

FEDERAL COURT OF AUSTRALIA

Smith on behalf of the Kullilli People v State of Queensland [2014] FCA 691

Citation: Smith on behalf of the Kullilli People v State of Queensland [2014] FCA 691

Parties: **PAOLA SMITH, JUDITH CONLON, BRENDA FISHER, STEPHEN HAGAN, KAYLEEN HOPKINS, ELIZABETH MCAVOY, RONALD WATSON AND PETER WHITE ON BEHALF OF THE KULLILLI PEOPLE v STATE OF QUEENSLAND, BULLOO SHIRE COUNCIL, PAROO SHIRE COUNCIL, QUILPIE SHIRE COUNCIL, ERGON ENERGY CORPORATION LIMITED, TELSTRA CORPORATION LIMITED (ACN 051 775 556), BRIDGEFIELD PTY LIMITED, CIRCUMPACIFIC ENERGY CORPORATION, DELHI PETROLEUM PTY LTD, DRILLSEARCH ENERGY LIMITED, MAGELLAN PETROLEUM (EASTERN) PTY LTD, MOONIE PIPELINE COMPANY PTY LTD, OILWELLS INC OF KENTUCKY, ORIGIN ENERGY RESOURCES LIMITED, SANTOS (299) PTY LTD, SANTOS LIMITED, SANTOS QNT PTY LTD ABN 33 083 077 196, SANTOS RESOURCES PTY LTD, VAMGAS PTY LTD and EDWARD JOHN BRIGDEN, CONSOLIDATED PASTORAL COMPANY PTY LTD, DABBAT PTY LTD, MICHAEL GIBSON, IAN JOSEPH KEMP GLASSON, LYNETTE JOAN GLASSON, ALAN RAEBLE SCHOTTELIUS, ELMA BETH SCHOTTELIUS, GREGORY NOEL VICARY SHERWIN AND USHER PASTORAL COMPANY PTY LTD**

File number: QUD 80 of 2009

Judge: **LOGAN J**

Date of judgment: 2 July 2014

Catchwords: **NATIVE TITLE** – consent determination – requirements under s 87 of the *Native Title Act 1993* (Cth) – importance of legal representation of all parties in native title cases

Legislation: *Corporations (Aboriginal and Torres Strait Islanders) Act 2006* (Cth)
Native Title Act 1993 (Cth) ss 13, 55, 56, 57, 61, 66, 66B, 87, 94A, 223, 225

Native Title Amendment Act 2009 (Cth)
Native Title (Prescribed Bodies Corporate) Regulations
1999 (Cth) reg 4

Cases cited:

Archer on behalf of the Djungan People #1 v State of Queensland [2012] FCA 801 cited
Baker on behalf of the Muluridji People v State of Queensland [2011] FCA 1432 cited
Cox on behalf of the Yungngora People v State of Western Australia [2007] FCA 588 considered
Fisher on behalf of the Ewamian People #2 v State of Queensland [2013] FCA 1249 cited
Hoolihan on behalf of the Gugu Badhun People #2 v State of Queensland [2012] FCA 800 cited
King v Northern Territory of Australia [2011] FCA 582 followed
Lovett on behalf of the Gunditjmarra People v State of Victoria [2007] FCA 474 followed
Members of the Yorta Yorta Aboriginal Community v State of Victoria (2002) 214 CLR 422 considered
Moses v State of Western Australia [2007] FCAFC 78 considered
Munn (for and on behalf of the Gunggari People) v Queensland (2001) 115 FCR 109 considered
Smith v State of Western Australia (2000) 104 FCR 494 considered

McKellar H, *Matya-Mundu, a history of the Aboriginal People of South West Queensland* (Cunnamulla Australian Native Welfare Association, 1984)

Date of hearing: 2 July 2014

Place: Thargomindah

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 35

Solicitor for the Applicant: Queensland South Native Title Services

Solicitor for the First Respondent: Crown Law

Solicitor for the Second, Fourth and Fifth Respondents: MacDonnells Law

Solicitor for the Third Respondent:	Thynne & Macartney
Solicitor for the Sixth Respondent:	Ashurst Australia (Melbourne)
Solicitor for the Seventh, Ninth, Eleventh, Twelfth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth Respondents:	Ashurst Australia (Brisbane)
Solicitor for the Eighth and Tenth Respondents:	Hopgood Ganim
Solicitor for the Thirteenth Respondent:	Norton Rose
Solicitor for the Fourteenth Respondent:	Clayton Utz
Solicitor for the Twentieth – Twenty-Nine Various Pastoral Respondents:	Thynne & Macartney

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 80 of 2009

**BETWEEN: PAOLA SMITH, JUDITH CONLON, BRENDA FISHER,
STEPHEN HAGAN, KAYLEEN HOPKINS, ELIZABETH
MCAVOY, RONALD WATSON AND PETER WHITE ON
BEHALF OF THE KULLILLI PEOPLE
Applicant**

**AND: STATE OF QUEENSLAND
First Respondent**

**BULLOO SHIRE COUNCIL
Second Respondent**

**PAROO SHIRE COUNCIL
Third Respondent**

**QUILPIE SHIRE COUNCIL
Fourth Respondent**

**ERGON ENERGY CORPORATION LIMITED
Fifth Respondent**

**TELSTRA CORPORATION LIMITED (ACN 051 775 556)
Sixth Respondent**

**BRIDGEFIELD PTY LIMITED
Seventh Respondent**

**CIRCUMPACIFIC ENERGY CORPORATION
Eighth Respondent**

**DELHI PETROLEUM PTY LTD
Ninth Respondent**

**DRILLSEARCH ENERGY LIMITED
Tenth Respondent**

**MAGELLAN PETROLEUM (EASTERN) PTY LTD
Eleventh Respondent**

**MOONIE PIPELINE COMPANY PTY LTD
Twelfth Respondent**

**OILWELLS INC OF KENTUCKY
Thirteenth Respondent**

ORIGIN ENERGY RESOURCES LIMITED
Fourteenth Respondent

SANTOS (299) PTY LTD
Fifteenth Respondent

SANTOS LIMITED
Sixteenth Respondent

SANTOS QNT PTY LTD ABN 33 083 077 196
Seventeenth Respondent

SANTOS RESOURCES PTY LTD
Eighteenth Respondent

VAMGAS PTY LTD
Nineteenth Respondent

**EDWARD JOHN BRIGDEN, CONSOLIDATED PASTORAL
COMPANY PTY LTD, DABBAT PTY LTD, MICHAEL
GIBSON, IAN JOSEPH KEMP GLASSON, LYNETTE JOAN
GLASSON, ALAN RAEBLE SCHOTTELIUS, ELMA BETH
SCHOTTELIUS, GREGORY NOEL VICARY SHERWIN AND
USHER PASTORAL COMPANY PTY LTD**
Twentieth – Twenty-Nine Various Pastoral Respondents

JUDGE: LOGAN J
DATE OF ORDER: 2 JULY 2014
WHERE MADE: THARGOMINDAH

BEING SATISFIED that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87 of the *Native Title Act 1993* (Cth)

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below (“the determination”).
2. The determination will take effect upon the agreements referred to in paragraph 1 of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreements referred to in paragraph 2 are not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.

4. Each party to the proceedings is to bear its own costs.

BY CONSENT THE COURT DETERMINES THAT:

5. The Determination Area is the land and waters described in Schedule 1A, and depicted in the map attached to Schedule 1B.
6. Native title exists in relation to the Determination Area described in Part 1, 2 and 3 of Schedule 1A.
7. The native title is held by the Kullilli People described in Schedule 3 (“the native title holders”).
8. Subject to paragraphs 10, 11 and 12 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1 are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the area;
 - (b) camp and for that purpose build temporary shelters;
 - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
 - (f) conduct ceremonies on the area;
 - (g) be buried and bury native title holders within the area;
 - (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm; and
 - (i) teach on the area the physical and spiritual attributes of the area.
9. Subject to paragraphs 10, 11 and 12 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 1A are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the area.
10. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the Laws of the State and the Commonwealth;
 - (b) the traditional laws acknowledged and traditional customs observed by the native title holders; and

- (c) the terms and conditions of the agreements referred to in paragraph 1 of Schedule 4.
11. The native title rights and interests referred to in paragraphs 8 and 9 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
 12. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).
 13. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.
 14. The relationship between the native title rights and interests described in paragraphs 8 and 9 and the other interests described in Schedule 4 (the “other interests”) is that:
 - (a) the other interests continue to have effect, and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title rights and interests;
 - (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and
 - (c) the other interests and any activity that is required or permitted by or under, and done in accordance with, the other interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.

THE COURT DETERMINES THAT:

15. Upon the determination taking effect:
 - (a) The native title is held in trust;
 - (b) The Kullilli Bulloo River Aboriginal Corporation (ICN: 7224), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (i) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
 - (ii) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

DEFINITIONS AND INTERPRETATION

16. In this determination, unless the contrary intention appears:

“Determination Area” is the land and waters described in Schedule 1A and depicted on the map in Schedule 1B and does not include areas described in Schedule 2. To the extent of any inconsistency between Schedule 1A and 1B, Schedule 1A prevails;

“External Boundary” means the boundary described in Schedule 1A Part 3;

“land” and “waters”, respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

“Laws of the State and the Commonwealth” means the common law and the laws of the State of Queensland and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

“Local Government Act” has the same meaning as in the *Local Government Act 2009* (Qld);

“Local Government Area” has the same meaning as in the *Local Government Act 2009* (Qld);

“Natural Resources” means:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and
- (b) any clays, soil, sand, gravel or rock found on or below the surface of the Determination Area

that have traditionally been taken and used by the native title holders, but does not include:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another; and
- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“Reserves” means reserves that are dedicated and taken to be reserves under the *Land Act 1994* (Qld);

“Water” means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream; and
- (b) any natural collection of water, whether permanent or intermittent.

Other words and expressions used in this Determination have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth).

Schedule 1 — DETERMINATION AREA

A. Description of Determination Area

The Determination Area comprises all of the land and waters described in Parts 1 and 2 of Schedule 1A to the extent that they fall within the External Boundary description at Schedule 1A Part 3, and depicted in the determination map in Schedule 1B, excluding the areas described in Schedule 2.

Part 1 — Non-Exclusive Areas.

(a) The land and waters comprised of the lots and part lots listed below.

Area Description
Lot 1 on KY20
Lot 1 on NY10
Lot 1 on NY7
Lot 1 on WY10
Lot 1 on WY14
Lot 1 on WY9
Lot 2 on KY3
Lot 2 on KY9
Lot 3 on KY7
Lot 3 on NY6
Lot 4 on B536
Lot 4 on WELL538
Lot 7 on WN68
That part of Lot 10 on BLO13 that falls within the External Boundary description
That part of Lot 11 on BLO13 that falls within the External Boundary description
Lot 14 on WN121
Lot 30 on WN8
Lot 31 on T19113
Lot 32 on T1918
Lot 33 on T19112
Lot 500 on CP900062
Lot 501 on CP900053
Lot 503 on SP134021
Lot 1 on BLO31
That part of Lot 1 on SP209773 that falls within the External Boundary description
Lot 1 on WN148
Lot 1 on WN186
Lot 1 on WN233
That part of Lot 2 on BLO31 that falls within the External Boundary description
That part of Lot 3 on BI22 that falls within the External Boundary description
That part of Lot 4 on CP880081 that falls within the External Boundary description

Area Description
description
That part of Lot 4 on GO51 that falls within the External Boundary description
That part of Lot 4 on WN234 that falls within the External Boundary description
That part of Lot 5 on SP126466 that falls within the External Boundary description
Lot 6 on SP238338
That part of Lot 8 on CP892351 that falls within the External Boundary description
That part of Lot 10 on CP855300 that falls within the External Boundary description
That part of Lot 11 on CP855300 that falls within the External Boundary description
Lot 58 on SP210397
That part of Lot 447 on SP196201 that falls within the External Boundary description
That part of Lot 468 on PH1653 that falls within the External Boundary description
That part of Lot 1309 on PH1613 that falls within the External Boundary description
Lot 1319 on PH1996
Lot 1322 on PH1737
Lot 1344 on CP908606
That part of Lot 1673 on PH2276 that falls within the External Boundary description
Lot 1795 on PH2123
That part of Lot 2143 on PH2019 that falls within the External Boundary description
Lot 2554 on PH458
Lot 2599 on PH20
That part of Lot 2669 on PH2064 that falls within the External Boundary description
That part of Lot 2828 on PH276 that falls within the External Boundary description
That part of Lot 2829 on PH307 that falls within the External Boundary description
Lot 2914 on SP219056
Lot 3119 on PH1104
Lot 4141 on PH1400
Lot 4245 on PH2267
Lot 4312 on PH887
Lot 4313 on PH1916
Lot 4371 on PH817
Lot 5004 on TI842932
Lot 5006 on PH1593
That part of Lot 5159 on PH1835 that falls within the External Boundary description

Area Description
Lot 4 on K537
Lot 6 on AP15851
Lot 6 on K5310
Lot 3 on TI842931
Lot 1 on AP21561

- (b) The waters within the External Boundaries including but not limited to:
- (i) Bulloo River;
 - (ii) Kulki Creek;
 - (iii) Tungera Creek;
 - (iv) Titheroo (Wangamurra) Creek;
 - (v) Tooverra Creek;
 - (vi) Mirintu Creek;
 - (vii) Moble Creek
 - (viii) Pitteroo Creek;
 - (ix) Wilson River;
 - (x) Lignum Branch;
 - (xi) Parragoona Creek.

Part 2 – Non-Exclusive Town Areas.

The land and waters comprised of the lots and part lots listed below.

Area Description
Lot 34 on CP900059
Lot 35 on C8128
Lot 1 on T1917
Lot 2 on T1917
Lot 3 on T1917
Lot 4 on T1917
Lot 5 on T1917
Lot 6 on T1917
Lot 7 on T1917
Lot 8 on T1917
Lot 31 on T1916
Lot 32 on T1916
Lot 33 on T1916
Lot 34 on T1916
Lot 35 on T1916

Area Description
Lot 36 on T1916
Lot 37 on T1916
Lot 38 on T1916
Lot 39 on T1916
Lot 40 on T1916
Lot 511 on CP900058
Lot 513 on CP900058

Part 3 — External Boundary Description

The External Boundary means the land and waters bounded by the following line:

External Boundary

Commencing at a point on the Queensland – New South Wales state border, approximately 12.5km east of Warri Warri Gate at Longitude 142.058001° East and extending generally northerly and generally north-easterly passing through the following coordinate points:

Longitude East	Latitude South
142.057699	28.998318
142.052618	28.984621
142.051022	28.967840
142.052472	28.945953
142.058298	28.920321
142.057868	28.895466
142.052839	28.876431
142.053864	28.845110
142.058223	28.825482
142.064374	28.803987
142.071786	28.780172
142.082417	28.761605
142.092487	28.740973
142.108257	28.718645
142.111636	28.704886
142.113363	28.697852
142.121299	28.675176
142.133251	28.658657
142.146170	28.638208
142.160391	28.617969
142.175392	28.597947
142.189321	28.576558
142.205453	28.547996
142.220307	28.521062

Longitude East	Latitude South
142.229985	28.496049
142.242048	28.473530
142.254961	28.454911
142.271289	28.438309
142.287692	28.416336
142.291821	28.410818
142.296528	28.385416
142.289208	28.369874
142.277269	28.357167
142.271526	28.342290
142.274598	28.326355
142.287699	28.305195
142.293441	28.297961
142.304688	28.283973
142.318459	28.271089
142.341584	28.245618
142.357811	28.226243
142.375484	28.201546
142.392700	28.180308
142.406542	28.159353
142.421832	28.133307
142.434852	28.110751
142.447560	28.085897
142.456751	28.066627
142.468840	28.049840
142.484973	28.028377
142.497787	28.009503
142.503763	27.998115
142.514559	27.982831
142.524730	27.968915
142.536210	27.956133
142.551441	27.934105
142.562898	27.920171
142.573075	27.907402
142.583232	27.893481
142.586739	27.889416
142.591279	27.879727

Then northerly to the centreline of the Wilson River at Longitude 142.595276° East, about 560 metres north-easterly of Noccundra Waterhole; then generally north-easterly along the centreline of that river to Longitude 142.921272° East; then generally south-easterly and generally north-easterly passing through the following coordinate points:

Longitude East	Latitude South
142.924660	27.433120
142.941935	27.443086
142.949243	27.442422
142.965853	27.435778
142.985785	27.429133
143.002395	27.423154
143.014354	27.417174
143.039602	27.405215
143.061527	27.393256
143.087439	27.379303
143.114015	27.368008
143.137269	27.356049
143.163845	27.343426
143.181784	27.334124
143.214339	27.318178
143.245566	27.300239
143.276129	27.283629
143.292739	27.274992
143.318651	27.261704
143.341240	27.249745
143.359844	27.241108
143.376454	27.230477
143.397714	27.216525
143.418311	27.201244
143.448873	27.181311
143.480100	27.156729
143.504683	27.134139

Then north easterly to a point on the Grey Range at Latitude 27.120427° South, being the watershed between Cooper Creek and Bulloo River; then generally north-easterly along that watershed and ridgeline of that range to Longitude 143.871053 East; then generally south-easterly across the Bulloo River, Gorrie Gorrie Creek and Baalooroo Creek passing through the following coordinate points:

Longitude East	Latitude South
143.912575	26.849876
143.920221	26.874419
143.960001	26.917576
144.032684	26.996430
144.074061	27.027198
144.102708	27.048418
144.121805	27.090856

144.151512	27.116320
144.234268	27.150270
144.270340	27.158758
144.332938	27.209685
144.396596	27.268038
144.443278	27.359281

Then southerly and generally south-westerly passing through the following coordinate points:

Longitude East	Latitude South
144.452827	27.413391
144.424181	27.529036
144.396596	27.586328
144.386509	27.599205

Then generally south westerly passing to the west of Lake Hutchinson, Lake Toomaroo and Lake Bindegolly to the Bulloo Developmental Road passing through the following coordinate points:

Longitude East	Latitude South
144.317073	27.686700
144.317077	27.687880
144.316390	27.694982
144.316286	27.702425
144.315859	27.709926
144.315170	27.715940
144.313327	27.724019
144.311410	27.729063
144.308913	27.733823
144.306285	27.738469
144.303463	27.742314
144.299097	27.747366
144.294986	27.751674
144.291070	27.756839
144.285154	27.761209
144.279494	27.764834
144.270677	27.768927
144.265721	27.771176
144.259740	27.774745
144.253889	27.779001
144.247588	27.784002

Longitude East	Latitude South
144.242965	27.789455
144.238280	27.795481
144.234367	27.801219
144.230261	27.807244
144.226225	27.814814
144.222699	27.820552
144.219429	27.825601
144.215706	27.829907
144.210497	27.834046
144.202390	27.838366
144.196085	27.841650
144.189590	27.846308
144.185025	27.849643
144.180849	27.853951
144.177318	27.858084
144.173466	27.862791
144.169547	27.867098
144.166148	27.872033
144.162102	27.876511
144.157604	27.880591
144.152462	27.884729
144.146163	27.890131
144.140634	27.894672
144.132656	27.898820
144.123066	27.903487
144.111542	27.907648
144.104917	27.911391
144.097974	27.916909
144.091226	27.922828
144.086476	27.928798
144.083270	27.933666
144.078584	27.940159
144.075898	27.946637
144.073595	27.952926
144.072960	27.954662
144.070464	27.960166
144.067013	27.969109
144.065166	27.976100
144.063577	27.982574
144.063042	27.987213
144.062341	27.992080
144.061186	27.996242
144.059132	28.000576

Longitude East	Latitude South
144.055824	28.004647
144.051737	28.007976
144.046432	28.011916
144.041968	28.015169
144.037635	28.017619
144.033107	28.020010

Then generally southerly to a point on a low ridgeline at Longitude 144.067132° East, Latitude 28.175252° South about 32km south-easterly of Thargomindah and about 3 km easterly of Dynevor Downs No. 9 Bore passing through the following coordinate points:

Longitude East	Latitude South
144.030390	28.022180
144.027156	28.024752
144.024049	28.027898
144.022109	28.031279
144.020422	28.035581
144.018868	28.040344
144.018283	28.045514
144.017051	28.049991
144.016206	28.055791
144.015878	28.062285
144.015355	28.069869
144.015607	28.078262
144.016120	28.084127
144.017927	28.089424
144.019345	28.095523
144.021021	28.101682
144.022763	28.106461
144.024829	28.111529
144.026959	28.116311
144.029928	28.123050
144.033222	28.127493
144.036970	28.131075
144.042010	28.134721
144.047439	28.137853
144.052287	28.140349
144.056746	28.143243
144.060558	28.146423
144.063660	28.149140
144.067536	28.153241

144.069022	28.155490
144.070377	28.158600
144.071344	28.162744
144.070758	28.168316
144.069204	28.171584

Then generally south-westerly and generally southerly along a ridgeline to a point on the Queensland – New South Wales State Border at Longitude 143.684697° East passing through the following coordinate points:

Longitude East	Latitude South
144.064480	28.178227
144.060467	28.180679
144.056718	28.182846
144.053612	28.185704
144.050247	28.189365
144.047076	28.193143
144.044164	28.196289
144.041963	28.199842
144.038534	28.203388
144.035556	28.208316
144.032385	28.212553
144.030572	28.215992
144.028630	28.218684
144.025653	28.221945
144.022418	28.224745
144.018990	28.227889
144.015049	28.230539
144.010200	28.232462
144.005348	28.232676
144.001953	28.232605
143.998284	28.233252
143.995632	28.235050
143.994219	28.237012
143.992419	28.239435
143.989898	28.241289
143.987238	28.242398
143.983926	28.243340
143.979959	28.244055
143.975982	28.243681
143.972218	28.245199
143.969369	28.246883
143.966530	28.249543
143.964877	28.253516

Longitude East	Latitude South
143.963140	28.261912
143.963704	28.266269
143.964654	28.269879
143.966845	28.273883
143.969035	28.277830
143.971024	28.281262
143.974317	28.284797
143.976170	28.287655
143.977765	28.290801
143.979226	28.293547
143.979836	28.295897
143.980123	28.298478
143.980287	28.301807
143.980179	28.303989
143.980069	28.305942
143.979246	28.308301
143.977189	28.310956
143.973632	28.313508
143.970071	28.315657
143.966185	28.317865
143.963401	28.319663
143.960489	28.321520
143.956728	28.323268
143.952121	28.324964
143.947441	28.326030
143.942183	28.327616
143.936729	28.329318
143.931859	28.330843
143.927380	28.332424
143.921970	28.332116
143.916752	28.331406
143.911524	28.329834
143.905270	28.329704
143.898632	28.330439
143.891924	28.330656
143.884966	28.331794
143.878076	28.333104
143.871844	28.335155
143.865286	28.337325
143.858596	28.339209
143.852358	28.340687
143.846842	28.342791
143.842106	28.344775

Longitude East	Latitude South
143.837056	28.347795
143.831996	28.349839
143.827399	28.352683
143.823189	28.355008
143.817821	28.358662
143.813637	28.363513
143.810357	28.367726
143.807336	28.371650
143.804643	28.375917
143.803252	28.380060
143.803286	28.383447
143.803064	28.387295
143.801748	28.392356
143.800035	28.396845
143.798128	28.401508
143.796342	28.405252
143.793009	28.410556
143.790699	28.414017
143.788581	28.417131
143.785997	28.419043
143.783213	28.420727
143.780037	28.422299
143.777120	28.423754
143.774341	28.425899
143.771764	28.428672
143.769330	28.432821
143.767800	28.436104
143.766526	28.438983
143.764999	28.442553
143.763724	28.445260
143.761610	28.448776
143.759882	28.451773
143.757638	28.455348
143.755325	28.458521
143.753337	28.461577
143.750827	28.464522
143.746820	28.467535
143.744032	28.468989
143.740598	28.470620
143.737292	28.472193
143.734897	28.473759
143.732763	28.475324
143.730376	28.477579

Longitude East	Latitude South
143.725483	28.483296
143.723622	28.486007
143.721571	28.489293
143.720100	28.491944
143.719473	28.494359
143.719566	28.497172
143.720049	28.499752
143.719367	28.503201
143.719328	28.505785
143.719619	28.508711
143.721406	28.511511
143.724758	28.514474
143.728439	28.517664
143.731928	28.521314
143.735025	28.524795
143.738717	28.529133
143.740461	28.534001
143.741227	28.538933
143.742306	28.542370
143.743455	28.546610
143.744210	28.550279
143.744054	28.554299
143.743833	28.557917
143.743931	28.561189
143.743980	28.565953
143.746229	28.569383
143.748540	28.572410
143.751568	28.575546
143.754200	28.578054
143.757490	28.581304
143.759476	28.584448
143.760552	28.587828
143.760917	28.591729
143.760443	28.596325
143.760357	28.600746
143.759942	28.604768
143.759075	28.609194
143.757688	28.613682
143.756172	28.618342
143.753222	28.622955
143.750591	28.626877
143.748414	28.630508
143.745393	28.634490

Longitude East	Latitude South
143.742317	28.639506
143.740714	28.641813
143.738474	28.645847
143.736942	28.648900
143.735741	28.652525
143.735972	28.656083
143.737578	28.660263
143.740426	28.664893
143.743392	28.668260
143.746812	28.671452
143.749057	28.674422
143.753005	28.678356
143.756356	28.681146
143.758664	28.683944
143.759996	28.686748
143.761014	28.690817
143.760929	28.695295
143.759926	28.699148
143.759305	28.702138
143.758355	28.704785
143.756108	28.708015
143.753734	28.711534
143.751690	28.715566
143.750031	28.718965
143.748055	28.723169
143.746671	28.728058
143.746384	28.731849
143.746894	28.737127
143.747397	28.741659
143.748446	28.748599
143.749542	28.754045
143.752077	28.759826
143.754799	28.764859
143.757978	28.770062
143.760045	28.774698
143.762374	28.779562
143.764231	28.782764
143.765968	28.787000
143.767186	28.791470
143.767629	28.796634
143.767622	28.802375
143.767145	28.806741
143.766487	28.812429

Longitude East	Latitude South
143.764444	28.822949
143.763446	28.827261
143.761405	28.831581
143.759038	28.835789
143.757112	28.838501
143.753442	28.842832
143.749368	28.845615
143.745550	28.848110
143.739245	28.849473
143.732736	28.849977
143.726019	28.849219
143.719763	28.848975
143.714753	28.849583
143.708772	28.850715
143.704422	28.852180
143.698459	28.855148
143.694719	28.858790
143.691114	28.862948
143.689203	28.867210
143.686198	28.872799
143.685335	28.877627
143.684282	28.882973
143.684660	28.888080
143.685427	28.893012
143.688352	28.898848
143.690095	28.903658
143.691318	28.908587
143.692286	28.914149
143.692798	28.919600
143.692847	28.924422
143.692976	28.930678
143.692972	28.936591
143.693144	28.940896
143.692811	28.946524
143.692932	28.951920
143.692596	28.957433
143.691476	28.962493
143.691130	28.966916
143.690183	28.969850
143.689501	28.973185
143.687782	28.977100
143.686906	28.980666
143.685773	28.984522

Longitude East	Latitude South
143.685031	28.988488
143.684424	28.992798
143.684328	28.996186
143.684528	28.997830

Then westerly along that state border back to the commencement point.

Note:

Reference Datum

Geographical coordinates are referenced to the Geocentric Datum of Australia (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

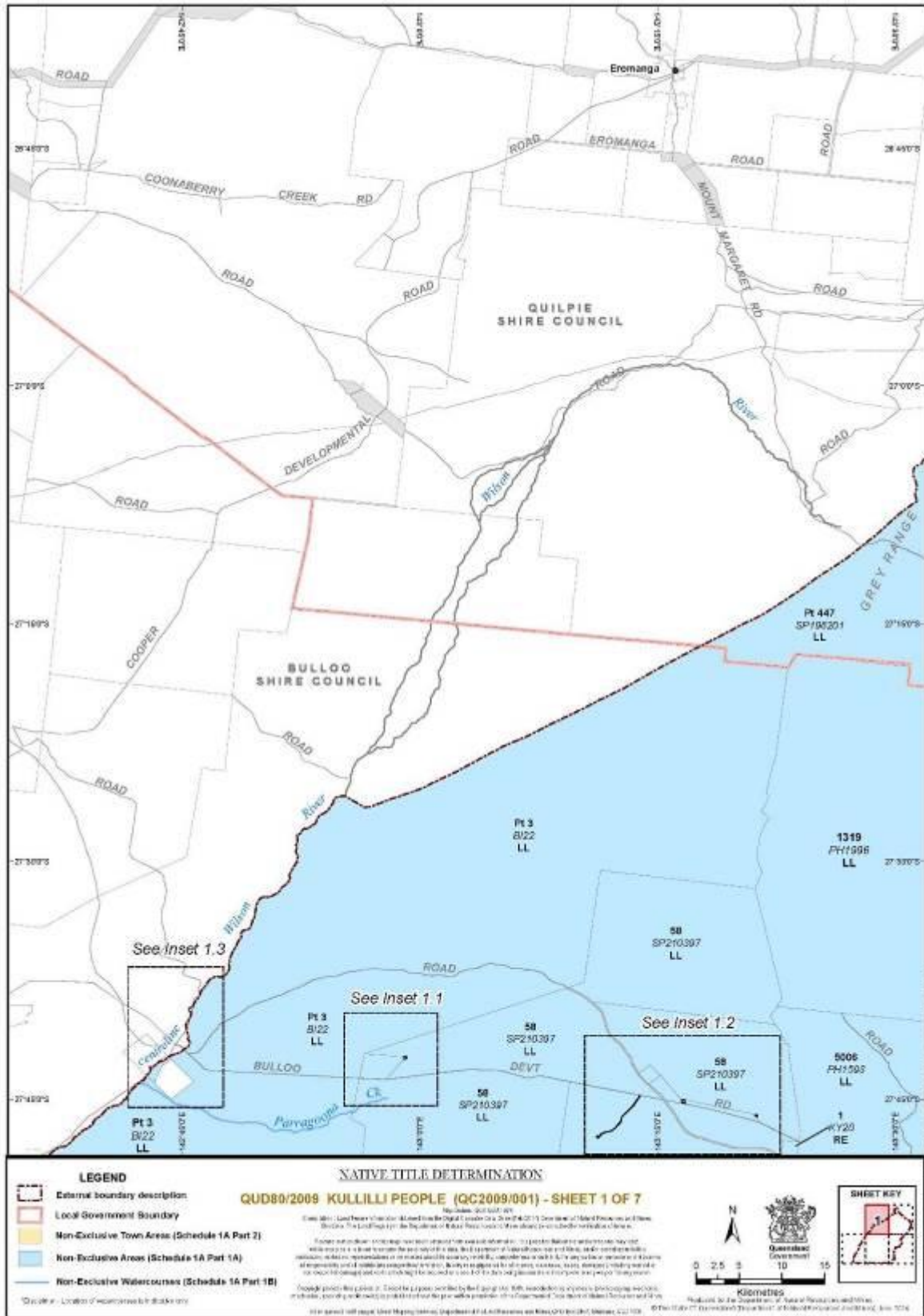
Data Reference and Source

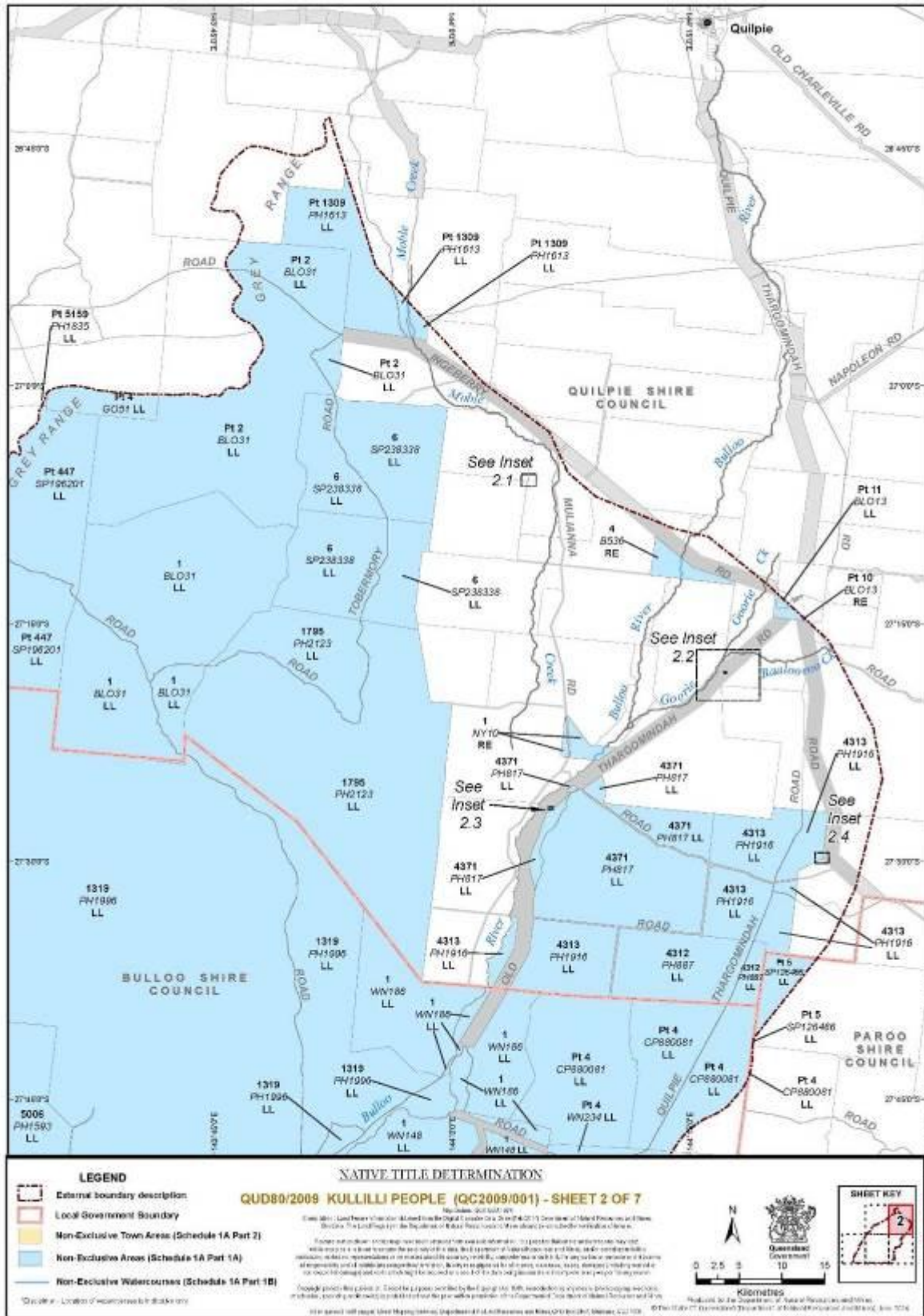
- External boundary based on data sourced from National Native Title Tribunal April 2014.
- Cadastre data sourced from Department of Natural Resources and Mines (Qld) April 2014.
- Watercourses and low ridgeline are interpreted from 1:250k Topographic vector data © Commonwealth of Australia (Geoscience Australia) 2003.
- Ridgeline of the Grey Range based on Drainage Basin Sub-Area Queensland Data as at (20/01/2009) sourced from Department of Environment and Resource Management (Qld) September 2011.

Use of Coordinates

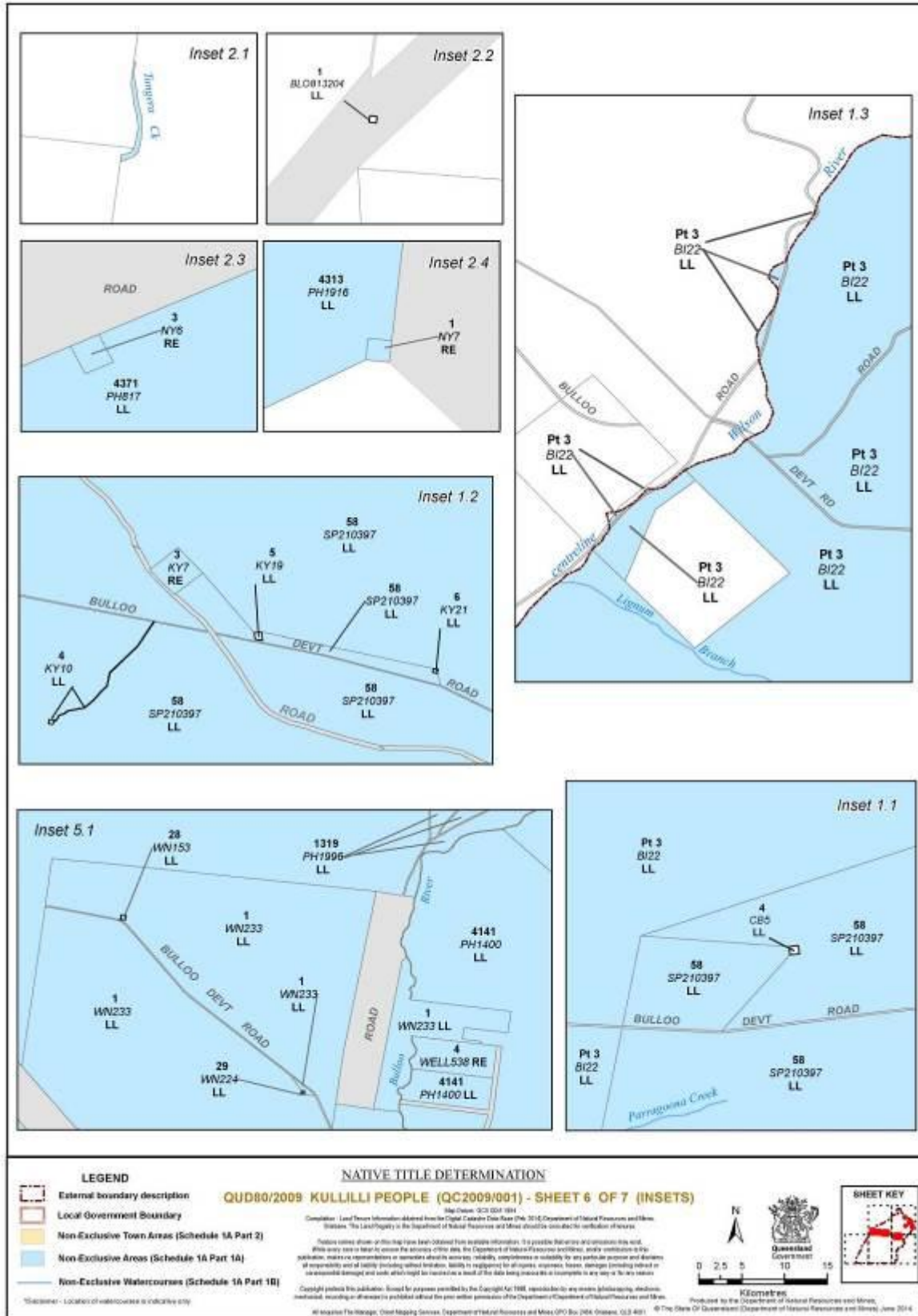
Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Queensland South Native Title Services (23/04/2014).









Schedule 2 — AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area:

1. Those land and waters within the External Boundary, which at the time the native title determination application was made:
 - (i) were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth); and
 - (ii) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied at the time of the native title determination application;are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).
2. Specifically, and to avoid any doubt, the land and waters described in (1) above includes, the tenure based exclusions under ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies, and includes but is not limited to, the whole of the land and waters described as:
 - (a) Lot 16, Crown Plan WN193, Title Reference: 17564202;
 - (b) Lot 28, Crown Plan WN153, Title Reference: 17564190;
 - (c) Lot 4, Crown Plan KY10, Title Reference: 17564199; and
 - (d) Lot 5, Crown Plan KY19, Title Reference: 17564200.
3. Specifically, and to avoid any doubt, the land and waters described in (1) above includes the land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and to which s 21 of the *Native Title (Queensland) Act 1993* (Qld), applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth).

Schedule 3 — NATIVE TITLE HOLDERS

1. The native title holders are the Kullilli People. The Kullilli People are the biological descendants of one or more of the following people:
 - (i) Joe Barney;
 - (ii) Neba Brighton;
 - (iii) Daisy (spouse Harry Pilot);
 - (iv) ‘Gnadollie’ Hekel;
 - (v) Ida (spouse Peter Williams, Buckley);
 - (vi) ‘Mary Ann’ Jinnie (spouse William Conlan);
 - (vii) Mary (spouse Harry Barney);
 - (viii) Mary (spouses Chinese, Dick Richards and Alexander Brierty);
 - (ix) ‘Ippi’ Mary (Bob Gray);
 - (x) Mary-Ann (Billy Phillips);
 - (xi) ‘Miria’ Maryann (Alick, Charlie Turner, Jack Williams);
 - (xii) ‘Munga’ Maryann;
 - (xiii) Jeannie ‘Jinnie’ Mossman and Charlie Fitzroy;
 - (xiv) Dick ‘Gunta’ Richards;
 - (xv) ‘Kullilli’ Rosie and her husband;
 - (xvi) ‘Curra’ Jack Thompson;
 - (xvii) ‘Bunda’ Tiger;
 - (xviii) Tilby and ‘Djogo’ Hugo;
 - (xix) Tinda and Lollipop;
 - (xx) Toby and Topsy;
 - (xxi) Jack ‘Norley’ Wallace;
 - (xxii) Monitor Wallace;
 - (xxiii) Willico;
 - (xxiv) Harry Willis;
 - (xxv) Harry Willy-Boy;
 - (xxvi) Monday Willoughby;
 - (xxvii) Harry Barney;
 - (xxviii) Annie Bulloo;
 - (xxix) Jack Bulloo;
 - (xxx) Charlie Copra;
 - (xxxi) Maggie; and
 - (xxxii) Trella/Tarella (and her son Albert Hagan).

Schedule 4 — OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of the other interests in relation to the Determination Area are the following as they exist as at the date of the determination:

1. The rights and interests of the parties under the following agreements:
 - (a) the agreement between Paola Smith, Maxine Gooda, Eric Hood, Ronny Watson and Peter White on their own behalf and on behalf of the Kullilli People (QUD80/2009) and the Bullo Shire Council and Quilpie Shire Council as parties to the Local Government ILUA QI2014/030;
 - (b) the agreement between Paola Smith, Maxine Gooda, Peter White, Ronny Watson (also known as Ronald Watson) and Eric Hood, on their own behalf and on behalf of the Kullilli People (QUD80/2009) and the Ergon Energy Corporation Limited ACN 087 646 062 as parties to the ILUA QI2014/029, authorised on 10 November 2013;
 - (c) the Kullilli People and Bellera, Bulloo Downs and Molesworth ILUA authorised on 10 November 2013;
 - (d) the Kullilli People and Ardoch ILUA authorised on 10 November 2013;
 - (e) the Kullilli People and Autumnvale and The Pioneers ILUA authorised on 10 November 2013;
 - (f) the Kullilli People and Clyde (aka Picarilli Downs) and Wongetta ILUA authorised on 10 November 2013;
 - (g) the Kullilli People and Congie ILUA authorised on 10 November 2013;
 - (h) the Kullilli People and Dynevor Downs ILUA authorised on 10 November 2013;
 - (i) the Kullilli People and Kuging and Orinya ILUA authorised on 10 November 2013;
 - (j) the Kullilli People and Kulki ILUA authorised on 10 November 2013;
 - (k) the Kullilli People and Kyeenee ILUA authorised on 10 November 2013;
 - (l) the Kullilli People and Moombidary ILUA authorised on 10 November 2013;
 - (m) the Kullilli People and Mulianna ILUA authorised on 10 November 2013;
 - (n) the Kullilli People and Narylico ILUA authorised on 10 November 2013;
 - (o) the Kullilli People and Nockatunga ILUA authorised on 10 November 2013;
 - (p) the Kullilli People and Norley, Orient and Pinidary ILUA authorised on 10 November 2013;

- (q) the Kullilli People and Pyampah (aka Wompa) ILUA authorised on 10 November 2013;
 - (r) the Kullilli People and Talgeberry ILUA authorised on 10 November 2013;
 - (s) the Kullilli People and Thargo ILUA authorised on 10 November 2013;
 - (t) the Kullilli People and Tickalara ILUA authorised on 10 November 2013;
 - (u) the Kullilli People and Wiralla ILUA authorised on 10 November 2013;
 - (v) the Kullilli People and Zenoni ILUA authorised on 10 November 2013; and
 - (w) the Kullilli People and Mirintu ILUA authorised on 10 November 2013.
2. The rights and interests of Circumpacific Energy Corporation under the following agreements in so far as they relate to a part of the Determination Area:
- (a) Right to Negotiate Deed of Agreement for ATP940 between the State of Queensland, Circumpacific Energy Corporation ARBN 147 283 832, the Kullilli People and Wongkumara People, dated 11 August 2011; and
 - (b) Conjunctive Ancillary Agreement between Circumpacific Energy Corporation ARBN 147 283 832 and the Kullilli People, dated 17 December 2010.
3. The rights and interests of Telstra Corporation Limited:
- (a) as the owner or operator of telecommunications facilities installed within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
 - (i) to inspect land;
 - (ii) to install and operate existing and new telecommunication facilities, including cabling, customer terminal sites, customer radio sites and ancillary facilities;
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities including cabling, customer terminal sites, customer radio sites, and ancillary facilities;
 - (c) for its employees, agents or contractors to access the Determination Area for the purposes of exercising the rights in (i), (ii) and (iii) above in respect of telecommunication facilities in and in the vicinity of the Determination Area;
 - (d) under any licences, leases, access agreements or easements relating to its telecommunications facilities in the Determination Area, including under:

- (i) Term Lease 0/209261 over Lot 3 on TI842931.
4. The rights and interests of Ergon Energy Corporation ACN 087 646 062:
 - (a) as the owner and operator of any “Works” as that term is defined in the *Electricity Act 1994 (Qld)* within the Determination Area;
 - (b) as a distribution entity and the holder of a distribution authority under the *Electricity Act 1994 (Qld)*;
 - (c) created under the *Electricity Act 1994 (Qld)* and the *Government Owned Corporations Act 1993 (Qld)* including:
 - (i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date on which these orders are made;
 - (ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph; and
 - (iii) to inspect, maintain and manage any Works in the Determination Area.
5. The rights and interests of the State of Queensland, the Bulloo Shire Council, the Paroo Shire Council and the Quilpie Shire Council to access, use, operate, maintain and control the dedicated roads in the Determination Area and the rights and interests of the public to use and access the roads.
6. The rights and interests of the Bulloo Shire Council, the Paroo Shire Council and the Quilpie Shire Council as the local governments for that part of the Determination Area within their Local Government Area, including:
 - (a) their powers, functions, responsibilities and jurisdiction under a Local Government Act;
 - (b) their rights and interests under any interest in land or waters within the Determination Area including under any lease, licence, access agreement, easement or reserve in the Determination Area;
 - (c) the right to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owners and operators of infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;
 - (d) the rights under any agreements between the Councils and any third party which relate to land or waters in the Determination Area; and
 - (e) the rights of their employees, agents and contractors to enter upon the Determination Area for the purpose of performing their powers and responsibilities under sub-paragraphs (a) to (d).
7. The rights and interests held by the State of Queensland or Commonwealth of Australia or any other person existing by reason of the force and operation of the

Laws of the State of Queensland and the Commonwealth, including, but not limited to, those existing by reason of the following legislation or any regulation, statutory instrument, declaration, plan, authority, permit, reservation, easement, claim, lease or licence made, granted, issued or entered into under that legislation:

- (a) the *Land Act 1994* (Qld);
- (b) the *Petroleum Act 1923* (Qld);
- (c) the *Petroleum and Gas (Production and Safety) Act 2004* (Qld); and
- (d) the *Mineral Resources Act 1989* (Qld).

8. Specifically, and to avoid any doubt:

- (a) the rights and interests of Origin Energy Resources Limited, Santos Limited, Delhi Petroleum Pty Ltd, Bridgefield Pty Ltd, Vamgas Pty Ltd and Moonie Pipeline Company Pty Ltd:
 - (i) as the holders of Pipeline Licence 6 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);
- (b) the rights and interests of Oilwells Inc of Kentucky, ARBN 062 619 774 and Bounty Oil and Gas NL as the holders of Petroleum Lease 214 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld);
- (c) the rights and interests of Santos QNT Pty Ltd as the holder of:
 - (i) Authority to Prospect 820 granted under the *Petroleum Act 1923* (Qld);
 - (ii) Authority to Prospect 636 granted under the *Petroleum Act 1923* (Qld); and
 - (iii) Authority to Prospect 765 granted under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).
- (d) the rights and interests of Santos QNT Pty Ltd and Vamgas Pty Ltd:
 - (i) as the holders of Petroleum Lease 244 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld);
 - (ii) as the holders of Petroleum Lease 245 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld); and
 - (iii) as the holders of Petroleum Lease 50 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld).
- (e) the rights and interests of Santos QNT Pty Ltd, Drillsearch Energy Pty Ltd and Santos(299) Pty Ltd:

- (i) as the holders of Petroleum Lease 293 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld); and
 - (ii) as the holders of Petroleum Lease 298 granted under the *Petroleum Act 1923* (Qld) and administered under the *Petroleum Act 1923* (Qld).
9. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (Queensland) Act 1993* (Qld) as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:
- (a) waterways;
 - (b) beds and banks or foreshores of waterways;
 - (c) stock routes; and
 - (d) areas that were public places at the end of 31 December 1993.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 80 of 2009

**BETWEEN: PAOLA SMITH, JUDITH CONLON, BRENDA FISHER,
STEPHEN HAGAN, KAYLEEN HOPKINS, ELIZABETH
MCAVOY, RONALD WATSON AND PETER WHITE ON
BEHALF OF THE KULLILLI PEOPLE
Applicant**

**AND: STATE OF QUEENSLAND
First Respondent**

**BULLOO SHIRE COUNCIL
Second Respondent**

**PAROO SHIRE COUNCIL
Third Respondent**

**QUILPIE SHIRE COUNCIL
Fourth Respondent**

**ERGON ENERGY CORPORATION LIMITED
Fifth Respondent**

**TELSTRA CORPORATION LIMITED (ACN 051 775 556)
Sixth Respondent**

**BRIDGEFIELD PTY LIMITED
Seventh Respondent**

**CIRCUMPACIFIC ENERGY CORPORATION
Eighth Respondent**

**DELHI PETROLEUM PTY LTD
Ninth Respondent**

**DRILLSEARCH ENERGY LIMITED
Tenth Respondent**

**MAGELLAN PETROLEUM (EASTERN) PTY LTD
Eleventh Respondent**

**MOONIE PIPELINE COMPANY PTY LTD
Twelfth Respondent**

**OILWELLS INC OF KENTUCKY
Thirteenth Respondent**

ORIGIN ENERGY RESOURCES LIMITED
Fourteenth Respondent

SANTOS (299) PTY LTD
Fifteenth Respondent

SANTOS LIMITED
Sixteenth Respondent

SANTOS QNT PTY LTD ABN 33 083 077 196
Seventeenth Respondent

SANTOS RESOURCES PTY LTD
Eighteenth Respondent

VAMGAS PTY LTD
Nineteenth Respondent

**EDWARD JOHN BRIGDEN, CONSOLIDATED PASTORAL
COMPANY PTY LTD, DABBAT PTY LTD, MICHAEL
GIBSON, IAN JOSEPH KEMP GLASSON, LYNETTE JOAN
GLASSON, ALAN RAEBLE SCHOTTELIUS, ELMA BETH
SCHOTTELIUS, GREGORY NOEL VICARY SHERWIN AND
USHER PASTORAL COMPANY PTY LTD**
Twentieth - Twenty-Nine Various Pastoral Respondents

JUDGE: LOGAN J
DATE: 2 JULY 2014
PLACE: THARGOMINDAH

REASONS FOR JUDGMENT

1 One of the Commonwealth Parliament's objectives in respect of the *Native Title Act 1993* (Cth) (the Act) is the resolution of claims for the recognition of native title by agreement. That objective is borne out in s 87 of the Act, especially by amendments made by the *Native Title Amendment Act 2009* (Cth).

2 Today the Court is giving practical voice to that objective by determining by consent an application in favour of the Kullilli Native Title claimants in respect to the land and waters within the area in south western Queensland identified in Schedule 1 of the Court's orders.

3 The Kullilli claims have a long history in this Court. The first application for a determination of native title over a broader claim area was lodged with the National Native

Title Tribunal on 24 May 1996. Following amendments to the Act in 1998, such applications became Federal Court proceedings. By order of the Honourable Justice Drummond, that application was dismissed on 10 March 2000. A further three Determination Applications were filed in the Court and were either discontinued or dismissed in 2006.

4 The application by Paola Smith, Maxine Gooda, Peter White, Ronny Watson and Eric Hood, on behalf of the Kullilli People, was filed on 23 March 2009. The application was amended pursuant to s 66B of the Act on 2 December 2013 to change the composition of the Applicant from the above named persons to Paola Smith, Ronald Watson, Stephen Hagan, Judith Conlon, Brenda Fisher, Kayleen Hopkins and Elizabeth McAvoy.

5 The application was registered by the National Native Title Tribunal on 17 April 2009 and was notified in accordance with s 66 of the Act on 28 October 2009. There are currently twenty nine respondent parties, including the State of Queensland, the Bulloo, Paroo and Quilpie Shire Councils representing the local government within the claim area, mining and infrastructure companies and various pastoralists. The application has been amended on three occasions to include certain apical ancestors after additional research had been undertaken, to change the composition of the Applicant and to remove areas of extinguishment within the claim boundary.

6 Viewed against that history and like many such claims, it can be seen that this claim has been long in its gestation. In earlier judgements in cases like the present, for example in 2012 in *Hoolihan on behalf of the Gugu Badhun People # 2 v State of Queensland* [2012] FCA 800; *Archer on behalf of the Djungan People #1 v State of Queensland* [2012] FCA 801 and *Fisher on behalf of the Ewamian People #2 v State of Queensland* [2013] FCA 1249, I observed that native title claims which linger unresolved on a court list are an affront to our system of justice. The statements which I then made are just as applicable to this case.

7 That said, the consensual resolution of the current Determination Application in less than five years is testament to much dedicated work by experienced legal advisers and some innovative negotiation techniques, the responsible actions of the parties guided by their advisers and case management by the Court's registrars. The result is that a final consensual resolution has been achieved in what is a relatively short time in this jurisdiction of the Court. I commend the parties and the legal practitioners involved.

8 In *Baker on behalf of the Muluridji People v State of Queensland* [2011] FCA 1432 (*Muluridji*) I adopted observations made in *King v Northern Territory of Australia* [2011] FCA 582 (*King*) per Mansfield J. His Honour made a number of observations about the preamble to the Act. I am in complete agreement not only with the substance of his Honour's observations in *King* but also with the manner in which he expressed them. They are exactly apposite in the present proceedings also. As I observed in *Muluridji*, I propose therefore to adopt them as my own in these reasons for judgment without further attribution.

9 The preamble to the Act recognised, on behalf of all people of Australia, that the Aboriginal peoples of Australia inhabited this country for many years prior to European settlement, and that the Aboriginal peoples had been progressively dispossessed of their lands. It recorded that, by the overwhelming vote of the people of Australia, the Constitution was amended to enable laws such as the Act to be passed, to facilitate the recognition by our shared legal system of the native title rights and interests in their land. This is an occasion when the Court is to make orders declaring that the groups of Aboriginal persons in the current applications have always been the traditional owners of the land. By the Court's orders, the Australian community collectively recognises that status. It is important to emphasise that the Court's orders do not grant that status. The Court is declaring that it exists and has always existed at least since European settlement.

10 The Applicant relies on twenty-seven affidavits from members of the claim group that provide direct evidence of their ongoing connection to the land and waters in the claim area. The affidavits are from a broad cross section of the claim group and depose to the observance of traditional laws and customs and the exercise of the native title rights and interests that I am able to recognise today. The composition of the claim group is supported by an affidavit from the QSNTS anthropologist Diana Romano annexing genealogical charts.

11 The application relies on the expert reports by Dr Sally Babidge which provides the anthropological evidence of the Kullilli People and further supplementary material addressing issues arising in the course negotiations with the respondent parties. Dr Babidge's material consists of:

- (a) Anthropological Report: Kullilli Native Title Claim dated 12 November 2010;
- (b) Anthropological analysis of Kullilli claimant affidavit material and brief analysis of background material for inclusion of "Trella" (Hagan Family) dated 23 February 2012; and

- (c) Supplementary material and analysis arising from “on country” visit (May 2011) dated 2 July 2012.

SECTION 87 OF THE ACT

12 Section 87 of the Act provides that the Court may make a determination of native title by consent over an area covered by a native title application and without holding a hearing where:

- (a) the period specified in the notice given under s 66 of the Act has ended (s 87(1));
- (b) there is an agreement between the parties on the terms of an order of the Court in relation to the proceedings (s 87(1)(a)(i));
- (c) the terms of the agreement are in writing and are signed by or on behalf of the parties and filed with the Court (s 87(1)(b));
- (d) the Court is satisfied that an order in, or consistent with, those terms would be within its power (s 87(1)(c)); and
- (e) having satisfied the criteria relevantly detailed, the Court considers the making of orders as *it appears to the Court to be appropriate to do so* pursuant to s 87(1A) of the Act. The Court may make a determination in accordance with s 87(2), as is relevant to these proceedings.

13 The focus of the Court in considering whether the orders sought are appropriate under s 87(1) and s 87(2) is on the making of the agreement by the parties. In *Muluridji* I cited observations of North J in *Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474. Such remarks are apt to be adopted in this case. His Honour stated:

[36] ... The Act is designed to encourage parties to take responsibility for resolving proceeding without the need for litigation. Section 87 must be construed in this context. The power must be exercised flexibly and with regard to the purpose for which the section is designed.

[37] In this context, when the Court is examining the appropriateness of an agreement, it is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application. The primary consideration of the Court is to determine whether there is an agreement and whether it was freely entered into on an informed basis: *Nangkiriny v State of Western Australia* (2002) 117 FCR 6; [2002] FCA 660, *Ward v State of Western Australia* [2006] FCA 1848. Insofar as this latter consideration applies to a State party, it will require the Court to be satisfied that the State party has taken steps to satisfy itself that there is a credible basis for an application: *Munn v Queensland* (2001) 115 FCR 109; [2001] FCA 1229.

14 As such, the Court is not required to make its own inquiry of the merits of the applicants' claim to be satisfied that the orders sought are supportable and in accordance with the law: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3]. The Court may consider such evidence to determine whether the State is acting in good faith and rationally: *Munn (for and on behalf of the Gunggari People) v Queensland* (2001) 115 FCR 109 at [29]-[30].

15 In *Smith v State of Western Australia* (2000) 104 FCR 494 at [38], Madgwick J stated:

[38] ... State governments are necessarily obliged to subject claims for native title over lands and waters owned and occupied by the State and State agencies, to scrutiny just as careful as the community would expect in relation to claims by non-Aborigines to significant rights over such land.

SECTION 94A OF THE ACT

16 Section 94A of the Act requires that a native title determination order must satisfy the requirements of s 225 of the Act. Section 225 provides:

A *determination of native title* is a determination whether or not native title exists in relation to a particular area (the *determination area*) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease -- whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of non-native title interests.

[emphasis in original]

17 Section 223(1) of the Act defines 'native title' and 'native title rights and interests' as:

- (1) ... the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
 - (a) the rights and interests are possessed under the traditional laws

- acknowledged, and the traditional customs observed, by Aboriginal peoples or Torres Strait Islanders; and
- (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia.

18 In *Members of the Yorta Yorta Aboriginal Community v State of Victoria* (2002) 214 CLR 422, Gleeson CJ, Gummow and Hayne JJ (with McHugh J agreeing) stated the relevant principles with respect to s 223 of the Act, at [46] to [55] and [80] to [83]:

- (a) A traditional law or custom which is the source of native title rights and interests is one which has been passed from generation to generation of a society, usually by word of mouth and common practice.
- (b) The origins of the law or custom from which native title rights and interests stem must be found in the normative rules of the relevant Aboriginal or Torres Strait Islander society that existed before the assertion of sovereignty by the British Crown – it is only those rules that are “traditional” laws and customs.
- (c) That normative system must have a continuous existence and vitality since sovereignty.
- (d) If that society ceases to exist as a group which acknowledges and observes those pre-sovereignty laws and customs, those laws and customs cease to have continued existence and vitality.
- (e) Only native title rights or interests that existed at the time of the change in sovereignty will be recognised. However, some change to, or adaptation of, traditional laws or customs or some interruption in the enjoyment or exercise of native title rights or interests in the period between the Crown asserting sovereignty and the present will not necessarily be fatal to a native title claim.
- (f) In many cases, perhaps most, claimants will invite the Court to infer, from evidence led at trial, the content of traditional laws and customs at times earlier than those described in the evidence.

19 Further, there is authority of this Court, exercising appellate jurisdiction, which lends itself to a determinative conclusion that physical presence is not a necessary requirement for continuing connection. See, for example, *Moses v State of Western Australia* [2007] FCAFC 78 at [306] per Moore, North and Mansfield JJ.

APPLICATION OF SECTION 223 AND SECTION 225 TO THE KULLILLI PEOPLE

20 The Kullilli People base their identity on their cognatic descent from those ancestors identified in Schedule 3 of the orders. The apical ancestors are likely to have existed on the claim area at or about the time of first contact in 1860 when the Burke and Wills expedition travelled through the region. I am able to draw an inference that Kullilli People occupied the area at sovereignty in 1788.

21 The claim area is situated in south western Queensland centred around the township of Thargomindah and extending south to the New South Wales border. It takes in part of the catchment of the Bulloo River with the western boundary marked by the Grey Range in the south-west and the Wilson River in the north-west. It is covered almost entirely by pastoral leases.

22 I have considered Dr Babidge's Anthropological Report which includes schematic genealogies of the Kullilli families. The Report refers to the work of the early ethnographers, R H Mathews, Archibald Meston and E M Curr. These sources demonstrate that there are broad consistencies between what has been identified with Kullilli People in the earliest records and the current claim. The Mathews material is based on his correspondence with police officers and pastoralists in the Thargomindah area and surrounding region in 1900. Correspondence between R H Mathews and police officers at Eromanga, Noccunda, Eulo and at Tibooburra name the "tribe" at Thargomindah, Bulloo Downs and along the Bulloo River as variously "Kullilly", "Cullalie", "Callalie" and "Cullilly". The late Hazel McKellar, a local historian and Kooma woman published a history of aboriginal groups in 1984 (McKellar H, *Matya-Mundu, a history of the Aboriginal People of South West Queensland* (Cunnamulla Australian Native Welfare Association, 1984)). Ms McKellar relied on information she had obtained from elders in the area. She wrote that "Kalili [Kullilli] occupied territory between the Bulloo and Wilson Rivers ... Ardoch (Station) to Bulloo Downs ... Northern boundary took in Mount Margaret Station and went as far south as the Nocundra on the Wilson River ... Camps were at waterholes on Bulloo River and Wilson River".

23 Pastoralists followed the explorers into the region and in 1864 Bulloo Downs was settled, closely followed by Ardoch. Thargomindah was gazetted as a town reserve in 1874 and other smaller townships within the claim area were established soon after. This led to conflict with the indigenous inhabitants of the area. Dr Babidge's Report demonstrates that

the Kullilli People endured a period of reprisal and massacre, forced removals and the associated dislocation from country. Many Kullilli People remained on their country working in the pastoral industry which allowed them to continue to exercise and observe their traditional laws and customs (p 51).

24 Dr Babidge says that while the waves of Kullilli people and others removed from their country were significant, a number of Kullilli families managed to remain on country working on pastoral stations. Dr Babidge has opined that “at station camps on Kullilli country or in the region some elements of the traditional system of social organisation were continued, especially betrothals. There are many marriages among Kullilli people, or between them and individuals from neighbouring groups, which points to continuity of social organisation” (p 54). Removals continued until 1950.

25 Dr Babidge identifies the importance of the employment in the pastoral industry which allowed Kullilli People to continue to exercise their traditional activities including the hunting, fishing and observance of traditional law and custom. She says that “there were big camps of Aboriginal people on some stations that enabled the ongoing socialisation of Kullilli people and among them neighbouring groups. Kullilli people lived at Norley Station, Bulloo Downs, Ardock and Mount Margaret, South Comongin (bordering on the north of Kullilli country), and Nockatunga and others in fairly large camps until the 1940’s and 1950’s (p 56).

26 The many affidavits filed in support of the application indicate through the members of the claim group that the transmission of cultural knowledge has continued to the present day to facilitate an ongoing cultural and spiritual connection to country. The Kullilli People have maintained their identity and connections to their country through working on the pastoral properties within the claim area and residing in Thargomindah, Quilpie and Cunnamulla, towns either close to or within the claim area. Those families who were removed to places like Cherbourg and Woorabinda have continued close interaction with those Kullilli people who remain on their traditional country.

27 The material provides that the Kullilli People have an identity and a connection to the land through the application of a shared body of traditional laws and customs that forms part of the greater jural public. Evidence exists of a normative system of law and custom in regard to marriage laws and the observation of section protocols. These laws and customs are salient to the reproduction of the claimants’ society.

28 Accordingly, it is appropriate to make the proposed orders which recognise:

- (a) that the claim group comprises a society united in and by their acknowledgement and observance of a body of accepted traditional laws and customs;
- (b) that the present day body of accepted laws and customs of the society in essence is the same body of laws and customs acknowledged and observed by the ancestors or members of the society adapted to modern circumstances;
- (c) that the acknowledgement and observance of those laws and customs has continued substantially uninterrupted by each generation since sovereignty, and that the society has continued to exist throughout that period as a body united in and by its acknowledgement and observance of those laws and customs; and
- (d) that the claim group still possesses rights and interests under the traditional laws acknowledged and the traditional customs observed by them, and that those laws and customs give them a connection to the land.

THE APPLICATION OF SECTION 87 TO THE KULLILLI PEOPLE'S CLAIM

29 The requirements of s 87 of the Act have been satisfied in the present case. In particular:

- (a) The parties have reached agreement as to the terms of determinations of native title (s 87(1)(a)(i)).
- (b) The parties have recorded their agreement in short minutes of consent (s 87(1)(b)).
- (c) An order in terms of or consistent with the short minutes of consent would be within the Court's power (s 87(1)(c)) because:
 - (i) the applications are valid and were made in accordance with s 61 of the Act; and
 - (ii) the applications are for a determination of native title in relation to an area for which there is no approved determination of native title (s 13(1)(a)).

The short minutes comply with s 94A and s 225 of the Act (s 87(1)(c)); and

- (d) It is appropriate that the Court make the orders sought because:
 - (i) all parties are legally represented;
 - (ii) it is consistent with objects in the Act that issues and disputes concerning native title are resolved by mediation;

- (iii) the State of Queensland has taken a real interest in negotiating the consent determination. In participating in these negotiations, the State of Queensland, acting on behalf of the general community, having had regard to the Act's requirements and having conducted a thorough assessment process, is satisfied that the determination is justified in all the circumstances;
- (iv) the connection material filed by the applicants satisfies s 223 of the Act and supports the making of the proposed determinations;
- (v) the requirements of ss 56, 94A and 225 of the Act are satisfied; and
- (vi) the proposed determinations are unambiguous and certain as to the rights declared.

SATISFYING SECTION 57 OF THE ACT

30 Under s 55 of the Act, the Court is required, either at the time of the Determination or as soon as practicable after it, to make such determinations as are required by s 56 and s 57 of the Act. They respectively relate to holding the native title on trust or otherwise and if not held on trust, the non-trust functions of the prescribed body corporate.

31 As to the proposed determinations, Ms Judith Conlon has informed the Court on 23 May 2014 that the native title is to be held on trust and the Kullilli Bulloo River Aboriginal Corporation (ICN 7224) is to be the prescribed body corporate under s 56 of the Act. The Kullilli Bulloo River Aboriginal Corporation was registered on 15 July 2009 under the *Corporations (Aboriginal and Torres Strait Islanders) Act 2006* (Cth). It will perform the functions mentioned in s 57(1) of the Act.

32 The Court notes that on 23 May 2014, Paul Richards has filed an affidavit that annexes a Notice of Nomination and Consent of Kullilli Bulloo River Aboriginal Corporation as the Prescribed Body Corporate, which satisfies the requirements of s 57(1) of the Act.

33 The Kullilli Bulloo River Aboriginal Corporation satisfies the requirements of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) because:

- (a) it is an Aboriginal and Torres Strait Islander Corporation: reg 4(1);
- (b) its purpose, as set out in its Rules of the Corporation, satisfy reg 4(2)(b);
- (c) the eligibility requirements of the Rules of the Corporation operate to ensure that all members of the corporation at the time of the determination are included or proposed

to be included in the determinations as persons who have native title rights and interests in relation to the determination area: reg 4(2)(b).

34 Finally, and at the risk of repetition, it needs to be understood that agreements of the kind that have brought about today's hearing and determinations do not just happen. They involve co-operation by all of the parties in the administration of justice, careful attention by them and their advisers to the requirements of the Act in relation to the proof of native title, related effort in the gathering of relevant evidence and the ready making of concessions as to whether on the evidence native title can be proved. They also involve the regular review by the Court at regional directions hearings, and in the intervals in between by the Court's registrars, to ensure that an application is both prosecuted with due diligence by an applicant and not unreasonably delayed by a respondent in its progress towards a hearing like today or, if needs be, a contested hearing. Ensuring that is important in any litigation but is especially so in a proceeding under the Act which serves a wider public interest recognised in the preamble and which, through the allocation of judicial and other court resources and via the provision of various forms of legal aid, involves a considerable investment of public money.

35 For the reasons given, the Determination is now made.

I certify that the preceding thirty-five (35) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 30 June 2014