement.⁵²

[60] The above statements and information are only an example of the type of material before me that I consider speaks to the laws and customs acknowledged and observed by the Djungan society in the area at settlement. Attachment F contains a number of other examples, drawn from ethno-historical sources and oral testimony.⁵³

[61] Turning then, to whether the laws and customs currently acknowledged and observed by the claim group are 'traditional', that is, whether they are rooted in the laws and customs of the society at settlement. There are various examples of specific aspects of the system of laws and customs asserted by the material that I consider support an assertion of traditional laws and customs.

[62] One example is where Attachment F talks about the way in which claimants today continue to assert their rights in country through their ancestral connection, in the same way that rights in country were understood amongst the Djungan people at sovereignty. Attachment F explains that the descendants of Lucy Burns, who were removed to Yarrabah in 1916 have a notable connection to the area of Thornborough and today the family continue to assert their rights in Djungan country through Lucy.⁵⁴

[63] Another example is where Attachment F talks about the way claimants continue to teach about the spiritual presences in the landscape, including by teaching younger generations the stories associated with sites, how sites were used by the 'old people', and which sites must be avoided to ensure protection from spiritual danger or harm. Attachment F explains that the creation story of *Ngarrabulkan*, and the appropriate behaviours to adopt in this area continues to be passed onto younger generations.⁵⁵

[64] In addition, I consider it is also clear from the material the way in which laws and customs have been continuously passed down through the generations, since the apical ancestors. Attachment F explains that [name deleted], born in 1925 in Mount Mulligan, is the son of [name deleted], the daughter of apical ancestor couple Jack O'Neil and Flora Richards, and that after being removed to Yarrabah in 1927 he ran away back to his home at Mount

⁵⁰ At [32].

⁵¹ At [33].

⁵² At [52].

⁵³ See for example at [53] to [56].

⁵⁴ At [22].

⁵⁵ At [32].

Mulligan when he was 16 years old.⁵⁶ Attachment F explains that [name deleted] was an important cultural authority figure amongst the Djungan people and played a key role in passing on knowledge of laws and customs to his children who in turn are now respected elders and ‘do extensive work in preserving Djungan culture and stories’.⁵⁷ In my view, this information also supports the continued importance of the role of elders within the claim group, another aspect of the laws and customs at settlement noted in the material.

[65] From these examples before me, I consider the material addresses the way in which Djungan laws and customs have been passed down through the generations, and subsequently, how the laws and customs acknowledged and observed today, are rooted in and derived from those same laws and customs acknowledged and observed by the predecessors of the group at settlement. It follows that I am satisfied 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 giving rise to the claim to native title.

What is required to provide a sufficient factual basis for s 190B(5)(c)?

[66] To meet s 190B(5)(c), the factual basis must support the assertion ‘that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.’ In order for a delegate to be satisfied that there is a factual basis for s 190B(5)(c) there must be some material which addresses the following matters outlined by Dowsett J in *Gudjala 2007*:

- that there was a society at settlement that observed traditional laws and customs from which the identified existing laws and customs were derived and were traditionally passed to the claim group;
- that there has been continuity in the observance of traditional law and custom going back to sovereignty or at least European settlement.⁵⁸

Reasons for s 190B(5)(c)

[67] I have already explained above at s 190B(5)(b) the reasons for which I am satisfied the factual basis is sufficient to support an assertion of a society in the application area at settlement acknowledging and observing laws and customs from which the laws and customs of the claim group today are derived.

[68] In my view, the material also addresses the way in which there has been continuity in the acknowledgement and observance of that system of laws and customs across the generations over the period since settlement. In particular, Attachment F sets out information about each of the apical ancestors and their descendants, naming those persons and providing details about them such as their birthplace, or life events such as marriage.⁵⁹ While the information indicates that many Djungan persons were removed at various times to missions such as Yarrabah, or Mona Mona, in each instance the material explains the way in which that person either returned to their home country, or how they continued to learn about Djungan laws

⁵⁶ At [18].

⁵⁷ At [18].

⁵⁸ *Gudjala 2007* at [82].

⁵⁹ At [14] to [26].

and customs, such as by having a parent or grandparent come and visit them.⁶⁰ Attachment F also explains elsewhere how predecessors of the claim group were able to maintain a physical presence on their country, and carry out their laws and customs, by gaining employment on pastoral stations in the area, or in mining settlements in the region.⁶¹

[69] Another way in which the material addresses continuity, in my view, is through the information describing claimants' knowledge of their predecessors and how those persons acknowledged and observed Djungan laws and customs. For example, Attachment F provides that one claimant continues to take the traditional walking path that his father and grandfather took that passes through the application area, including for the purposes of cultural trips for Djungan children.⁶² Another example is where one claimant explains that her grandmother, apical ancestor Topsy Wason, taught her about fishing and hunting spots and spiritual places on country.⁶³ A further example is where Attachment F provides that one claimant knows of a certain predecessor who 'was a murri doctor' and 'could do medicine used to heal people.'⁶⁴ From this information, I consider the material speaks to the detailed knowledge held by claimants about how their predecessors, across the generations, acknowledged and observed particular Djungan laws and customs in relation to the application area.

[70] In my view, this information supports an assertion that there has been continuity in the acknowledgement and observance of those laws and customs, such that I am satisfied the factual basis supports the assertion at s 190B(5)(c).

Prima facie case – s 190B(6): condition met

[71] I consider that some of the claimed rights and interests have been established on a prima facie basis. Therefore, the claim satisfies the condition of s 190B(6).

What is required to meet this condition?

[72] For the application to meet the requirements of s 190B(6), the Registrar 'must consider that, prima facie, at least some of the native title rights and interests claimed can be established.' I note the following comments by Mansfield J in *Doepel* in relation to this condition:

1. it requires some measure of the material available in support of the claim;⁶⁵
2. although s 190B(5) directs attention to the factual basis on which it is asserted that the native title rights and interests are claimed, this does not itself require some weighing of that factual assertion as that is the task required by s 190B(6);⁶⁶
3. s 190B(6) appears to impose a more onerous test to be applied to the individual rights and interests claimed.⁶⁷

⁶⁰ See for example at [15], [21] and [26].

⁶¹ At [12].

⁶² At [20] and [44].

⁶³ At [15].

⁶⁴ At [52].

⁶⁵ *Doepel* at [126].

⁶⁶ *Doepel* at [127].

⁶⁷ *Doepel* at [132].

[73] Mansfield J found that the use of the words ‘prima facie’ in s 190B(6) means 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.’⁶⁸

[74] Noting the definition of ‘native title rights and interests’ in s 223(1) of the Act, in order for me to consider a right or interest prima facie established, it must be shown to be a right or interest that is:

- (a) possessed under the traditional laws and customs of the native title claim group;⁶⁹
- (b) a right or interest in relation to the land or waters of the application area;⁷⁰
- (c) not extinguished in relation to the entirety of the application area.⁷¹

Which of the claimed native title rights and interests can be established on a prima facie basis?

[75] I consider that all of the rights and interests claimed are established on a prima facie basis, except the following two non-exclusive rights:

- Right to inherit native title rights and interests in the claim area in accordance with traditional laws and customs;
- Right to dispose of native title rights and interests in the claim area in accordance with traditional laws and customs.

[76] The rights and interests claimed by the native title claim group in relation to the claim area are set out in Attachment E. As discussed above at s 190B(4), they include a right to exclusive possession, and a total of 39 non-exclusive rights and interests. In my view, the substance of many of these non-exclusive rights is very similar. That is, the exercise of the right involves the same or similar natured activities. For that reason, I have grouped the non-exclusive rights of similar substance together and addressed the material addressing the collective group. This approach has been made clear in my reasons below.

Right of exclusive possession

[77] The nature of a native title right to exclusive possession was discussed in *Ward HC*, where the High Court held 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 land to the exclusion of all others.⁷²

[78] Since *Ward HC*, there have been a number of cases that have also considered the substance of such a right. From these cases, the following principles have emerged:

- a native title right to exclusive possession includes the right to make decisions about access to and use of the land by others;⁷³

⁶⁸ *Doepel* at [135].

⁶⁹ Section 223(1)(a).

⁷⁰ Section 223(1)(b).

⁷¹ Section 223(1)(c).

⁷² At [88].

⁷³ *Sampi* at [1072].

- the right cannot be formally classified as proprietary - its existence depends on what the evidence discloses about its content under traditional law and custom;⁷⁴ and
- the material must speak to how, pursuant to their laws and customs, the group is able to 'exclude from their country people not of their community', acting as 'gatekeepers for the purpose of preventing harm and avoiding injury to country.'⁷⁵

[79] In my view, there is material before me that speaks to a right of this nature. In particular, Attachment F explains that 'Djungan people themselves maintain the laws and customs associated with exclusive possession in a number of ways', however, 'in terms of their traditional customs, they believe that the 'old people' or *ngajikarra* and the various spirits are the ones who ultimately expel intruders and guard Djungan country.'⁷⁶ Attachment F then describes the way this plays out practically, specifically that the spirits are aware of people who are not Djungan and 'if they come onto country alone or without the permission of the traditional owners the spirits can cause supernatural misfortune to befall those people.'⁷⁷ From this statement, I consider I can infer that the laws and customs of the Djungan people do provide for a requirement that strangers seek their permission before coming onto Djungan country.

[80] A specific example of this belief and custom of the Djungan people is also given, Attachment F explaining that in Djungan oral tradition the great Mount Mulligan colliery explosion in 1921 was caused by the 'spirits in anger at white man's intrusion' on Djungan country.⁷⁸

[81] In addition to this, the material talks about specific spiritual characters at known places and sites within Djungan country that claim group members have been taught about by their predecessors and underlie their belief that those places should be avoided in order to evade harm from those forces.⁷⁹ It is also stated that other groups in the region acknowledge the exclusive nature of the Djungan people's possession of their traditional country and that only they can 'speak' for this country.⁸⁰

[82] I note that the native title right of exclusive possession depends not on any concepts of proprietary interests, but on what the material discloses about its content under traditional law and custom. In my view, the information in Attachment F explains how, underlying the traditional laws and customs of the Djungan people, is a belief in the power of the ancestral and other spirits to deter and prevent non-Djungan people entering Djungan country on improper terms, that is, by failing to comply with the laws and customs that exist around strangers seeking permission to enter that area. From this, I accept that the laws and customs of the Djungan people, do in fact provide for the Djungan people to make decisions about the access of others to the area, and that these decisions are made for the purpose of preventing harm or incorrect engagement with the country and its spiritual inhabitants.

[83] It follows that I consider the right established on a prima facie basis.

Non-exclusive rights – Group 1

⁷⁴ *Griffiths* at [71].

⁷⁵ *Griffiths* at [127].

⁷⁶ At [40].

⁷⁷ At [40].

⁷⁸ At [40].

⁷⁹ For example at [32] to [34] and [41].

⁸⁰ At [42].

[84] This group of rights, as they are described in Attachment F, includes the rights to:

- occupy the claim area;
- use the claim area;
- access the claim area;
- traverse the claim area; and
- the quiet enjoyment of the claim area.

[85] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[86] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[87] It is explained that apical ancestor Topsy Wason was not removed to Yarrabah and 'continued to live on country at the Aboriginal camp near Mount Mulligan until her death.' It further explains that her son, [name deleted], who was removed, 'continued to visit his traditional lands eventually moved back on country', taking with him his wife and children and passing on laws and customs to them with Topsy's help.⁸¹

[88] It is explained that one claimant remembers taking a traditional walking track which connected Mt Carbine, where he was living with his family at the time, to Chillagoe.⁸²

Non-exclusive right to speak for the claim area – Group 2

[89] I consider that there is sufficient information before me to allow me to consider this right established on a prima facie basis.

[90] The following information in Attachment F is an example of the type of material before me that speaks to this right:

[91] It is explained that in the late 1980s the Djungan people held a large meeting at the significant site *Yulbunbu*, where they raised the Aboriginal flag on their traditional lands and 'decided they would try to purchase Kondaparinga station, because it lies entirely on traditional territory and includes their spiritual centre *Ngarrabullgan*.

[92] While the right to speak for country has generally been understood by the Courts as being an aspect of an exclusive right of possession, I note that Attachment E which describes the rights and interests claimed, regarding the non-exclusive rights, states that they are 'not to the exclusion of all others'. In addition to this, a specific example of the way the group exercises a non-exclusive right to country is given, in the above example. It follows that I consider the right established on a prima facie basis.

Non-exclusive rights – Group 3

[93] This group of rights, as they are described in Attachment F, includes the rights to:

- speak to the claim area;
- conduct religious activities on the claim area;

⁸¹ At [15].

⁸² At [21].

- conduct religious ceremonies on the claim area;
- conduct spiritual activities on the claim area;
- conduct spiritual ceremonies on the claim area;
- conduct secular activities on the claim area;
- conduct secular ceremonies on the claim area;
- interact with the spirits and ancestral beings on the claim area;
- teach on the claim area the physical and spiritual attributes of the claim area; and
- practice traditional bush medicine on the claim area.

[94] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[95] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[96] It is explained that Djungan people do smoking rituals when hunting and fishing and that one claimant learned from the 'old people' at Chillagoe 'a smoking ritual that helps when one cannot find or see what one is looking for.' Attachment F provides that the claimant uses this ritual out on country when his hunting and gathering ventures are not successful.⁸³

[97] It is also explained that one claimant was shown hunting and fishing spots, and spiritual places on country, by her grandmother, apical ancestor Topsy Wason.⁸⁴

Non-exclusive rights – Group 4

[98] This group of rights, as they are described in Attachment F, includes the rights to:

- camp on the claim area; and
- erect structures on the claim area including those that are both temporary and permanent.

[99] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[100] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[101] Attachment refers to the 1926 article by Richards where he reported that the local Aboriginal people built humpies and lived in them during cold or wet weather. Attachment F further explains that claimants continue to erect rudimentary structures from local natural resources for the purposes of shelter and comfort when camping on their traditional country. It refers to a particular claimant who erected a number of these structures on Kondaparinga station, and how he used these as a base when checking up on his country.⁸⁵

Non-exclusive rights – Group 5

[102] This group of rights, as they are described in Attachment F, includes the rights to:

⁸³ At [45].

⁸⁴ At [15].

⁸⁵ At [51].

- hunt on the claim area;
- fish on the claim area;
- gather on the claim area;
- consume natural resources on the claim area;
- share natural resources on the claim area;
- exchange natural resources on the claim area;
- harvest natural resources on the claim area;
- construct material items from natural resources on the claim area including but not restricted to shields, baskets, bags, and items of adornment; and
- trade on the claim area.

[103] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[104] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[105] It is explained that in his 1926 article, Richards reported that women carried a type of bag made of knitted grass which was worn suspended from the head with string made from the inner bark of the currajong. It is further explained that elders today remember how Topsy Wason would put the fish they caught in a dilly bag behind her head, and how she taught them how to make the bag.⁸⁶

[106] Elsewhere, Attachment F talks about artefacts and tools manufactured by the Djungan people, including fishing spears and rods. It is explained that claimants today make boomerangs depicting the events of story-places on Djungan country.⁸⁷

Non-exclusive rights – Group 6

[107] This group of rights, as they are described in Attachment F, includes the rights to:

- light fires on the claim area for domestic purposes, including but not restricted to, cooking and warmth;
- light fires on the claim area for hunting purposes; and
- light fires on the claim area for clearing vegetation and regenerating growth of natural resources.

[108] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[109] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[110] It is explained that in 1886, Mowbray wrote of the Djungan people's consumption of various natural resources taken from their surroundings, and also that he observed the way in which cooking was done on an open fire or in a primitive oven made of flat stones.⁸⁸

⁸⁶ At [49].

⁸⁷ At [50].

Non-exclusive rights – Group 7

[111] This group of rights, as they are described in Attachment F, includes the rights to:

- maintain places of importance under traditional laws and customs on the claim area; and
- protect places of importance under traditional laws and customs on the claim area from physical harm.

[112] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[113] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[114] As above, Attachment F explains how in the late 1980s, a large meeting of Djungan people occurred at *Ngarrabullgan*, where the group decided to attempt to purchase Kondaparinga station, 'because it lies entirely on traditional territory and includes their spiritual centre'.⁸⁹

Non-exclusive rights – Group 8

[115] This group of rights, as they are described in Attachment F, includes the rights to:

- inherit native title rights and interests in the claim area in accordance with traditional laws and customs; and
- dispose of native title rights and interests in the claim area in accordance with traditional laws and customs.

[116] The material does explain the way in which the laws and customs of the Djungan people provide for rights and interests in land to arise through descent from ancestors who were known Djungan people associated with that area. It is my understanding that this is what is meant by the first bullet point right above. In my view, however, the right to inherit native title rights is focused on a relationship between claimants and their predecessors, rather than on a relationship with the land and waters of the application area. Pursuant to s 223(1), that is, the definition of 'native title rights and interests', I understand that such rights and interests must be in relation to land and waters. For that reason, I do not consider the right to inherit native title rights and interests established on a prima facie basis as a native title right or interest.

[117] Regarding the right described in the second bullet point above, from the material, I am unable to understand the meaning of this right, as there is no information that speaks specifically to its content or nature. On that basis, I do not consider it established on a prima facie basis.

Non-exclusive rights – Group 9

[118] This group of rights, as they are described in Attachment F, includes the rights to:

- bury deceased claim group members on the claim area; and
- be buried on the claim area.

⁸⁸ At [53].

⁸⁹ At [43].

[119] I consider that there is sufficient information before me to allow me to consider these rights established on a prima facie basis.

[120] The following information in Attachment F is an example of the type of material before me that speaks to these rights:

[121] It is explained that the Djungan people have a very strong tradition of respect towards the dead, and especially towards their bones, and that this is why burial sites and massacre sites are important places in Djungan lore such as the Aboriginal cemetery near Thornborough.⁹⁰

Physical connection – s 190B(7): condition met

[122] I am satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with a part of the claim area.

What is required to meet this condition?

[123] For the application to meet the requirements of s 190B(7), the Registrar ‘must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or waters covered by the application’—see subsection (a).

[124] The following principles have emerged from the case law about what is required at s 190B(7):

- the material must satisfy the delegate of particular facts;
- evidentiary material is, therefore, required; and
- the focus is confined to the relationship of at least one member of the native title claim group with some part of the claim area;⁹¹
- the physical connection must be shown to be in accordance with the traditional laws and customs of the claim group;⁹²
- the material may need to address an actual presence on the area.⁹³

Is there evidence that a member of the claim group has a traditional physical connection?

[125] I am satisfied that claim group member [name deleted] has a traditional physical connection with some part of the application area.

[126] From the material, I understand that [name deleted] is a descendant of apical ancestor Charles James Archer, such that I accept him to be a member of the native title claim group.

[127] Attachment F explains how [name deleted] took a number of Djungan children on a cultural trip, which followed a traditional walking track between Mount Carbine and Chillagoe. It is further explained that [name deleted]’s father took this route in the mid-1940s.⁹⁴ From the material, I understand that the main focus of this trip was to take Djungan children through their traditional country to teach them about the places, features, and resources within that country, and also Djungan laws and customs and mythologies attaching to that country.

⁹⁰ At [47].

⁹¹ *Doepel* at [17].

⁹² *Gudjala 2007* at [89].

⁹³ *Yorta Yorta* at [184].

⁹⁴ At [44].

[128] I have explained above at s 190B(5)(a) the way in which I understand this traditional walking track to pass through the application area. Also above, at s 190B(5)(b), I have explained the reasons for which I am satisfied the factual basis is sufficient to support an assertion that the passing down of traditional laws and customs and knowledge about country forms a key aspect of Djungan law and custom. In this way, I am satisfied the physical connection Ron Archer has with the application area as described above can be said to be ‘traditional’.

No failure to comply with s 61A – s 190B(8): condition met

[129] In my view the application does not offend any of the provisions of ss 61A(1), 61A(2) and 61A(3) and therefore the application satisfies the condition of s 190B(8):

Requirement	Information addressing requirement	Result
s 61A(1) no native title determination application if approved determination of native title	Geospatial report	Met
s 61A(2) claimant application not to be made covering previous exclusive possession act areas	Schedule B	Met
s 61A(3) claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas	Attachment E	Met

No extinguishment etc. of claimed native title – s 190B(9): condition met

[130] In my view the application does not offend any of the provisions of ss 190B(9)(a), (b) and (c) and therefore the application meets the condition of s 190B(9):

Requirement	Information addressing requirement	Result
(a) no claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q	Met
(b) exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P	Met
(c) native title rights and/or interests in the application area have otherwise been extinguished	Schedule B, paragraph (l)	Met

Procedural and other matters (s 190C)—Conditions met

Information etc. required by sections 61 and 62 – s 190C(2): condition met

[131] I have examined the application and I am satisfied that it contains the prescribed information and is accompanied by the prescribed documents.

What is required to meet this condition?

[132] To meet s 190C(2), the Registrar must be satisfied that the application contains all of the prescribed details and other information, and is accompanied by an affidavit or other document, required by ss 61 and 62. This condition does not require any merit or qualitative assessment of the material to be undertaken.⁹⁵

Subsection 61

[133] The application contains the details specified in s 61.

Section	Details	Form 1	Result
s 61(1)	Native title claim group	Attachment A	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Attachment A	Met

Subsection 62

[134] The application contains the details specified in s 62.

Section	Details	Form 1	Result
s 62(1)(a)	Affidavits in prescribed form	Attached to the Form 1	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B and Attachment B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Attachment D	Met
s 62(2)(d)	Description of native title rights and interests	Attachment E	Met
s 62(2)(e)	Description of factual basis	Schedule F and Attachment F	Met
s 62(2)(f)	Activities	Schedule F and Attachment F	Met
s 62(2)(g)	Other applications	Schedule H	Met
s 62(2)(ga)	Notices under s 24MD(6B)(c)	Schedule HA	Met
s 62(2)(h)	Notices under s 29	Attachment D	Met

No previous overlapping claim group – s 190C(3): condition met

[135] I am not satisfied that no person included in the native title claim group for this application is a member of the native title claim group for any previous overlapping application.

⁹⁵ *Doepel* at [16] and also at [35] to [39].

What is required to meet this condition?

[136] To meet s 190C(3), the Registrar ‘must be satisfied that no person included in the native title claim group for the application (the **current application**⁹⁶) was a member of a native title claim group for any previous application’. To be a ‘previous application’:

1. the application must overlap the current application in whole or part;
2. there must be an entry for the claim in the previous application on the Register of Native Title Claims when the current application was made; and
3. the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

[137] It is only where there is an application meeting all three of the criteria above, that is, a ‘previous application’, that the requirement for me to consider the possibility of common claimants is triggered.⁹⁷

[138] The geospatial report provides that there are no native title determination applications overlapping the whole or part of the application area. Therefore, it is not necessary to consider the remaining criterion. The condition is met.

Identity of claimed native title holders – s 190C(4): condition met

[139] I am satisfied the requirements set out in s 190C(4)(a) are met.

What is required to meet this condition?

[140] For the application to meet the requirements of s 190C(4), the Registrar must be satisfied that the application has been certified by all representative Aboriginal/Torres Strait Islander bodies that could certify the application in performing its functions.⁹⁸ If the application has not been certified, the Registrar must be satisfied that the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.⁹⁹

[141] Schedule R refers to Attachment R1 which is a document titled ‘Certificate of an application for a determination of native title under s 203BE of the Native Title Act 1993 (Cth)’ that has been signed by the Chief Executive Officer of the North Queensland Land Council Native Title Representative Body Aboriginal Corporation (NQLC) on 6 November 2018. It is therefore the requirements of s 190C(4)(a) which apply in this instance.

[142] I understand that my consideration of the application pursuant to s 190C(4)(a) is limited to two matters.¹⁰⁰ Firstly, whether the certificate has been provided by an appropriate representative body able to certify a native title determination application, and secondly, whether the certificate complies with s 203BE(4).

[143] The certificate provides that the area subject of the application is wholly within the NQLC’s representative body area, which I have verified with the information in the geospatial report.

⁹⁶ Emphasis in original.

⁹⁷ See *Strickland FC* at [9].

⁹⁸ See subsection 190C(4)(a).

⁹⁹ See subsection 190C(4)(b).

¹⁰⁰ See *Doepel* at [78].

The certificate then states that the NQLC is a 'representative Aboriginal/Torres Strait Islander body recognised under section 203AD of the *Native Title Act 1993* (Cth)'.

[144] I have accessed, through the Tribunal website, a national map titled, 'Representative Aboriginal and Torres Strait Islander Body areas'. The map provides information about the legal status of representative and native title service provider organisations across Australia. Confirming the statement in the certificate, the map shows the NQLC as a recognised representative body, pursuant to s 203AD of the Act. As a recognised representative body, the Act provides that the body is to perform all of the functions of a representative body, set out in s 203B(1) and which includes the certification function. It follows that I am satisfied the NQLC is an appropriate body able to certify the application.

[145] Section 203BE(4)(a) requires the certificate to contain a statement to the effect that the representative body is of the opinion the requirements of paragraphs (2)(a) and (b) (relating to all the persons in the native title claim group authorising the applicant to make the application, and all reasonable efforts being made to ensure the application identifies the persons comprising the group) have been met. I have considered the contents of the certificate and am satisfied that it contains the necessary statement regarding the NQLC's opinion.

[146] Section 203BE(4)(b) requires the certificate to 'briefly set out' the representative body's reasons for being of the opinion stated. The certificate contains the following information addressing the matters referred to in ss 203BE(2)(a) and (b):

- the NQLC has assisted the Djungan People with a number of previous native title determination applications, including determinations in favour of the Djungan People, and maintains a register of members of the native title claim group;
- on 22 August 2018, the NQLC mailed notices to all the persons on the Djungan People register, advising them of a native title community meeting scheduled in Mareeba on 13 September 2018 to discuss authorisation of a new Djungan claim that would occur the following day;
- the NQLC also provides assistance to Nguddaboolgan Native Title Aboriginal Corporation, the registered native title body corporate (RNTBC) that holds the determined native title rights and interests for the Djungan People in relation to the previous determinations, and informed the Directors of the RNTBC about the proposed authorisation of the new claim during a meeting on 30 August 2018;
- the community meeting took place on 13 September 2018 and a solicitor and anthropologist from the NQLC discussed with those in attendance previous authorisation processes and native title claim group descriptions;
- on 14 September 2018, the Djungan People, using a traditional process of decision-making pursuant to their laws and customs (involving discussion among various Djungan clans and families then decisions formed by Elders of the group) made unanimous authorisation decisions in relation to the claim;

- the claim group description is the same description used in the existing determinations of native title for the Djungan People, and which is based on extensive research and the work of consultant anthropologists in the region;
- the description of the group has also been subject of the consideration of Elders of the claim group;
- all reports held by the NQLC were checked and considered by an in-house anthropologist, and presented to the authorisation meeting.

[147] In my view, this information is sufficient in providing a 'brief' explanation of the NQLC's reasons for stating the opinion in the certificate.

[148] Section 203BE(4)(c) requires the certificate to, where applicable, briefly set out what the body has done to address overlapping applications pursuant to s 203BE(3). That is, either to achieve agreement between claim groups for overlapping claims, or to minimise the number of applications covering the land and waters.

[149] The certificate states that from its consideration of information held by the National Native Title Tribunal, the NQLC is not aware of any overlapping applications that have been filed in the Federal Court, and it is not aware of other persons seeking to, and it does not intend to, lodge any overlapping application. I consider these statements sufficient in addressing the requirement at s 203BE(4)(c).

End of reasons