

## FEDERAL COURT OF AUSTRALIA

### Wuthathi, Kuuku Ya'u and Northern Kaaingu People v State of Queensland

[2015] FCA 381

Citation: Wuthathi, Kuuku Ya'u and Northern Kaaingu People v State of Queensland [2015] FCA 381

Parties: **BESSIE HOBSON, FRANK HOLLINGSWORTH, LLOYD HOLLINGSWORTH, JEAN MOSBY, GEOFFREY PASCOE, VINCENT TEMPLE, PHILLIP WALLIS, DOUGLAS WILSON ON BEHALF OF THE WUTHATHI, KUUKU YA'U AND NORTHERN KAAINGU PEOPLE v STATE OF QUEENSLAND and COOK SHIRE COUNCIL**

File number(s): QUD 6023 of 2002

Judge(s): **GREENWOOD J**

Date of judgment: 28 April 2015

Catchwords: **NATIVE TITLE** – consideration of a proposed consent determination of native title rights and interests made under the provisions of the *Native Title Act 1993* (Cth) – consideration of whether the proposed orders are appropriate and whether orders ought to be made having regard to s 87 of that Act

Legislation: *Native Title Act 1993* (Cth), ss 13(1), 61(1), 87, 94A, 223, 225

Cases cited: *Wik and Wik Way Native Title Claim Group v State of Queensland* [2009] FCA 789; (2009) 258 ALR 306  
*Kuuku Ya'u People v State of Queensland* [2009] FCA 679  
*Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422

Date of hearing: 28 April 2015

Date of last submissions: 28 April 2015

Place: Cairns

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 34

Solicitor for the Applicants: Mr A McLean, Cape York Land Council

Solicitor for the State of Queensland: Ms M Gittins, Crown Law

Solicitor for the Cook Shire Council: Mr M Wright, Preston Law

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

**QUD 6023 of 2002**

**BETWEEN:** **BESSIE HOBSON, FRANK HOLLINGSWORTH, LLOYD HOLLINGSWORTH, JEAN MOSBY, GEOFFREY PASCOE, VINCENT TEMPLE, PHILLIP WALLIS, DOUGLAS WILSON ON BEHALF OF WUTHATHI, KUUKU YA'U AND NORTHERN KAAJUNU PEOPLE**  
**Applicants**

**AND:** **STATE OF QUEENSLAND**  
**First Respondent**  
**COOK SHIRE COUNCIL**  
**Second Respondent**

**JUDGE:** **GREENWOOD J**

**DATE OF ORDER:** **28 APRIL 2015**

**WHERE MADE:** **CAIRNS**

**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),

**THE COURT ORDERS BY CONSENT THAT:**

1. There be a determination of native title in the terms set out below (“the determination”).
2. The Determination Area is comprised of Wuthathi country, Kuuku Ya’u country, Northern Kaanju country, and country shared jointly by the Wuthathi People and the Kuuku Ya’u People.
3. Each party to the proceedings is to bear its own costs.

**THE COURT DETERMINES BY CONSENT THAT:**

4. The Determination Area is the land and waters described in Part A of Schedule 1, and depicted on the map in Part B of Schedule 1.

5. Native title exists in relation to the Determination Area described in Part A of Schedule 1.
6. The native title is held by:
  - (a) the Wuthathi People described in Schedule 2 in respect of the Wuthathi country within the Determination Area;
  - (b) the Kuuku Ya'u People described in Schedule 2 in respect of the Kuuku Ya'u country within the Determination Area;
  - (c) the Northern Kaanju People described in Schedule 2 in respect of the Northern Kaanju country within the Determination Area; and
  - (d) both the Wuthathi People described in Schedule 2 and the Kuuku Ya'u People described in Schedule 2, jointly, in respect of that part of the Determination Area shared by them jointly  
("the native title holders").
7. Subject to paras 8, 9 and 10 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part A of Schedule 1 are:
  - (a) other than in relation to Water, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
  - (b) in relation to Water, the non-exclusive rights to:
    - (i) access and be present on and in the Water of the area;
    - (ii) hunt, fish and gather from the Water of the area; and
    - (iii) take and use the Water of the area,  
for cultural, personal, domestic and communal purposes.
8. The native title rights and interests are subject to and exercisable in accordance with:
  - (a) the Laws of the State and the Commonwealth; and
  - (b) the traditional laws acknowledged and traditional customs observed by the native title holders.
9. The native title rights and interests referred to in para 7(b) do not confer possession, occupation, use or enjoyment to the exclusion of all others.

10. 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).
11. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 3.
12. The relationship between the native title rights and interests described in para 7 and the other interests described in Schedule 3 (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.

## **DEFINITIONS AND INTERPRETATION**

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

“High-Water Mark” means the ordinary high-water mark at spring tides;

“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; and

“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).

**THE COURT DETERMINES THAT:**

14. Upon the determination taking effect, the native title is held by the common law holders, being the persons referred to in para 6 of the determination.
15. Within 12 months from the date of the determination, or such further time as the Court may allow, a representative of the common law holders must, by written notice to the Federal Court:
  - (a) indicate whether the native title is to be held in trust; and
  - (b) nominate a prescribed body corporate in accordance with s 56(2) or s 57(2) of the *Native Title Act 1993* (Cth).
16. In the event that no notice is given within the time specified in para 15, the matter is to be listed for further directions.
17. Until such time as there is a registered native title body corporate in relation to the Determination Area, any notices required under the *Native Title Act 1993* (Cth) or otherwise to be served on the native title holders or the common law holders may be served upon the Cape York Land Council Aboriginal Corporation ICN 1163, and such service shall be deemed to be sufficient.

**SCHEDULE 1**

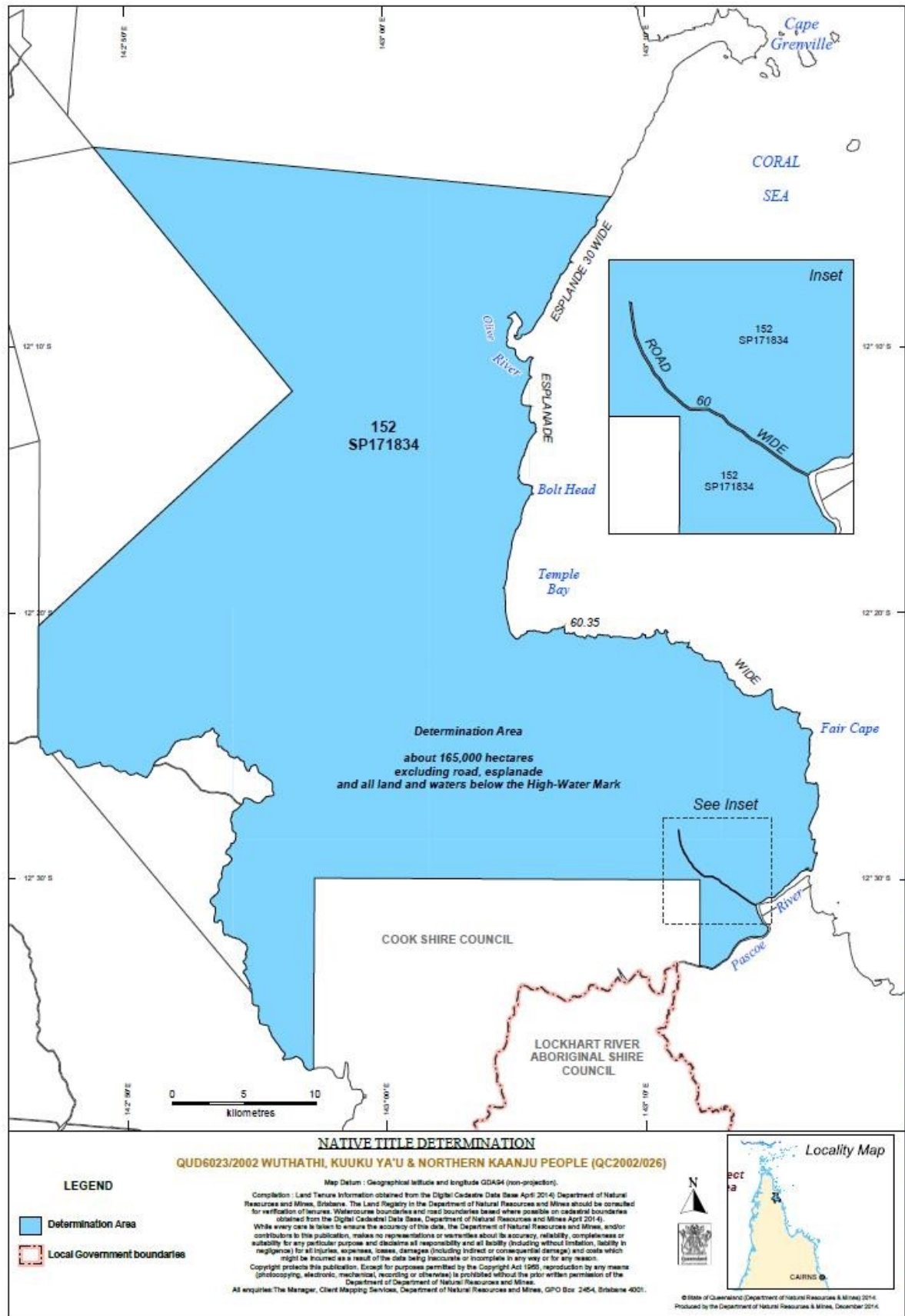
**DETERMINATION AREA**

**A. Description of Determination Area**

The Determination Area comprises all of the land and waters described as Lot 152 on SP171834.

Lot 152 on SP171834 does not include any:

- (a) land and waters below the High-Water Mark; or
- (b) esplanade.





**SCHEDULE 2**  
**NATIVE TITLE HOLDERS**

**The Wuthathi People**

1. The descendants of:
  - (a) Pintharra;
  - (b) Johnson Moreton;
  - (c) Frank Wilson;
  - (d) Ida Temple (Waterbag);
  - (e) Moe Rie Warren;
  - (f) Innis Pascoe;
  - (g) Dinah;
  - (h) Ada Lancaster;
  - (i) Annie Punda (Athnamu);
  - (j) Nara Jira Para;
  - (k) Ela (Illa); and
  - (l) Eliza (wife of Tom Ware).
2. Those persons adopted by any Wuthathi People referred to in item 1 above in accordance with traditional laws and customs.

**The Kuuku Ya'u People**

1. The descendants of:
  - (a) Johnny (Yarakupi) Doctor and Nancy (Tawamulu) as a result of their union;
  - (b) Charlie Kanora as a result of union with his two wives Nelly and Jean;
  - (c) Tom 'Flathead' Platt (father of Johnny Pascoe);
  - (d) Charlie James (brother of Tom 'Flathead' Platt);
  - (e) Peter (Piramu) Pascoe (including adopted son Lawrence Fruit);
  - (f) Agnes (Puruwa) (wife of Jimmy Hobo);
  - (g) Bob Pascoe (brother of Annie Anderson);
  - (h) Annie Anderson (wife of Fred Charles Lancaster);

- (i) Topsy (wife of John George Hollingsworth);
  - (j) Toby (Tupamaynaku) Accoom and Kitty (Tunpu) as a result of their union;
  - (k) Charlie Claudie (father of Charlie (Kutini) Giblet renamed after Hugh Giblet);
  - (l) Barney Claudie and Minnie (Chinka) Doctor as a result of their union;
  - (m) Hughie (Tantuki) Temple; and
  - (n) Annie Butcher.
2. Those persons adopted by any Kuuku Ya'u People referred to in item 1 above in accordance with traditional laws and customs.

### **Northern Kaanju People**

1. The descendants of:
  - (a) Billy Moreton and his son George Moreton Snr;
  - (b) Big Johnny Nguulpam Horseboy as a result of union with his two wives Nellie and Mary Anne;
  - (c) Tom 'Flathead' Platt;
  - (d) Old Lady Rosie (wife of Ambrose Butt and Old Paddy);
  - (e) Annie Small as a result of union with her husband Ambrose Butt;
  - (f) Billy Boyd as a result of union with his wife Kathy Robertson;
  - (g) 'King' Bob Robertson;
  - (h) George Mamoose (also known as George Mamus);
  - (i) Victoria John;
  - (j) Charlie Boko;
  - (k) Billy Chungo;
  - (l) Annie Mullet, and of her parents Mickey and Nellie;
  - (m) Jim Copo (Cooper) as a result of union with his wife Elsie;
  - (n) Charlie James, brother of Tommy 'Flathead' Platt;
  - (o) Nancy Boyd as a result of union with her husband Mickey (Monkey) Boyd (also known as Monkey Gordon);
  - (p) Toby Horseboy;

- (q) Annie King, also known as Long Annie (wife of Paddy King), and of her brother Roy Stevens;
  - (r) Old Lady Mapoon (wife of English Barkley) and of her daughter Alice Mark;
  - (s) Dick York and of his brothers Larry York and Old Man Balrat;
  - (t) Annie Densley, also known as Short Annie, and of her brother Joe Sullivan;
  - (u) Paddy King;
  - (v) Nellie Fox (also known as Nellie Greedy) and of her sister Mary Ann Johnson;
  - (w) Annie Night Island (wife of Frederick Charles Mortenson), of Mary Ann and of Rosie Percy; and
  - (x) Wally David.
2. Those persons adopted by any Northern Kaanju People referred to in item 1 above in accordance with traditional laws and customs.

### SCHEDULE 3

#### 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 Cook Shire Council including any rights the Council, its employees, agents and contractors have:
  - (a) Under its local government jurisdiction and functions contained in the *Local Government Act 2009* (Qld), under the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) and any other legislation, for that part of the Determination Area within its local government area as defined in the *Local Government Act 2009* (Qld); and
  - (b) To enter land described in para 1(a) in compliance with any legislative requirements regarding notice or otherwise to:
    - (i) exercise any of the rights and interests referred to in para 1(a);
    - (ii) inspect, maintain and repair any infrastructure facilities and other improvements; and
    - (iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.
2. Any other rights and interests:
  - (a) held by the State of Queensland or Commonwealth of Australia; or
  - (b) existing by reason of the force and operation of the Laws of the State or the Commonwealth.

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 6023 of 2002**

**BETWEEN:** **BESSIE HOBSON, FRANK HOLLINGSWORTH, LLOYD HOLLINGSWORTH, JEAN MOSBY, GEOFFREY PASCOE, VINCENT TEMPLE, PHILLIP WALLIS, DOUGLAS WILSON ON BEHALF OF WUTHATHI, KUUKU YA'U AND NORTHERN KAAJUNU PEOPLE**  
**Applicants**

**AND:** **STATE OF QUEENSLAND**  
**First Respondent**  
**COOK SHIRE COUNCIL**  
**Second Respondent**

**JUDGE:** **GREENWOOD J**

**DATE:** **28 APRIL 2015**

**PLACE:** **CAIRNS**

**REASONS FOR JUDGMENT**

1 The Federal Court of Australia convenes here today to make, and explain the reasons for making, orders under s 87 of the *Native Title Act 1993* (Cth) (the “Act”) that take effect as a determination of the traditional native title rights and interests of the native title claim group which is made up of three groups, the Wuthathi, the Kuuku Ya’u and the Northern Kaanju Peoples, over 1640 square kilometres of land and waters formerly the subject of pastoral holdings known as *Bromley* and *Boynton* in the north eastern part of Cape York Peninsula.

2 The application for a determination of native title under s 13(1) and s 61(1) of the Act by Phillip Wallis, Jean Mosby, Douglas Wilson, Lloyd Hollingsworth, Bessie Hobson, Geoffrey Pascoe, Vincent Temple and Frank Hollingsworth on behalf of the Wuthathi, Kuuku Ya’u and Northern Kaanju People was filed on 24 May 2002 (“Bromley”).

3 The description and plan of the Determination Area is attached to the orders published today as Sch 1.

4 The respondent parties have had the opportunity to consider the affidavit evidence of Wuthathi claimants, Johnson Chippendale and Moira Macumboy; Kuuku Ya’u claimants,

Lorraine Clamont, Albert Doctor and Ivy Hobson; and Vincent Temple, a Northern Kaanju claimant, filed by the applicant in relation to occupation of the Determination Area. The parties are agreed that s 47B of the Act applies to the former pastoral leases now amalgamated and properly described in Sch 1 to the proposed orders.

5 The application was duly registered on the Register of Native Title Claims and the notification period for the purposes of s 66 of the Act closed on 26 November 2003.

6 The State of Queensland and the Cook Shire Council remain as the only respondents to the application.

7 On 9 May 2013, the application was amended to add an additional apical ancestor for the Northern Kaanju People and to amend the description of one of the lots the subject of the claim. The application was significantly amended on 9 December 2014 to remove the names of deceased members of the applicant group; to update the claim group description; to provide that no area of esplanade is the subject of the application; and to ensure that the claimed native rights and interests closely reflect the formulation of those rights reflected in the proposed orders.

8 As a result of a number of directions hearings and case management hearings, the parties to the application reached in-principle agreement that exclusive native title rights and interests exist in the Determination Area. The agreement under s 87 of the Act annexing proposed draft orders was filed in the Court on 19 December 2014.

9 Section 87 of the Act provides that the section *applies* if, at any stage of the proceedings (after the expiration of the period specified in the notice given under s 66 of the Act), an agreement is reached between the parties on the terms of an order the Federal Court might make in the proceedings; and, the terms of the agreement in writing signed by, or on behalf of, the parties are filed with the Court; and, the Court is satisfied that an order in, or consistent with, those terms would be within the *power* of the Court. Once those preconditions are satisfied, the Court may, if it appears to the Court *appropriate* to do so, make an order in, or consistent with, the terms of the agreement without holding a hearing of questions of fact and law in relation to the application: s 87(1)(a), (b) and (c); s 87(1A); and s 87(2).

10 In determining whether it is appropriate for the Court to make the proposed orders, emphasis is placed upon whether the agreement has been genuinely and freely made on an

informed basis by all parties represented by legal advisers. Having regard to the history of the State's engagement in the analysis of native title rights and interests in relation to land and waters throughout Queensland and the resources and expertise available to the State in determining the legal status of particular land and waters, the State's legal advisers are in an advantageous position to examine the precise content of an applicant's determination application under the Act. Although, in my view, it is not necessary for the claimant group to file a substantial body of evidence of the kind that would otherwise be required in the determination of the merits of a claim at trial, it is, in my view, necessary for the Court to be satisfied that the terms of the s 87 Agreement are, as Chief Justice French has observed, "rooted in reality": *Native Title – A Constitutional Shift?*, University of Melbourne Law School, JD Lecture Series, French CJ, 24 March 2009; *Wik and Wik Way Native Title Claim Group v State of Queensland* [2009] FCA 789; (2009) 258 ALR 306 at [16]; *Kuuku Ya'u People v State of Queensland* [2009] FCA 679 at [12] – [15].

11 The question of whether the terms of the agreement are rooted in reality simply requires *some material* to be before the Court upon which it can act in reaching the statutory state of satisfaction as to the appropriateness of making the orders.

12 In this case, the parties have been represented by experienced lawyers in reaching the terms of the agreement for the purposes of s 87 of the Act.

13 Section 94A of the Act requires that an order for determination of native title must set out details of the matters mentioned in s 225 of the Act which must be read together with s 223 of the Act. These sections give meaning to the terms "determination of native title" and "native title" and "native title rights and interests".

14 In *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 at [76], Gleeson CJ, Gummow and Hayne JJ treated the statutory elements contained in s 223 as central. The mandatory requirements for a determination of native title are these. The native title rights and interests must be communal, group or individual rights and interests. They must be rights and interests in relation to land or waters. They must be possessed under the traditional laws acknowledged, and the traditional customs observed, by Aboriginal peoples or Torres Strait Islanders. Aboriginal peoples or Torres Strait Islanders by their law and customs must have a connection with the land or waters, and the rights and interests must be recognised by the common law of Australia.

15 Orders under s 87 of the Act take effect not only inter-parties in the resolution of claims made in the proceedings but represent an independent judicial determination, in the exercise of the judicial power of the Commonwealth, that may be asserted, as a matter of law, against anyone.

16 A determination of native title expresses the recognition and protection of those rights and interests, in relation to land and waters defined and described in s 223 of the Act, which find their *origin* in traditional laws and customs acknowledged and observed by Aboriginal peoples: *Members of the Yorta Yorta Aboriginal Community v Victoria* at [75] and [76], Gleeson CJ, Gummow and Hayne JJ.

17 A determination of native title requires the Court to determine who are the persons or group of persons who hold the common or group rights comprising the native title; the nature and extent of those rights and interests in the Determination Area; the nature and extent of any other interests; and the relationship between the native title rights and interests and those other interests, in the Determination Area (s 225 of the Act).

18 In determining these matters in relation to the claim on behalf of the Wuthathi, Kuuku Ya'u and Northern Kaanju People, I have had regard to the *Overview of Connection Material for the Bromley Native Title Claim* dated October 2014 and two affidavits by Professor Athol Chase and Dr David Thompson. A number of affidavits by members of the claim group deposing to occupation in and exercise of native title rights and interests on the Determination Area have been filed in the proceedings. This evidence has been also considered by the State of Queensland and the Cook Shire Council.

19 There is no doubt as to the breadth of anthropological experience that Dr Thompson and Professor Chase have with the people of northern Cape York. Dr Thompson has worked in the region since 1969. Professor Chase commenced residence and anthropological field work at Lockhart River in 1971. Their work in this instance relates to connection with and occupation by the Wuthathi, Kuuku Ya'u and Northern Kaanju People of the land and waters of the claim area, the early society at sovereignty, the normative laws and customs acknowledged and observed by the society at and since sovereignty and the genealogical record.

20 In *Kuuku Ya'u People v State of Queensland* [2009] FCA 679 at [18]-[19], I referred to two events that demonstrate foundation features of that claim that also apply to this claim:



18 On 28 April 1789, Captain William Bligh and 17 crewmen were placed in an open launch after mutineers took over the ship *Bounty* north of the “Tonga Trench” in the Pacific Ocean. Bligh navigated the launch across more than 4,000 nautical miles to what is now East Timor. Bligh travelled west with the currents and ultimately reached land, on mainland Australia, at Cape Direction 20 nautical miles south of Restoration Island in the claim area. He then navigated north across Lloyd Bay to Restoration Island and made camp there in May 1789. He observed and recorded from Restoration Island, groups of Aboriginal people on the mainland (probably a community of 50 or more people) exhibiting common ceremonial markings, common articles and collective or organised behaviour. Bligh noted clear signs of visitation to Restoration Island and shelter structures erected there.

19 The second event occurred on 10 November 1848 when the Kennedy expedition arrived at the mouth of the Pascoe River. The botanist Carron and nine men camped at the river mouth for six weeks before the arrival of the ship, *Ariel*, and engaged with the Aboriginal community in ways which involved exchanges of fish, other food, items and a range of other regular contacts. Carron made a detailed record of these exchanges and encounters. The records speak to the society, its organisation, structure and customs evident at that time within claim area. These observations are consistent with Bligh’s observations and they represent very early evidence of organised connection with *place*. The *Overview* document draws upon the anthropological and linguistic work of Donald Thomson with the Kuuku Ya’u People in two field trips to the region of the claim area in 1928 and 1929 and the work of David Thompson and Athol Chase across the period of their own work and engagement with the Kuuku Ya’u People. The *Overview* document addresses extensive other reported evidence of contact, continuity of occupation and the content of normative laws and customs practised by the Kuuku Ya’u People, including the accounts of Robert Logan, Walter Roth and the seminal work of Donald Thomson. The *Overview* document deals with the historical observance of those laws and customs and the analytical anthropological methodology adopted by Thompson and Chase in formulating their opinions.

21 Professor Chase and Dr Thompson describe the claim group as a *tripartite group*.

22 The claim area that is delineated by pastoral lease boundaries consists, from a contemporary Aboriginal viewpoint in this area, of only portions of the broader territories which exhibit the three language groupings of the Wuthathi, the Kuuku Ya’u and the Northern Kaanju. These language territories share boundaries with each other with an approximate joint boundary point just south west of a site called “Michingun” which is at the southern inland extremity of the Wuthathi territory.

23 The claim group is also referred to by their collective identity *Pama Kungkaychi*, or “North Side People”. This identity category is based upon the sharing of a common mythological track and its associated shared initiation ceremonies as well as the exchange of marriage partners.

24

Professor Chase and Dr Thompson go on to say that:

28. *Wuthathi, Northern Kaanju and Kuuku Ya'u* people have maintained continuous links of biological descent (supplemented by adoptions) from, and identity with, the “classical” land-holding groups and identities recorded in and around the claim area from the last century and in various written sources since e.g. Parry-Okeden 1897; McConnel 1939, Thomson 1933, Thomson 1972, Hale 1964; Chase 1980; Chase 1996 (*Wuthathi Land Claim to Ten Islands off Cape Grenville*); Thompson and Chase 1997 (*Kuuku Ya'u Land Claim to Iron Range National Park*); Smith 2000a; Smith and Claudie 2003. Each group also was an applicant claimant group for, respectively, the following native title claims: *Wuthathi* QG150/98 (QC97/043) [This claim was eventually discontinued and a new *Wuthathi* native title claim was lodged and filed being the current *Wuthathi* #2 Claim (QUD 6022/2002).], *Batavia* QG 6152/98 (QC97/043) [This claim was eventually discontinued in 2013.] and *Kuuku Ya'u* QG 6016/98 (QC 95/001) [This claim was eventually determined in 2009].
29. Social relationships and identity are not simple matters in Aboriginal society and they possess their own complexities for the outsider to understand. While each of the three language groups discussed here contain narrower social categories (sometimes referred to as “clans” or family groups), they are also part of wider kinship-based social categories of regional Aboriginal (*pama* in the local vernaculars) identity, all of which provide the necessary warp and weft of formal systems of social relationships across a broad region. These relationships provide the framework for trade, marriage, ceremonial attendance, and so on. Common themes in this matrix of relationships are the formalised systems of classificatory kinship and descent. This Overview outlines the traditional groupings of these three language groups as part of discussion of the wider category of *Pama Kungkaychi* “northside people” that is inclusive of all of the claimants here.
30. The *Kuuku Ya'u* group of claimants identify themselves, and are identified by other Aboriginal people of the north-eastern and north-central Cape York Peninsula region, as the group of people whose native title rights and interests under Aboriginal law and custom are to that area of land associated with the *Kuuku Ya'u* language and which lies on the east coast from the Lockhart River mouth northward to the region of Bolt Head/Olive River in Shelburne Bay where they share a boundary area with the *Wuthathi* people. Their coastal lands extend inland across the coastal lowlands to a boundary area with the *Northern Kaanju*, and eastwards to include the seas, reefs and islands as far as the main Barrier Reef. The *Kuuku Ya'u* also retain recognition of clan, or estate, territories within the general linguistic territory, each associated with extended families of descent from a common ancestor. This has resulted in a recognition of a northern *Kuuku Ya'u* grouping (*Kungkay*), based on the northern estates, and a southern *Kuuku Ya'u* grouping (*Kanthanampu*). This claim deals with northern *Kuuku Ya'u* as the primary land-owning group having “core” rights, and with the southern grouping having usufructory or “contingent rights of use”, to use Sutton’s distinction (Sutton 2001b:14).
31. The *Wuthathi* group of claimants identify themselves, and are identified by other Aboriginal people of the north-eastern and north-central Cape York Peninsula region, as the group of people whose native title rights and

interests under Aboriginal law and custom, are to that area of land associated with the *Wuthathi* language. This area lies on the east coast north from the region of Bolt Head/Olive River in Temple Bay. *Wuthathi* coastal land extends northward to approximately Captain Billy Landing north of Shelburne Bay, and eastward to include offshore seas, reefs and islands as far east as the main Barrier Reef. *Wuthathi* inland territory encompasses the majority of the streams and tributaries that comprise the Olive River system, and the lands back to the Richardson Range, which these streams and tributaries drain.

32. The *northern Kaanju* group of claimants identify themselves, and are identified by other Aboriginal people of the north-eastern and north-central Cape York Peninsula region, as the group of people whose native title rights and interests under Aboriginal law and custom, are to that area of land associated with the *Kaanju* language which lies north of the Archer River in central eastern Cape York Peninsula and which extends north to the area of Schramm Creek, 22km north of the old Moreton Telegraph Station. *Northern Kaanju* land extends from just west of the Embley Range, (west of the Cape York Peninsula development road) eastward to include the drainage system of the upper Wenlock River, and the Pascoe River system as far east (approximately) as the junction points of Hann Creek and Hamilton Creek on the Pascoe River bank to the west of Wattle Hill station. The northeastern area of the *Northern Kaanju* homelands also takes in some of the upper reaches of the Oliver River system, within the Bromley claim area.

[citations omitted]

- 25 As to the content of the normative system of group rights and interests possessed under the traditional laws acknowledged and the traditional customs observed by the ancestors of, and members of, the claim group, the *Overview* provides an analysis of those matters in considerable detail. It is not necessary in these reasons to set out the elements of that analysis or the particular foundation for those matters.

- 26 Dr Thompson, in his affidavit, says that:

... at the time of sovereignty (through inference from the earliest records and the first anthropological writings), there were normative systems of traditional laws and customs among the Kuuku Ya'u, Wuthathi and Northern Kaanju.

- 27 Dr Thompson continues:

... the current normative systems therefore are part of continuing cultural systems. This is currently observable in Wuthathi, Kuuku Ya'u and Northern Kaanju activities, as well as in statements about their culture. The sequence of anthropological investigations of the Wuthathi, Kuuku Ya'u and Northern Kaanju provides a series of scholarly "snapshots" from which it is reasonable to infer the existence of continuous cultural systems, which include the normative systems.

28 It is sufficient for present purposes to observe that Professor Chase and Dr Thompson accept that the native title rights and interests which owe their origin to traditional laws acknowledged and traditional customs observed by the claim group in relation to the Determination Area are properly described as the right to possession, occupation, use and enjoyment of the area to the exclusion of all others, and the native title rights and interests in relation to Water (in the sense defined in Order 13 of the orders published today) are properly described as the non-exclusive right to take and use water for personal, domestic and non-commercial communal purposes.

29 The native title rights and interests so identified are subject to and exercisable in accordance with the laws of the State of Queensland and the Commonwealth of Australia and traditional laws acknowledged and traditional customs observed by the native title holders.

30 Section 55 of the Act requires that where the Federal Court proposes to make a determination that native title exists, the Court must, at the same time as, or as soon as practicable after, it makes the determination, make such determinations as are required by ss 56 or 57.

31 Order 14 of the proposed orders provides that the native title will be held by the common law holders being those persons referred to in para 6 of the determination with the following proviso in Order 15 that:

Within 12 months from the date of the determination, or such further time as the Court may allow, a representative of the common law holders must, by written notice to the Federal Court:

- (a) indicate whether the native title is to be held in trust; and
- (b) nominate a prescribed body corporate in accordance with s 56(2) or s 57(2) of the *Native Title Act 1993* (Cth).

32 On the basis of all the matters described in these reasons and in reliance upon the material described in the preceding paragraphs, I am satisfied that the Court has power to make the determination in the terms proposed and that it is appropriate to do so in all the circumstances.

33 The orders made today give recognition within the Australian legal system to the native title rights and interests of the Wuthathi, Kuuku Ya'u and Northern Kaanju People in relation to the Determination Area, borne out of traditions honoured and customs practised by

the ancestors of the claimants and observed and practised by their descendants and those persons who form part of the claim group by reason of adoption as described in Sch 2 to these orders.

34 The Court now publishes the orders comprising the determination of native title.

I certify that the preceding thirty-four (34) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Greenwood.

Associate:

Dated: 28 April 2015