

Registration Decision



Application name	Daisy Tjuparntarri Ward & Ors on behalf of the Traditional Owners of the Pila Nature Reserve and State of Western Australia (Pila Nature Reserve)
Name of applicant	Daisy Tjuparntarri Ward, Ben Junior Ralph Brown, Andrew Jones, Leese Giles, Paul Carnegie and Clarabelle Ward Kenda
Federal Court of Australia No.	WAD174/2021
NNTT No.	WC2021/005
Date of Decision	22 October 2021

Claim accepted for registration

I have decided the claim in the Pila Nature Reserve application satisfies all the conditions in ss 190B–190C of the *Native Title Act 1993* (Cth).¹ Therefore the claim must be accepted for registration and entered on the Register of Native Title Claims.

Katy Woods²

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

² Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 19 May 2021 and made pursuant to s 99 of the Native Title Act.

Reasons for Decision

Cases Cited

Aplin on behalf of the Waanyi Peoples v State of Queensland [2010] FCA 625 (**Aplin**)
Bell v Native Title Registrar [2021] FCA 229 (**Bell**)
Corunna v Native Title Registrar [2013] FCA 372 (**Corunna**)
De Rose v South Australia [2002] FCA 1342 (**De Rose**)
Fortescue Metals Group v Warrie on behalf of the Yindjibarndi People [2019] FCAFC 177 (**Warrie**)
Griffiths v Northern Territory [2007] FCAFC 178 (**Griffiths FC**)
Gudjala People #2 v Native Title Registrar [2007] FCA 1167 (**Gudjala 2007**)
Gudjala People #2 v Native Title Registrar [2008] FCAFC 157 (**Gudjala 2008**)
Gudjala People #2 v Native Title Registrar [2009] FCA 1572 (**Gudjala 2009**)
Harrington-Smith on behalf of the Wongatha People v Western Australia (No 5) [2003] FCA 218 (**Harrington-Smith No 5**)
Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9) [2007] FCA 31 (**Harrington-Smith No 9**)
Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v State of Western Australia (No 3) [2017] FCA 938 (**Tjungarrayi 2017**)
Kanak v National Native Title Tribunal [1995] FCA 1624 (**Kanak**)
Martin v Native Title Registrar [2001] FCA 16 (**Martin**)
McLennan v State of Queensland [2019] FCA 1969 (**McLennan**)
Members of the Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (**Yorta Yorta**)
Northern Land Council v Quall [2020] HCA 33 (**Quall HCA**)
Northern Territory of Australia v Doepel [2003] FCA 1384 (**Doepel**)
Project Blue Sky v Australian Broadcasting Authority [1998] HCA 2 (**Project Blue Sky**)
Sampi on behalf of the Bardi and Jawi People v State of Western Australia [2010] FCAFC 26 (**Sampi FC**)
State of Western Australia v Strickland [2000] FCA 652 (**Strickland FC**)
Strickland v Native Title Registrar [1999] FCA 1530 (**Strickland**)
Wakaman People 2 v Native Title Registrar and Authorised Delegate [2006] FCA 1198 (**Wakaman**)
Ward v Registrar, National Native Title Tribunal [1999] FCA 1732 (**Ward v Registrar**)
Western Australia v Native Title Registrar [1999] FCA 1591 (**WA v NTR**)
Western Australia and Northern Territory v Lane [1995] FCA 1484 (**Lane**)
Western Australia v Ward [2002] HCA 28 (**Ward HC**)

Background

- [1] The claim in this application is made on behalf of the traditional owners of the Pila Nature Reserve native title claim group (**claim group**). It comprises the entirety of the Pila Nature Reserve, which is located in the Gibson Desert in Western Australia (**application area**).
- [2] The application was filed on 28 July 2021 and the Registrar of the Federal Court of Australia (**Federal Court**) gave a copy to the Native Title Registrar (**Registrar**) on 30 July 2021, pursuant to s 63. This referral triggered the Registrar's duty to consider the claim made in the application under s 190A. In accordance with s 190A(6), I must accept the claim for registration if it satisfies all the conditions in ss 190B–190C (**registration test**). For the reasons

below, I consider the claim in the application satisfies all the conditions of the registration test and therefore it must be accepted for registration pursuant to s 190A(6). Attachment A contains the information that will be included on the Register of Native Title Claims (**Register**).

Procedural fairness

- [3] On 9 August 2021, a senior officer of the National Native Title Tribunal (**Tribunal**) wrote to the representative of the State of Western Australia (**State**) and advised that any comments or submissions the State wished to make on the application should be received by 23 August 2021. Also on 9 August 2021, the senior officer wrote to the applicant's representative and advised that any further information the applicant wished me to consider should be received by 23 August 2021.
- [4] On 11 August 2021, the applicant's representative provided the following **additional material**:
- (a) Covering letter, Malcolm O'Dell, 11 August 2021 (**applicant's submissions**);
 - (b) Witness Statement of [name removed], 19 August 2014 (**Claimant 1 statement**);
 - (c) Witness Statement of [name removed], 21 August 2014 (**Claimant 2 statement**);
 - (d) Witness Statement of [name removed], 21 August 2014 (**Claimant 3 statement**);
 - (e) Witness Statement of [name removed], 22 August 2014 (**Claimant 4 statement**);
 - (f) Witness Statement of [name removed], 26 August 2014 (**Claimant 5 statement**);
 - (g) Witness Statement of [name removed], 26 August 2014 (**Claimant 6 statement**);
 - (h) Witness Statement of [name removed], 26 August 2014 (**Claimant 7 statement**);
 - (i) Witness Statement of [name removed], 27 August 2014 (**Claimant 8 statement**);
 - (j) Witness Statement of [name removed], 27 August 2014 (**Claimant 9 statement**);
and
 - (k) Witness Statement of [name removed], 28 August 2014 (**Claimant 10 statement**).
- [5] On 14 October 2021, the senior officer provided the additional material to the State's representative and advised that any comments or further information should be received by 20 October 2021. No submissions were received from the State and so this concluded the procedural fairness process.

Information considered

- [6] In accordance with s 190A(3)(a), I have considered the information in the application and the additional material. There is no information before me from searches of State, Territory or Commonwealth interest registers obtained by the Registrar under s 190A(3)(b). There is no information before me from the State which I must consider in accordance with s 190A(3)(c). Section 190A(3) also provides that the Registrar may have regard to such other information considered appropriate. Pursuant to that provision, I have considered information in the geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services dated 9 August 2021 (**geospatial report**) and information in the Tribunal's geospatial database.

Section 190C: conditions about procedural and other matters

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

What is required to meet s 190C(2)?

[7] To meet s 190C(2), the Registrar must be satisfied the application contains all of the prescribed details and other information, and is accompanied by any affidavit or other document, required by ss 61–2. I am not required to undertake a merit assessment of the material at this condition.³ I understand the matters covered by s 61(5) are matters for the Federal Court.

Consideration

[8] I consider the application contains the details specified in s 61:

Section	Details	Information	Result
s 61(1)	Native title claim group have authorised the applicant	Part A(2), Schedule A, s 62 affidavits filed with application (s 62 affidavits)	Met
s 61(3)	Name and address for service	Part B	Met
s 61(4)	Native title claim group named/described	Schedule A	Met

[9] I consider the application contains the information specified in s 62:

Section	Details	Information	Result
s 62(1)(a)	Affidavits in prescribed form	s 62 affidavits	Met
s 62(1)(d)	Section 47 agreements	Schedule L, Attachment L	Met
s 62(2)(a)	Information about the boundaries of the area	Schedule B, Attachment B	Met
s 62(2)(b)	Map of external boundaries of the area	Attachment C	Met
s 62(2)(c)	Searches	Schedule D	Met
s 62(2)(d)	Description of native title rights and interests	Schedule E	Met
s 62(2)(e)	Description of factual basis	Schedule F	Met
s 62(2)(f)	Activities	Schedule G	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	Schedule I	Met

Conclusion

[10] As the application contains the details and information specified in ss 61–2, I am satisfied s 190C(2) is met.

³ *Doepel* [16], [35]–[39].

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

What is required to meet s 190C(3)?

- [11] To meet s 190C(3), the Registrar must be satisfied that no person included in the claim group for the current application was a member of a native title claim group for any previous application. To be a ‘previous application’:
- (a) the application must overlap the current application in whole or part;
 - (b) there must be an entry for the claim in the previous application on the Register when the current application was made; and
 - (c) the entry must have been made or not removed as a result of the previous application being considered for registration under s 190A.

Consideration

- [12] The geospatial report states and my own searches confirm that the current application is entirely overlapped by the application of WAD222/2020 Gibson Desert Nature Reserve Compensation Claim Group. My understanding of s 190C(3) is that it was enacted to prevent overlapping claims by the same native title claim group from being on the Register at the same time.⁴ I therefore understand that my consideration at this condition is limited to overlapping claimant applications, rather than other types of applications which are not subject to the registration test. Therefore, as WAD222/2020 is a compensation application, rather than a claimant application, in my view it does not form part of my consideration at this condition. My searches confirm that there are no other claimant applications which overlap the current application. This means there are no claimant applications which meet the definition of a ‘previous application’ under s 190C(3). Therefore the issue of common claimants does not arise.

Conclusion

- [13] I am satisfied that no person included in the claim group was a member of a native title claim group for any previous application, and so s 190C(3) is met.

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

Do the amendments to s 190C(4) apply?

- [14] Amendments to s 190C(4) came into effect on 25 March 2021.⁵ Item 24 of the Replacement Revised Explanatory Memorandum to the *Native Title Legislation Amendment Bill 2020* provides:

This item provides for application and transitional provisions for this Part. The effect of this item is that where a claim group authorises an applicant or an ILUA under sections 251A or 251B prior to the commencement of this item on Proclamation, the current registration provisions for the claim or agreement would continue to apply to that agreement or claim, even after the item commences.

⁴ *Strickland FC* [9].

⁵ *Native Title Legislation Amendment Act 2021* (Cth).

Where the authorisation of an applicant does not occur until after the commencement of this item, the new provisions would apply (provided the relevant claimant or compensation application, or native title agreement occurs after commencement).⁶

[15] The certificate from Central Desert Native Title Services Ltd (**CDNTS**) in Attachment R states that the applicant's legal representative provided information about the authorisation of the applicant to CDNTS on 23 March 2021.⁷ I therefore understand that the authorisation of the applicant took place before that date. Considering this information and the guidance in the Replacement Revised Explanatory Memorandum, I understand I must apply the requirements of s 190C(4) as that provision stood prior to the 25 March 2021 amendments.

What is required to meet s 190C(4)?

[16] To meet the requirements of s 190C(4), as it stood prior to the amendments of 25 March 2021, the Registrar must be satisfied that either:

- (a) the application has been certified by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under Part 11; or
- (b) the applicant is a member of the 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 claim group.

[17] As a certificate accompanies the application in Attachment R, I must consider the application against the requirements of s 190C(4)(a) and in particular that:

- (a) the certificate identifies the relevant representative body;
- (b) the representative body has the power under Part 11 to issue the certification; and
- (c) the certificate meets the requirements of s 203BE(4).⁸

Consideration

Is the relevant representative body identified?

[18] The geospatial report states, and my own searches confirm, that CDNTS is the representative body for the whole of the application area. I am therefore satisfied the certificate identifies the relevant representative body.

Does the representative body have the power to issue the certification?

[19] My searches reveal that CDNTS performs the functions of a representative body pursuant to s 203FE(1). CDNTS can therefore perform all the functions listed in Part 11 of the Native Title Act, including the certification functions in s 203BE. I am satisfied CDNTS has the power under Part 11 to issue the certification. The certificate has been signed by the Chief Executive Officer 'under delegation from the board'. I understand there is no impediment to the delegation of the certification function to particular individuals acting either as a delegate or agent of the representative body.⁹

⁶ Native Title Legislation Amendment Bill 2020, Replacement Revised Explanatory Memorandum, Item 24 [46].

⁷ Attachment R [3].

⁸ *Doepel* [80]–[81].

⁹ *Quall HCA* [48], [63].

Does the certificate meet the requirements of s 203BE(4)?

[20] I have considered each of the requirements of s 203BE(4) in turn below.

Section 203BE(4)(a) – statements

[21] Section 203BE(4)(a) requires a representative body to state that it is of the opinion that the requirements of ss 203BE(2)(a)–(b) have been met. Amendments to s 203BE(2) came into force on 25 March 2021, however those amendments only apply to applicants authorised after that date.¹⁰ As discussed above, I understand authorisation of the applicant took place before that date and so I must consider the requirements of s 203BE(2) as it stood prior to the amendments.

[22] Section 203BE(2)(a)–(b), prior to 25 March 2021, prohibited a representative body from certifying an application unless it is of the opinion that:

(a) all persons in the claim group have authorised the applicant to make the application; and

(b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the claim group.

[23] As the certificate contains these required statements in paragraph 2, I am satisfied s 203BE(4)(a) is met.

Section 203BE(4)(b) – reasons

[24] Section 203BE(4)(b) requires a representative body to briefly set out its reasons for being of the opinion that the requirements of ss 203BE(2)(a)–(b) have been met. Paragraph 3 of the certificate states that CDNTS considered the following information:

(a) the proposed application form;

(b) the map of the application area; and

(c) correspondence from the claim group’s legal representative in relation to the anthropological research undertaken, the claim group’s decision making process and the authorisation of the applicant.

[25] Paragraph 4 explains that the information provided to CDNTS demonstrates that members of the claim group have been provided with every reasonable opportunity to participate in the decision to authorise the applicant, which was made in accordance with the claim group’s traditional decision making process. Paragraph 4 also explains that the Ngaanyatjarra Council and CDNTS have provided legal and anthropological services in and around the application area since 2005, and staff and anthropologists from those organisations made all reasonable efforts to ascertain and identify all the members of the claim group.

[26] As the certificate sets out the reasons for CDNTS’s opinion that ss 203BE(2)(a)–(b) are met, I am satisfied s 203BE(4)(b) is met.

¹⁰ *Native Title Amendment Act 2021* (Cth), s 24(2).

Section 203BE(4)(c) – overlapping applications

- [27] Section 203BE(4)(c) requires a representative body to set out, where applicable, what it has done to meet the requirements of s 203BE(3). Section 203BE(3) states that if the application area is wholly or partly covered by other applications, including proposed applications, of which the representative body is aware, the representative body must make all reasonable efforts to achieve agreement between the persons in respect of whom the applications are made and minimise the number of applications covering the land or waters.
- [28] Paragraph 5 of the certificate states CDNTS is not aware of any other application which covers the application area. I consider this information is sufficient for the purposes of s 203BE(4)(c).

Conclusion

- [29] As the certificate identifies the relevant representative body, the representative body has the power under Part 11 to issue the certification, and the certificate meets the requirements of s 203BE(4), the requirements of s 190C(4)(a) are satisfied. This means s 190C(4) is met.

Section 190B: conditions about merits of the claim

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

What is required to meet s 190B(2)?

- [30] To meet s 190B(2), the Registrar must be satisfied 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. I understand the questions for this condition are whether:
- (a) the information and map provide certainty about the external boundary of the application area; and
 - (b) the information enables identification of any areas within the external boundary over which no claim is made.¹¹

Consideration

Do the information and map provide certainty about the external boundary?

- [31] Paragraph 1 of Schedule B states that the application area covers ‘all that land and water comprising reserve 34606 for the purpose of Conservation of Flora and Fauna, being Lot 13 as shown on Deposited Plan 91083 (Reserve 34606 – Pila Nature Reserve, formerly Gibson Desert Nature Reserve)’.
- [32] Attachment C contains a map titled ‘Gibson Desert Nature Reserve Native Title Claim’. On the map, the external boundary of the application area depicted in bold blue outline and a green

¹¹ Section 62(2)(a)–(b); *Doepel* [122].

fill. The application area is labelled on the map as 'R 34606 Gibson Desert Nature Reserve Lot 13 on DP 91083'.

[33] I have considered the information in Schedule B and the map in Attachment C and I consider they provide certainty about the external boundary of the application area.

Does the information enable identification of the excluded areas?

[34] Paragraph 2 of Schedule B states that the application does not include the 'Excluded Road Corridors', which are further described in Attachment B as being the areas covered by the Gary Highway and Gunbarrel Highway, identified by longitude and latitude coordinate points to six decimal places.

[35] The geospatial report advises that the State's cadastral data has been updated, such that Reserve 34606 no longer includes the areas covered by the Gary Highway and Gunbarrel Highway and the coordinate points specified in Attachment B are no longer correct.

[36] I have considered the information in Schedule B, Attachment B and the geospatial report. In my view, the exclusion of the areas covered by the Gary and Gunbarrel Highways can be identified from the information in Schedule B and Attachment B, which I consider is sufficient for the purposes of s 190B(2). I do not consider the failure to update Attachment B with the current coordinate points for those highways is an issue of non-compliance which renders the application invalid, because I am otherwise able to identify from the information that the area covered by the two highways is excluded from the application.¹²

Conclusion

[37] As I consider that both the external boundary of the application area and the excluded areas can be identified from the description with reasonable certainty, and that the map shows the external boundary, I am satisfied s 190B(2) is met.

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

What is required to meet s 190B(3)?

[38] To meet s 190B(3), the Registrar must be satisfied that:

- (a) the persons in the claim group are named in the application; or
- (b) the persons in the claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

[39] Schedule A states:

1. The native title claim group are those persons who:
 - (a) have rights under traditional laws and customs in part or all of the claim area through:
 - (i) being conceived in the claim area;
 - (ii) being born in the claim area;

¹² *Project Blue Sky* [93].

- (iii) the birth of an ancestor on the claim area;
 - (iv) the acquisition of knowledge through long association with the claim area;
 - (v) an ancestor's acquisition of knowledge through long association with the claim area;
 - (vi) the burial site of an ancestor in the claim area; and/or
 - (vii) having religious, sacred, ritual, practical and historical knowledge of the claim area; and
- (b) are recognised under traditional laws and customs by other members of the native title claim group as having rights in the claim area.

2. As at the date of this application, the native title claim group includes the descendants of the following people: [list of ancestors].

[40] It follows from the above description that s 190B(3)(b) is applicable. Where a description is utilised, my task is limited to whether I can be satisfied as to the sufficiency of the description, for the purpose of facilitating the identification of any person as part of the claim group.¹³ I am not required or permitted to be satisfied about the correctness of the description at this condition.¹⁴

Consideration

[41] I understand that where a claim group description contains a number of paragraphs, the paragraphs should be read as part of one discrete passage, and in such a way as to secure consistency between them, if such an approach is reasonably open.¹⁵ Following this approach, I understand that to qualify as a member of the claim group, an individual must:

- (a) meet one of the criteria in paragraph 1(a)(i)–(vii); and
- (b) be recognised by the other members of the claim group as having rights in the application area.

[42] Paragraph 1(a) provides that, pursuant to the claim group's traditional laws and customs, membership may be by conception, birth or birth of an ancestor on the application area; the long association of oneself or one's ancestor with the application area; the burial of one's ancestor on the application area; and/or having particular knowledge of the application area. Paragraph 2 specifies the ancestors from whom membership of the claim group by descent can be obtained.

[43] The application states that this claim group belongs to the Western Desert Cultural Bloc (**WDCB**).¹⁶ Similar descriptions for other native title claim groups within the WDCB have previously been accepted, however I do not consider this relieves me of my task at s 190B(3) and I will consider each criterion for membership before deciding whether the requirements of s 190B(3)(b) are met.¹⁷ I have grouped certain criteria together where it is convenient to do so.

¹³ *Wakaman* [34].

¹⁴ *Ibid.*

¹⁵ *Gudjala 2007* [34].

¹⁶ Schedule F [3].

¹⁷ *Tjungarrayi 2017*, Schedule 3.

Conception and birth

[44] I consider that requiring a person to demonstrate that they were born on the application area, or that their parents lived on the application area when they were conceived, provides an objective starting point to commence an inquiry about whether the person is a member of the claim group. Describing a claim group with reference to birth is a method which has previously been accepted.¹⁸ I am therefore of the view that with some factual enquiry it will be possible to identify the persons who meet either of these options for claim group membership.

Birth of an ancestor

[45] The third criterion in paragraph 1(a) is birth of an ancestor on the application area. I understand that the ancestors named in paragraph 2 were born in the application area and that the descendants of those ancestors can meet this criterion of the claim group description. I consider requiring a person to show descent from one of the ancestors identified in paragraph 2 provides a clear starting point to commence an inquiry about whether the person is a member of the claim group. The approach of describing a claim group with reference to named ancestors has been previously accepted.¹⁹

Long association

[46] For this criterion, I note in particular the reference to the traditional laws and customs of the claim group in the opening sentence of paragraph 1(a). I consider that the traditional laws and customs would provide the appropriate set of rules or principles through which it can be ascertained whether a person meets this criterion.²⁰ *Aplin* provides that '[a]s to substantive matters concerning membership, the claim group must act in accordance with traditional laws and customs'.²¹ Describing a claim group with reference to long traditional association, and with reference to ancestors are methods which have previously been accepted.²² I consider that enquiries to the other claim group members would enable the persons who meet either of the 'long association' options for claim group membership to be ascertained.

Burial of an ancestor

[47] As mentioned above, describing a claim group with reference to ancestors has been previously accepted.²³ In my view, factual enquiries would reveal whether a person's ancestor has been buried on the application area.

Religious, sacred, ritual, practical and historical knowledge

[48] As with the 'long association' membership options, I note the reference to the traditional laws and customs of the claim group in my consideration of this option for group membership and I consider that the claim group, acting in accordance with their traditional laws and customs, could establish whether a person holds the requisite knowledge.²⁴ Enquiries to the other claim group members would therefore enable the persons who meet this membership option to be

¹⁸ *De Rose* [926].

¹⁹ *WA v NTR* [67].

²⁰ *Ward v Registrar* [25].

²¹ *Aplin* [256].

²² *De Rose* [897], *Tjungarrayi 2017*, Schedule 3; *WA v NTR* [67].

²³ *WA v NTR* [67].

²⁴ *Aplin* [256].

ascertained. I also note that forms of religious, sacred or ritual *authority* have previously been accepted as a method of identifying members of a claim group, which in my view appears somewhat similar to this criterion.²⁵

Recognition

[49] I understand that membership of a native title claim group must be based on group acceptance, that being inherent in the nature of a society.²⁶ In *Sampi FC*, the Full Court agreed that '[a] relevant factor... in determining whether a group constitutes a society in the *Yorta Yorta* sense is the internal view of the members of the group – the emic view. The unity among members of the group required by *Yorta Yorta* means that they must identify as people together who are bound by the one set of laws and customs or normative system'.²⁷ I therefore understand that the inclusion of 'recognition' in paragraph 1(b) introduces a subjective element to the description.

[50] Schedule F states that the claim group have a connection to the land of the application area which is fundamentally spiritual and manifests through their observance of the tjukurpa dreaming stories which permeate the landscape.²⁸ I understand that it is this connection to the land which enables other members of the claim group to recognise whether a person has rights in the application area. In my view, with some factual enquiry to the other claim group members and the individuals in question, it will be possible to identify the people who are recognised as members of the claim group. In reaching this view I have also considered the judicial guidance that it is appropriate to construe the requirements of the Native Title Act beneficially.²⁹

Conclusion

[51] I am satisfied the application describes the persons in the claim group sufficiently clearly such that it can be ascertained whether any particular person is a member of the group as required by s 190B(3)(b). This means s 190B(3) is met.

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

What is required to meet s 190B(4)?

[52] To meet s 190B(4), the Registrar must be satisfied the description contained in the application is sufficient to allow the claimed native title rights and interests to be identified. My consideration of s 190B(4) is confined to information found in the application.³⁰ I have not considered at this condition whether the rights and interests claimed can be considered 'native title rights and interests' in accordance with s 223, as I consider that is part of the task at s 190B(6), where I must decide whether each of the claimed rights is established as a native title right on a prima facie basis.

²⁵ *De Rose* [926]–[928], Schedule 3 of *Tjungarrayi 2016* and *Tjungarrayi 2017*.

²⁶ *Aplin* [260]; *Yorta Yorta* [108].

²⁷ *Sampi FC* [45].

²⁸ Schedule F [7]–[14].

²⁹ *Kanak* [73].

³⁰ *Doepel* [16].

Consideration

[53] From paragraph 1 of Schedule E, I understand that exclusive possession is claimed in the entirety of the application area. Paragraph 2 specifies that the claimed right is exercisable in accordance with the traditional laws and customs of the claim group and is subject to the laws of Western Australia and the Commonwealth. In my view, having considered the information in Schedule E, the nature, extent and limitations on the claimed right to exclusive possession are clear and there is no inherent or explicit contradiction within the description.³¹

Conclusion

[54] I am satisfied the description is sufficient to understand and identify the claimed rights and interests, which means s 190B(4) is met.

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

What is required to meet s 190B(5)?

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

[56] I understand my task is limited to assessing whether the asserted facts can support the existence of the claimed native title rights and interests, rather than determining whether there is evidence that proves directly or by inference the facts necessary to establish the claim.³² I am not required by s 190B(5) to determine whether the asserted facts will or may be proved at a hearing.³³

What information has been provided in support of the assertions at s 190B(5)?

[57] In my view, Schedule F and the additional material contain information which supports the assertions at s 190B(5).

What is required to meet s 190B(5)(a)?

[58] *McLennan* confirmed that to meet s 190B(5)(a), the factual basis must be sufficient to show:³⁴

- (a) the claim group presently has an association with the application area, and the claim group's predecessors have had an association with the application area since sovereignty or European settlement;³⁵

³¹ *Ibid* [123].

³² *Ibid* [16]–[17]; *Gudjala 2008* [83], [92].

³³ *Bell* [98].

³⁴ *McLennan* [28].

³⁵ *Gudjala 2007* [52].

- (b) there is ‘an association between the whole group and the area’, although not ‘all members must have such association at all times’;³⁶ and
- (c) there is an association with the entire area claimed, rather than an association with only part of it or ‘very broad statements’, which have no ‘geographical particularity’.³⁷

What information has been provided in support of s 190B(5)(a)?

[59] Schedule F provides that the claim group and their predecessors are associated with the application area through their belief in the tjukurrpa, which is responsible for creating both the landscape and the members of the claim group.³⁸ This connection gives rise to the claim group’s continuing obligation to protect certain places, including places in the application area which are connected to specific tjukurrpa beings.³⁹ The connection between the current claim group and the application area is the same as that of their predecessors, going back to the time of sovereignty.⁴⁰

[60] The additional material provides information about certain claim group members and their predecessors’ association with the application area, for example:

- (a) Claimant 1’s grandfather is buried in the application area and Claimant 1’s parents lived and travelled around the application area with him, his siblings and other family, such that the area is considered their ‘home’;⁴¹
- (b) Claimant 1 was taught where all the rockholes are in the application area and that he has a responsibility to look after the tjukurrpa;⁴²
- (c) Claimant 2 was born around 1950 to the east of the application area and grew up on and around the area with her siblings, parents and grandparents, ‘before whitefellas’ and with ‘no clothes, no school and no government’;⁴³
- (d) Claimant 2 lived at Patjarr rockhole in the early 1990s with her husband and three children, and now lives at Patjarr community on the eastern boundary of the application area, which is nearby to tjukurrpa sites that are ‘really sacred and really important’;⁴⁴
- (e) Claimant 3’s grandparents are buried on the application area and his father showed him the important places and taught him his responsibilities to look after these places, which he has passed on to his children;⁴⁵
- (f) Claimant 5 describes travelling around the application area with her predecessors and learning the good places to get water, kangaroo, goanna, snakes and lizards, which she is now teaching to her children and grandchildren;⁴⁶

³⁶ Ibid.

³⁷ *Martin* [26]; *Corunna* [39], [45].

³⁸ Schedule F [8].

³⁹ Ibid [10]–[11].

⁴⁰ Ibid [9].

⁴¹ Claimant 1 statement [5], [10], [15].

⁴² Ibid [40], [60].

⁴³ Claimant 2 statement [4]–[5], [8]–[9], [64], [71], [103].

⁴⁴ Ibid [41], [46].

⁴⁵ Claimant 3 statement [42]–[43].

- (g) Claimant 9 was ‘born in the bush’ and she recalls walking around the eastern and northern parts of the application area with her parents and learning about certain places from them; and her eldest daughter was also born in the area in the 1960s;⁴⁷
- (h) Current members of the claim group were children or young adults when they were photographed and filmed for the ‘Dunlop films’ in the late 1960s, at which time they were living on and around the application area with their predecessors and had had limited or no contact with Europeans.⁴⁸

Is the factual basis sufficient to support the assertion at s 190B(5)(a)?

[61] In relation to this application, I understand that the entirety of the application area is a Reserve which has not been subject to sustained European settlement such as through the issuing of pastoral leases, which in other cases provide records of the claim group’s predecessors. In this case, contact with Europeans has occurred within the living memory of senior claim group members, meaning that inferences must be made about the earlier generations of the claim group going back to the time of British sovereignty. I have assessed the sufficiency of the factual basis with reference to the judicial guidance in *Strickland* that the requirements of the registration test are stringent and it is not necessary to elevate them to the impossible.⁴⁹

Is the factual basis sufficient to support an association between the claim group and the application area, at sovereignty and since that time?

[62] I understand from the material that the claim group and their predecessors are associated with the application area through their physical presence on it and through their spiritual connection with the tjukurpa which manifests in the landscape. The claimants describe walking across the application area with their parents and grandparents, and the obligations they were taught by those predecessors to look after the important places. I understand that current members of the claim group and their immediate predecessors experienced first contact with Europeans in the 1960s, at which time they were living a traditional lifestyle on and around the application area. In my view, it is reasonable to infer that earlier generations of the claim group had the same or similar association with the application area at the time of British sovereignty. I understand it is appropriate to construe the Native Title Act beneficially and to make this particular retrospective inference.⁵⁰ I therefore consider the factual basis is sufficient to support an association with the claim group both at the time of sovereignty and since that time.

Is the factual basis sufficient to support an association between the claim group and the application area currently?

[63] The material provides that members of the claim group were born on or nearby the application area and were taught about its important features, such as waterholes, from their predecessors. The predecessors also taught them how to exploit the resources of the application area for food, such as kangaroo and goanna, which they continue to do today with

⁴⁶ Claimant 5 statement [52], [68].

⁴⁷ Claimant 9 statement [2]–[4].

⁴⁸ Claimant 6 statement, annexure NC-1; Claimant 8 statement, annexure PM-1.

⁴⁹ *Strickland* [55].

⁵⁰ *Harrington-Smith No 9* [294]–[296]; *Kanak* [73]; *Lane* [9].

their descendants. I understand that members of the claim group continue to live very close to the application area at the Patjarr community. I consider the factual basis is sufficient to support an association between the claim group and the application area currently.

Is the factual basis sufficient to support an association, both past and present, with the whole application area?

[64] I understand the task at s 190B(5)(a) is limited to assessing whether the factual basis is sufficient to support the assertion that the claim group have, and their predecessors had, an association over the application area as a whole.⁵¹ It is not a requirement that every member of the claim group have an association with the entire application area at all times.

[65] In my view, the claimants' statements provide examples of the association that the claim group has with the whole application area. The claimants describe walking across the application area with their predecessors to and from Warburton, which I can see from the Tribunal's geospatial database, lies approximately 85 kilometres to the south. Claimants continue to live at Patjarr community, right on the eastern boundary, and describe how they know the rock holes which lie across the extent of the application area that they were taught by their predecessors. In my view, there is sufficient information to support a physical association between the claim group and the application area as a whole.

[66] I also note the information about the claim group's spiritual beliefs in the tjukurpa and that a number of tjukurpa stories manifest at locations across the application area. The claimants describe how they were taught about these sites from their predecessors and that they have an obligation to look after them. In my view, this information supports the assertion of a spiritual association between the claim group and the application area as a whole.

Conclusion - s 190B(5)(a)

[67] I consider the information before me is sufficient to support the assertion that the claim group have, and their predecessors had, an association with the application area. I am satisfied there is sufficient factual basis to support an assertion of a physical association of the claim group to the whole application area. I am also satisfied there is a sufficient factual basis to support an assertion of a spiritual association. This means s 190B(5)(a) is met.

What is required to meet s 190B(5)(b)?

[68] To meet s 190B(5)(b), the factual basis must be sufficient to support an assertion that there exist traditional laws acknowledged and traditional customs observed by the claim group that gives rise to the claim to native title rights and interests. 'Native title rights and interests' is defined in s 223(1)(a) as those rights and interests 'possessed under the traditional laws acknowledged, and traditional customs observed,' by the native title holders.

[69] In *Yorta Yorta*, the plurality of the High Court of Australia (**High Court**) held that a 'traditional' law or custom is one which has been passed from generation to generation of a society, usually by word of mouth and common practice. The High Court further held that in the context of the Native Title Act, 'traditional' also carries two other elements, namely:

[I]t conveys an understanding of the *age of the traditions*: the origins of the content of the law or custom concerned are to be found in the *normative rules* of the Aboriginal and Torres Strait Islander

⁵¹ *Corunna* [31].

societies that existed before the assertion of sovereignty by the British Crown. *It is only those normative rules that are “traditional” laws and customs.*

[T]he normative system under which the rights and interests are possessed (the traditional laws and customs) is a system that has had a *continuous existence and vitality since sovereignty*. If that normative system has not existed throughout that period, the rights and interests which owe their existence to that system will have ceased to exist.⁵²

[70] In *Warrie*, the Full Court held that:

Where a rule, or practice or behaviour in relation to the identified land and waters arises from traditional law, and has normative content, then it can be capable of satisfying para (a) of s 223(1).

*[A] claim group must establish that the traditional law and custom which gives rise to their rights and interests in that land and waters stems from rules that have a normative character, there is no further gloss or overarching requirement, and no further rigidity. The Native Title Act in terms does not require establishment of some overarching “society” that can only be described in one way and with which members of a claim group are forever fixed in relation to any other land and waters over which they assert native title.*⁵³

[71] In *Gudjala 2009*, Dowsett J held that the factual basis must demonstrate some relationship between the claim group, their predecessors and the pre-sovereignty society from which the laws and customs of the claim group are derived.⁵⁴ I therefore understand my assessment of the sufficiency of the factual basis under s 190B(5)(b) requires the identification of:

- (a) a link between the pre-sovereignty society, the predecessors and the claim group in the application area; and
- (b) the continued observance of normative rules by the successive generations of the claim group, such that the normative rules can be described as ‘traditional laws and customs’.

What information has been provided in support of the assertion at s 190B(5)(b)?

[72] Schedule F provides that the claim group belongs to the society of the WDCB which is underpinned by the belief system of the tjukurra.⁵⁵ In addition to explaining the creation of the landscape and people’s connection with it, the tjukurra provides the normative rules of conduct that the claim group members observe in relation to the landscape and in relation to other people, such that ostracism and punishment results from breach of these rules.⁵⁶ The laws of the tjukurra include the recognition of a person holding rights and interests to country, sanctions for wrongful presence on country, obligations to perform certain rituals and otherwise care for certain places, and principles of social organisation including marriage and avoidance rules.⁵⁷ The claim group and their predecessors have continued to observe these laws and customs since sovereignty.⁵⁸

[73] The claimants provide the following examples in their statements:

⁵² *Yorta Yorta* [46]–[47], emphasis added.

⁵³ *Warrie* [105], [107], emphasis added.

⁵⁴ *Gudjala 2009* [40].

⁵⁵ Schedule F [16].

⁵⁶ *Ibid* [16]–[17].

⁵⁷ *Ibid* [19]–[22].

⁵⁸ *Ibid* [23].

- (a) Claimant 1 describes how he was born outside the application area to the east, because his parents had travelled there to participate in a ceremony;⁵⁹
- (b) Claimant 10 describes how his mother and father showed him the application area and that his father taught him the sacred tjukurrpa sites and places where he was not permitted to go;⁶⁰ his mother is now elderly and so he is obligated to look after her country and check all the rock holes;⁶¹
- (c) Claimant 10 also describes how claim group elders take the young people to the application area to teach them about country and that permission must be sought from the correct elders in order to access their country;⁶²
- (d) Claimant 9 states that she was taught about the application area by her mother and father and she describes a particular tjukurrpa site which is dangerous and that there are rules to follow to approach it safely, which she has taught to her children;⁶³
- (e) Claimant 8 explains how her father, who was from just north of the application area, walked down into it in order to find the ‘right wife for his skin’ in accordance with the WDCB marriage rules;⁶⁴ Claimant 8 has similarly married the ‘right way’;⁶⁵
- (f) Claimant 7 recalls learning from his two grandfathers, who taught him ‘about tjukurrpa and Bush Law’ including how to make spear and spear throwers from sandalwood, how to hunt game and how to burn country ‘the proper way. The way we were taught’, which he has since taught his children.⁶⁶

Is the factual basis sufficient to support the assertion of s 190B(5)(b)?

Does the factual basis support a link between the pre-sovereignty society, the predecessors and the claim group?

[74] The material before me provides that the pre-sovereignty society in the application area was the WDCB. I understand that it is possible for a claim group to be members of a broader society, without all the members of that society being members of the claim group, similar to the society of Australia, whose various members also observe their local and state-based laws.⁶⁷ In my view, the current application is analogous – the claim group are members of the WDCB and adhere to its relevant laws and customs, as manifested through the tjukurrpa which connect this claim group to the application area. I therefore consider the material addresses the identity of the pre-sovereignty society, sufficient for the purposes of s 190B(5)(b).

[75] As discussed above at s 190B(5)(a), the claimants describe living in and around the application area with their predecessors. They provide examples of their parents participating in regional

⁵⁹ Claimant 1 statement [5].

⁶⁰ Claimant 10 statement [16].

⁶¹ Ibid [20].

⁶² Ibid [29], [31], [34].

⁶³ Claimant 9 statement [3], [33].

⁶⁴ Claimant 8 statement [9].

⁶⁵ Ibid [52].

⁶⁶ Claimant 7 statement [14], [18], [26], [30]–[32].

⁶⁷ *Harrington-Smith No 5* [53]; *Sampi FC* [69].

ceremonies and marrying in accordance with the rules of the WDCB, in the years prior to European contact in the 1960s. In my view, it is reasonable to infer that the earlier predecessors participated in the WDCB society in the same or similar ways as their descendants. I therefore consider the factual basis supports the assertion of a link between the pre-sovereignty society, the predecessors and the current claim group.

Is the factual basis sufficient to support the assertion of the existence of 'traditional laws and customs'?

[76] In their statements, the claimants give examples of the laws and customs taught to them by their predecessors and which they continue to observe today. I note that these include laws relating to the lands and waters of the application area, such as seeking permission to access country, and the rules permitting safe access to spiritually dangerous places. The claimants explain that their obligation to look after places arises from the tjukurrpa which manifest there, for example Claimant 10's obligation to protect the rock holes on his mother's country. Other normative laws which the claim group continue to observe are the marriage rules and the proper methods for hunting game and burning country. The claimants describe being taught these laws and customs from their predecessors whilst on and around the application area, and describe how they are teaching these same things to their descendants. In my view, there is sufficient information about how the laws and customs have been acknowledged and observed by successive generations of the claim group, to support the assertion that the laws and customs are 'traditional' in the sense described in *Yorta Yorta*.⁶⁸

Conclusion – s 190B(5)(b)

[77] I am satisfied the factual basis supports the assertion that there exist traditional laws acknowledged and traditional customs observed by the claim group. This means s 190B(5)(b) is met.

What is required to meet s 190B(5)(c)?

[78] Meeting the requirements of this condition relies on whether there is a sufficient factual basis to support the assertion at s 190B(5)(b), that there exist traditional laws and customs which give rise to the claimed native title rights and interests.⁶⁹ It also requires a sufficient factual basis to support an assertion that there has been continuity in the observance of traditional laws and customs going back to sovereignty or at least to European settlement.⁷⁰

Is the factual basis sufficient to support the assertion of the continuity of traditional laws and customs?

[79] As discussed above at ss 190B(5)(a)–(b), I am satisfied that factual basis supports the assertions that the claim group and their predecessors are associated with the application area and that there exist traditional laws and customs. I have extracted above some examples from the material in support of these assertions found in the application and in the witness statements from the claimants. In my view, this material also supports the continuity of the claim group's traditional laws and customs, insofar as it demonstrates the observance of rules by successive generations of the claim group since before contact with Europeans. By way of

⁶⁸ *Yorta Yorta* [46]–[47].

⁶⁹ *Gudjala 2009* [29].

⁷⁰ *Gudjala 2007* [82].

further example, Claimant 8 explains that his parents taught him how to make a fire, dig goanna and hunt for animals including kangaroo.⁷¹ He states:

I show my children how to hunt. They know how to do it ...also how to cook goanna, emu. And my children teach their children. Just like my parents and grandparents teach me, I now teach them...⁷²

[80] In my view, the above example and others found in the material before me demonstrate a continuance in the observance of traditional laws and customs.

Conclusion – s 190B(5)(c)

[81] I am satisfied the factual basis is sufficient to support an assertion of continuity in the observance of traditional laws and customs, which means s 190B(5)(c) is met.

Conclusion

[82] As I consider the factual basis on which it is asserted that the claimed native title rights and interests exist is sufficient to support the three assertions of ss 190B(5)(a)–(c), s 190B(5) is met.

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

What is required to meet s 190B(6)?

[83] To meet s 190B(6), the Registrar must consider that, prima facie, at least some of the native title rights and interests claimed can be established. According to s 223(1), a ‘native title right or interest’ is one that is held under traditional laws acknowledged and traditional customs observed by the native title claim group. I understand the condition of s 190B(6) requires some measure of the material available in support of the claim and imposes a more onerous test to be applied to the individual rights and interests claimed.⁷³ I also understand that the words ‘prima facie’ mean that if a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a prima facie basis.⁷⁴ It is therefore my task to consider whether there is probative factual material which supports the existence of each individual right and interest, noting that as long as some rights can be prima facie established, the requirements of s 190B(6) will be met. Only the rights and interests I consider can be established prima facie will be entered on the Register.⁷⁵

Consideration

Is the claimed native title right and interest established on a prima facie basis?

[84] As discussed above at s 190B(4), only one right is claimed in relation to the application area, which is expressed as follows:

1. In the entirety of the application area, the native title rights and interests claimed is the exclusive right of possession, occupation, use and enjoyment of land and waters to the exclusion of all others.

⁷¹ Claimant 8 statement [34]–[35].

⁷² Ibid [36].

⁷³ *Doepel* [126].

⁷⁴ Ibid [135].

⁷⁵ Section 186(1)(g).

[85] The High Court in *Ward HC* observed, in relation to claims of exclusive possession as a native title right:

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.⁷⁶

[86] In *Sampi*, French J held:

[T]he right to possess and occupy as against the whole world carries with it the right to make decisions about access to and use of the land by others. The right to speak for the land and to make decisions about its use and enjoyment by others is also subsumed in that global right of exclusive occupation.⁷⁷

[87] The Full Court held in *Griffiths FC*:

If control of access to country flows from spiritual necessity because of the harm that “the country” will inflict upon unauthorised entry, that control can nevertheless support a characterisation of the native title rights and interests as exclusive. The relationship to country is essentially a “spiritual affair”.⁷⁸

[88] As discussed above at ss 190B(5)(b)–(c), I understand that the rules pertaining to land tenure originate in the tjukurrpa and have been observed by the claim group, in relation to the application area, since before the time of first contact. I understand that for members of the WDCB, including members of the claim group, the right to speak for country and protect areas is a fundamental aspect of land ownership under the laws of the tjukurrpa. For example, Claimant 2 states:

Being on country, knowing it, is having the right to talk for country because it is my tjukurrpa. My parents told me about the country as we walked and told me it is my ngurra [home country]. I walked the land with my family and I know it like my parents did.⁷⁹

[89] Claimants also assert that, through their connection to the tjukurrpa, they have responsibility to protect certain specified areas. For example, Claimant 3 explains how he is obligated to look after certain places on his father’s, mother’s and grandparents’ country, including certain rock holes and places where his ancestors are buried.⁸⁰

[90] In accordance with their traditional laws, claimants are required to introduce strangers to the spirits believed to be resident in the land and to advise people about the places where they cannot go. Claimant 3 explains that improper access to country can cause the trespasser to get sick and can also have dangerous consequences for the people responsible for the particular tjukurrpa.⁸¹ Claimant 4 explains that strangers must be properly introduced to country in order to avoid spiritual consequences, stating ‘[t]hey need permission because there are spirits there in the country...There are tjukurrpa that will do something if the country is harmed’.⁸²

⁷⁶ *Ward HC* [88].

⁷⁷ *Sampi* [1072].

⁷⁸ *Griffiths FC* [127].

⁷⁹ Claimant 2 statement [72].

⁸⁰ Claimant 3 statement [42], [47].

⁸¹ *Ibid* [51].

⁸² Claimant 4 statement [65].

[91] From the material before me, I understand that the right of exclusive possession materialises from the claim group's spiritual beliefs in the tjukurrpa and that the spiritual beings who created the landscape continue to exist within it. I understand that, as the people responsible for the application area, the claim group mediate between other people and the resident spirits, such that they can be described as the 'gatekeepers' of their country and can avoid the spiritual harm which can otherwise result from improper access.⁸³ In addition, I understand that the normative rule of seeking permission to enter another's country continues to be observed in the WDCB, and that in relation to this application area, it is the members of the claim group whose permission must be sought. In my view, there is sufficient information to show how the right of exclusive possession operates in the application area, in accordance with the claim group's traditional laws and customs. I consider the information accords with the judicial guidance about the right of exclusive possession outlined in *Ward HC, Sampi*, and *Griffiths FC*, extracted above. I therefore consider that the right of exclusive possession is prima facie established.

Conclusion

[92] I am satisfied the application contains sufficient information about the claimed right of exclusive possession, such that it can be said to be established on a prima facie basis. I am also satisfied the claimed right can be considered a 'native title right and interest'. This is because, according to the definition in s 223(1), a native title right or interest is one held under traditional laws and customs, and I am satisfied there is sufficient factual basis to support the assertion of the existence of traditional laws and customs, as discussed above at s 190B(5)(b). This means s 190B(6) is met.

Traditional physical connection – s 190B(7): condition met

What is required to meet s 190B(7)?

- [93] To meet s 190B(7), the Registrar must be satisfied at least one member of the claim group:
- (a) currently has or previously had a traditional physical connection with any part of the application area; or
 - (b) previously had and would reasonably have been expected currently to have such a connection, but for certain things done.

[94] I note this condition requires the material to satisfy the Registrar of particular facts such that evidentiary material is required, and that the physical connection must be in accordance with the traditional laws and customs of the claim group.⁸⁴

Consideration

[95] Schedule F provides that members of the claim group have a traditional physical connection with the application area insofar as they have lived there for a significant period of time and that senior members 'lived a wholly traditional lifestyle'.⁸⁵ I have extracted above at

⁸³ *Griffiths FC* [127].

⁸⁴ *Doepel* [18]; *Gudjala 2009* [84].

⁸⁵ Schedule F [13].

ss 190B(5)–(6) a number of examples which I consider demonstrate that members of the claim group have a physical connection with the application area, shown through their residence on the application area and the use of its resources.

[96] I also consider the claimants’ connection with the application area is ‘traditional’ in the sense required by s 190B(7). As I am satisfied the factual basis is sufficient to support an assertion that the laws and customs have been passed down to the current members of the claim group by their predecessors, as discussed above at s 190B(5)(b), it follows that I am satisfied their connection with the application area is in accordance with those traditional laws and customs.

Conclusion

[97] I am satisfied at least one member of the native title claim group currently has a traditional physical connection with a part of the application area as required by s 190B(7)(a), and so s 190B(7) is met.

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

What is required to meet s 190B(8)?

[98] Section 190B(8) requires the application comply with ss 61A(1)–(3).

Consideration

[99] In my view, the application complies with each of the requirements of ss 61A(1)–(3):

Section	Requirement	Information	Result
s 61A(1)	Claimant application not to be made covering areas of approved determination of native title	The geospatial report states and my own searches confirm that the application does not cover an area where there has been an approved determination of native title	Met
s 61A(2)	Claimant application not to be made covering previous exclusive possession act areas	Paragraph 4 of Schedule L indicates that s 47C applies to the entire application area. Paragraph 5 of Schedule L states that native title in the application area was wholly extinguished by the vesting of Reserve 34606 over the application area	Not applicable – see reasons below
s 61A(3)	Claimant application not to claim possession to the exclusion of all others in previous non-exclusive possession act areas		Not applicable – see reasons below

Sections 61A(2)–(3)

[100] Where extinguishment of native title is required to be disregarded by s 47C and the application states that s 47C operates in relation to an application, s 61A(4) provides that neither s 61A(2) nor s 61A(3) applies. From the information in Schedule L, I understand that the extinguishment of native title through the vesting of Reserve 34606 is required to be disregarded by s 47C, which means that ss 61A(2)–(3) are not applicable.

Conclusion

[101] I am satisfied the requirements of s 190B(8) are met.

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

What is required to meet s 190B(9)?

[102] Section 190B(9) states that the application must not disclose, and the Registrar must not otherwise be aware that the claimed native title extends to cover the situations described in ss 190B(9)(a)–(c).

Consideration

[103] In my view, the application does not contravene any of the restrictions found in s 190B(9):

Section	Requirement	Information	Result
s 190B(9)(a)	No claim made of ownership of minerals, petroleum or gas that are wholly owned by the Crown	Schedule Q provides that the claim group does not claim any minerals, petroleum or gas wholly owned by the Crown	Met
s 190B(9)(b)	Exclusive possession is not claimed over all or part of waters in an offshore place	Schedule P states that no offshore places comprise any part of the application area and I am satisfied that no claim of exclusive possession is made in relation to any offshore place	Met
s 190B(9)(c)	Native title rights and/or interests in the claim area have otherwise been extinguished	Paragraphs 6–7 of Schedule L provide that all extinguishment of native title in the application area must be disregarded pursuant to s 47C	Met

Conclusion

[104] I am satisfied the requirements of s 190B(9) are met.

End of reasons

Attachment A

Information to be included on the Register of Native Title Claims

Application name	Pila Nature Reserve
NNTT No.	WC2021/005
Federal Court of Australia No.	WAD174/2021
Date of Registration Decision	22 October 2021

Section 186(1): Mandatory information

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

Application filed/lodged with:	Federal Court of Australia
Date application filed/lodged:	28 July 2021
Date application entered on Register:	22 October 2021
Applicant:	As per Schedule
Applicant's address for service:	As per Schedule
Area covered by application:	As per Schedule
Persons claiming to hold native title:	As per Schedule
Registered native title rights and interests:	As per Schedule

Katy Woods

Delegate of the Native Title Registrar pursuant to ss 190–190D of the Native Title Act under an instrument of delegation dated 19 May 2021 and made pursuant to s 99 of the Native Title Act.