

Pages 1 through 148 redacted for the following reasons:

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78B(2)(e)

**From:** Rachel Small  
**To:** "Tony.EELES@des.qld.gov.au"; "elizabeth.russell@dnrme.qld.gov.au"  
**Subject:** FW: Extent of claims and determinations in Northern Region  
**Date:** Friday, 12 October 2018 10:47:00 AM  
**Attachments:** [image001.png](#)  
[Parks wholly within a combination of NT Claims or Determinations.xlsx](#)  
[Parks wholly within NT Claims.xlsx](#)  
[Parks wholly within NT Determinations.xlsx](#)  
[Maria Creek NP.pdf](#)  
[image002.png](#)  
[image004.png](#)

Hi Tony

Lovely to speak with you. Intriguing (and timely) that this morning you have undertaken the exercise that I had just asked Elizabeth to do.

This I my DATSIP email address.

If you are able to share with me the protected areas wholly / partially in native title claims and determinations across Qld I would be most appreciative. Ive attached the previous work you undertook for me for northern region only when I was with QPWS.

If there is any question about sharing this information – Im not with QPWS, then I would be most grateful if you were able to share the methodology with Elizabeth as we have an SLA with DNRME for mapping services.

Kind regards

Rachel

**Rachel Small** | A/ Manager (Special Projects)

Cape York Peninsula Tenure Resolution

Department of Aboriginal and Torres Strait Islander Partnerships

T: 07 4036 5619 | M: N/A

**From:** SMALL Rachel [mailto:Rachel.Small@des.qld.gov.au]  
**Sent:** Friday, 12 October 2018 9:27 AM  
**To:** Rachel Small <Rachel.Small@atsip.qld.gov.au>  
**Subject:** FW: Extent of claims and determinations in Northern Region

**From:** SMALL Rachel  
**Sent:** Tuesday, 28 August 2018 2:02 PM  
**To:** ALTAFFER James; DUPUY Jacqueline; MLIKOTA Haylee  
**Subject:** FW: Extent of claims and determinations in Northern Region

Hi everyone

GIS has been able to provide the attached data sets. Given the most recent discussions with CYLC about process, some of those identified in the “wholly within determination area” may be low hanging fruit, and a priority once the current of forward plan parks have been well progressed. I wouldn't encourage a change to the forward plan to include these parks unless a direction is provided by management – there's plenty to do at present.

Regards

Rachel

**Rachel Small**

A/ Assistant Principal Ranger

**Northern Region | Queensland Parks and Wildlife Service**

Department of Environment and Science

T 07 4222 5063 | E [rachel.small@des.qld.gov.au](mailto:rachel.small@des.qld.gov.au)

**From:** EELES Tony  
**Sent:** Thursday, 23 August 2018 11:16 AM

R

R



**To:** SMALL Rachel

**Subject:** Extent of claims and determinations in Northern Region

Hi Rachel

Here are the lists of National Parks and Resources Reserves wholly within NT Claim and Determination areas.

I've included Maria Creek National Park in the determination table as it has only a small part of the park not within the determination area (see map). I'll leave it up to you if you want to drop it or not.

Also included is a list of parks that are wholly within a combination of claims or determinations. Please let me know if you need anything else.

Regards

Tony

**Tony Eeles**

Senior Project Officer

**Spatial Services | Queensland Parks and Wildlife Service**

Department of Environment and Science

-----  
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Page 155 redacted for the following reason:

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**From:** Rachel Small  
**To:** "EELES Tony"  
**Subject:** RE: ILUAs over the QPWS Estate  
**Date:** Tuesday, 16 October 2018 9:08:00 AM  
**Attachments:** image001.png  
image003.png

Hi Tony

This is a considerable amount of work [redacted] Third party personal information  
It may be that Craig dean is also interested in this data set as he has a Native Title officer commenced in Northern Parks and Forests [redacted] and this data may be of considerable importance.

Regards  
Rachel

**Rachel Small** | A/ Manager (Special Projects)  
Cape York Peninsula Tenure Resolution  
Department of Aboriginal and Torres Strait Islander Partnerships  
T: 07 4036 5619 | M: N/A

**From:** EELES Tony [mailto:Tony.Eeles@des.qld.gov.au]  
**Sent:** Tuesday, 16 October 2018 7:24 AM  
**To:** HINTZ Jannah <Jannah.Hintz@des.qld.gov.au>; Rachel Small <Rachel.Small@datsip.qld.gov.au>  
**Subject:** ILUAs over the QPWS Estate

Hi Jannah and Rachel

Here are the ILUAs over the estate. One spreadsheet has the five ILUA attributes you picked Jannah and the other is a summary of whether a park has an ILUA or not or part.

Regards  
Tony

**Tony Eeles**  
Senior Project Officer  
**Spatial Services | Queensland Parks and Wildlife Service**  
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Pages 157 through 234 redacted for the following reasons:

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78B(2)(e)



**From:** [Karrell Ross](#)  
**To:** [Peta L Simpson](#); [Linda A Craig](#); [Rachel Small](#); [Crag Carttling](#); [Deidree L Findlay](#); [Ross Macleod](#); [FIEN Georgianna](#)  
**Subject:** Eligible Interest Holder Consents - Decision  
**Date:** Friday, 9 November 2018 12:28:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Hi All

There has been a recent decision in regards to Eligible Interest Holder Consents and who has the “legal right” for Carbon offsets projects. The case looks at who has eligible interest holder consent for sequestration offsets projects and emissions avoidance offsets projects.

This was a test case which involved Abm Elgoring Ambung Aboriginal Corporation (ABM). The proposed project was initiated by the pastoralists (project proponent) who have leases over Harkness and Balurga – these are areas where native title has been determined. Some of the decision focusses on who is required to give consent as an “eligible interest holder”. In the case of ABM – in their determination in 2011, they gained the legal right to traditional burning of country. This has been a grey area for many carbon agreements in regard to who owns the land and the definition of an “eligible interest holder”. The likely ramifications, which CYLC has been an advocate of, is that emissions avoidance /sequestration projects – need to have the consent of the native title party as an “Interest holder” – even when there has been no determination made (so no RNTBC) but a native title claim has been lodged. There is also discussion about consent being provided by an ILUA.

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It’s a fairly long judgement, but gives some direction for the form of future Carbon Projects and who will need to provide consent.

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2018/2018fca1636>

I will be in Cairns next Friday 16<sup>th</sup> attending a workshop with stakeholders DES, Balkanu, etc to look at developing best practice models for Carbon Agreements for groups, in light of the Land Restoration Funding program that is looking as supporting carbon abatement projects. An outcome of the project will be to have to have a process and template for ILUAs for indigenous groups to work with.

kind regards

Karrell

## Federal Court outcome on Emissions

# Reduction Fund case

01 November 2018

The Federal Court has today handed down its decision in the case of Country Carbon Pty Ltd v Clean Energy Regulator.

The decision confirmed that section 28A of the Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI Act) is to be applied as it is drafted – project proponents are required to obtain eligible interest-holder consent for area-based emissions avoidance projects.

The Court has also held that whether a person has the legal right to carry out an Emissions Reduction Fund project is a matter to be established to the satisfaction of the Regulator in accordance with the law.

The Clean Energy Regulator welcomes the clarity provided by the Court on these matters.

The Clean Energy Regulator notes that the Federal Court's decision has a 21-day appeal period. During this period we will consider the Court's judgment, and continue to administer the Emissions Reduction Fund in accordance with the decision.

## Karrell Ross

Manager – Post Land Transfer Support Team

**Cape York Peninsula Tenure Resolution Program**

Department of Aboriginal and Torres Strait Islander Partnerships

P 3003 6504 M  Mobile phone number E [karrell.ross@datsip.qld.gov.au](mailto:karrell.ross@datsip.qld.gov.au)

Level 9, 1 William Street, BRISBANE QLD 4001

[www.datsip.qld.gov.au](http://www.datsip.qld.gov.au)

**From:** Bruce Wannan  
**To:** "ROBINSON Michael"  
**Bcc:** "FREEMAN Alastair"  
**Subject:** RE: KUR-world: myola palm  
**Date:** Monday, 19 November 2018 4:12:59 PM  
**Attachments:** [image001.png](#)  
[Mitchell report on A myolensis.pdf](#)  
[image003.png](#)  
[image005.png](#)

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Hi Michael,

I see that you may be making a site inspection this week. Let me know if you would like a local guide!

I have looked at the comments on the Myola Palm.

The comments look pretty good. I would make the following comments/ suggestions:

- The field identification of *Archontophoenix myolensis* is difficult especially in juvenile individuals. Most people undertaking surveys have assumed that all palms in the creeks in the Myola area are *Archontophoenix myolensis* (quite appropriately). The key think in my opinion is the restricted nature of the habitat. *A.m* is truly a restricted, endangered, endemic which is unusual even by Wet Tropics World Heritage Area standards.
- It would be appropriate to consider the catchments of the side creeks to be *critical habitat* for *Archontophoenix myolensis*. As you note, even if parts of the upper catchment are not directly cleared, the impact of water abstraction and waste water introduction may seriously compromise the habitat further downstream and offsite.

I have attached a copy of a report undertaken some years ago. It is by no means perfect but may provide some additional background.

I would also make following additional comments on other aspects of the flora survey:

- Assessment of species occurrence – the survey lists species that do not occur in the local area and missed some that are certainly common.
- Assessment of vegetation types – the survey It fails to recognise the areas of currently mapped non-remnant that are, in fact, remnant vegetation based on their height and species composition. Observations on-site with KEC and the proponent's representatives in 2016 clearly indicated that there were areas which had been cleared prior to the development that were remnant vegetation - based on the 70 / 50 rule (70% of height and 50% of cover by typical species rule). A site inspected at 16.82683333, 145.61158333 demonstrated this clearly; additionally, there remained substantial areas which contained unrecognised remnant vegetation.

The significance of these errors in regard to the impact assessment of the proposed development means that there has already been over 46 ha of habitat cleared (Chap 8: page 3), and that there is a further 170 ha of rainforest habitat that will be cleared (Table 8-2).

R

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The proposed development will detrimentally impact a bioregionally significant corridor for the Wet Tropics World Heritage Area which connects the southern part of the Wet Tropics World Heritage Area to the northern part via the Black Mountain area. The critical value of this corridor has been recognised for over 20 years and was one of the main reasons for the development of Myola Planning Study which recommended that the area be not developed. The corridor protects the ecological and evolutionary connectivity of many Wet Tropics species that together were responsible for the World Heritage listing.

Give me a ring if you need any further information on these comments.

Regards

**Bruce Wannan**

Senior Planning Officer | Cape York Peninsula Tenure Resolution |  
Economic Participation |  
Department of Aboriginal and Torres Strait Islander Partnerships

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**Free call from a landline to the office: 1800 153 826**

---

**From:** ROBINSON Michael [mailto:Michael.Robinson@des.qld.gov.au]

**Sent:** Tuesday, 13 November 2018 6:15 PM

**To:** Bruce Wannan <Bruce.Wannan@datsip.qld.gov.au>

**Subject:** RE: KUR-world: myola palm

**Importance:** High

Hi Bruce,

Sorry for the delay. See attached draft comments on the palm. I've extracted it from the OCG template: the first column is the chapter reference; second column is the issue/s; third column is recommendation.

Could you please comment on whether I've captured the main issues. Happy for you to make track changes and insert comments.

I've also attached the flora and fauna chapter. Other docs can be accessed from the hyperlink in my email below.

It looks like I might be visiting the site next Tuesday or Wednesday. Alistair Freeman might also attend. Would be good to chat before then.

Cheers, Mike

**Michael Robinson**

Principal Environmental Assessment Officer

**Impact Assessment and Operational Support**

**Regulatory Capability & Customer Service Branch**

Department of Environment and Science

-----  
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---

**From:** Bruce Wannan  
**Sent:** Wednesday, 31 October 2018 9:44 AM  
**To:** ROBINSON Michael  
**Subject:** RE: KUR-world: myola palm

Mike ,

I am happy to review these.

Regards

**Bruce Wannan**

Senior Planning Officer | Cape York Peninsula Tenure Resolution |  
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**From:** ROBINSON Michael [mailto:Michael.Robinson@des.qld.gov.au]  
**Sent:** Tuesday, 30 October 2018 2:50 PM  
**To:** WANNAN Bruce <Bruce.Wannan@des.qld.gov.au>  
**Subject:** KUR-world: myola palm

Hi Bruce,

I'm currently reviewing the draft EIS for the KUR-world Integrated Eco-Resort project, a coordinated project being assessed by EIS under the Office of Coordinator General:  
<https://www.statedevelopment.qld.gov.au/assessments-and-approvals/kur-world-integrated-eco-resort.html>

Have you had any involvement in the assessment to date? The Myola Palm, *Archontophoenix myola*, was found in the project area and offsite along Warril Creek associated with RE 7.11.1 &

RE 7.11.7. The consultants, NRA, were not definitive about identifying it to species level because the plants were either young or not in flower. They have assumed all potential plants are Myola Palms. Considering it is listed as endangered under the NC Act and the EPBC Act I'm surprised that they have not conclusively identified it. Plants with that conservation status must be assessed against the significant residual impact guidelines and may be subject to offset conditions.

The palm is not proposed to be cleared but may be subject to indirect impacts from potential changes to water velocity, water quality and groundwater/surface water interactions. The potential impact area was recorded as 30ha which is a 10% loss of the current extent of the species on the project site.

I'm drafting some EIS review comments for the DES submission regarding MSE values. Would it be OK if I sent the protected plants ones through for your review to ensure that I don't miss anything?

Cheers, Mike

**Michael Robinson**

Principal Environmental Assessment Officer

**Impact Assessment and Operational Support**

**Regulatory Capability & Customer Service Branch**

Department of Environment and Science

-----  
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<p>Section 8.3.2.4 Threatened and near threatened flora species, p.8</p>	<p><b>Survey of the Myola Palm</b> The assessment of the Myola Palm, <i>Archontophoenix myolensis</i>, an endangered plant listed under the Nature Conservation (Wildlife) Regulation 2006, is not adequate. It was stated that the plants located on the project area precluded definitive identification to species level because the plants were either young or not in flower.  The main objective of a flora survey is to locate any endangered, vulnerable or near threatened plants that may be present in the clearing impact area or in areas potentially subject to indirect impacts.  A targeted survey is required to identify the plants with a survey effort commensurate with the plant's endangered conservation status.</p>	<p>1. A targeted survey of Myola Palm, <i>Archontophoenix myolensis</i>, is required to be undertaken by a suitably qualified person to definitively identify the species presence both on the site and in the local area. Surveys should be timed to co-incide with flowering and fruiting events and follow survey requirements detailed in the Flora Survey Guidelines - Protected Plants (DEHP, 2016).  2. The survey must target all watercourse and drainage lines within the site. The survey must also extend offsite along the full extent of Cain Creek, Haren Creek, Owen Creek, and the tributary of Warril Creek that will receive waters from the site.</p>	<p><b>Commented [RM1]:</b> Quantify radius? Define 'local area'?</p>
<p>Section 8.3.2.4 Threatened and near threatened flora species Figure 8-4 Appendix 5; Appendix G, Hoskins 2017, Figure 7, p.13</p>	<p><b>Mapping of Myola Palm habitat</b> 'Figure 8-4 Regulated vegetation management mapping (VM Act) and observed locations of Threatened and Near Threatened flora' depicts "Potential <i>Archontophoenix myolensis</i>" plants within or in close proximity to the development footprint. This contrasts with section 8.7.1.1.2 of Chapter 8 that states the plant is unlikely to be directly affected by clearing. The assessment provides no information on the likely population extent and population density of the Myola Palm both on or offsite. Occurrence records and likely habitat factors should provide a means of estimating known and potential habitat for the species. This area should be presented as a map.</p>	<p>1 The population extent of Myola Palm needs to be recorded by capturing GPS points; and the population density determined by recording the total number of individuals comprising the population. Where plants remain unidentified, a specimen must be lodged with the Queensland Herbarium for formal identification.  2. A new or amended Figure 8-4 is suggested to include both known and potential habitat (extent) of threatened flora. An amended figure should include the Myola Palm records mapped in Figure 7 of Hoskins (2017) and any additional survey results.</p>	<p><b>Commented [RM2]:</b> Not all of the records from this figure are depicted in fig 8-4</p>

**Myola Palm impact assessment**

Table 8-3 states that the potential impact area for the Myola Palm is 30ha (10% of the species' potential habitat onsite). Areas that contain plants that are endangered or vulnerable are considered MSES - protected wildlife habitat. There has been no assessment against the Significant Residual Impact Guideline, DSDIP, 2014 (SRI guideline) to determine whether project impacts on the plants will likely be significant.

Main threats to the species identified in the 'Approved Conservation Advice for *Archontophoenix myolensis* (Myola Achantophoenix) (2008)' include urban development and human disturbance. A potential threat is hydrological change, including dams and weirs placed on inhabited streams. The assessment has not reviewed the Conservation Advice or provided a discussion on the likelihood of these threats or proposed mitigation measures.

New or amended figures are required to more accurately represent the extent of impacts from the proposed development.

1. Any Myola Palms subject to clearance or within 100m of development (an area considered to be supporting habitat for a protected plant) must be assessed against section 3.5.1, Pt 3 of the Guideline. Areas that contain plants that are endangered or vulnerable are considered MSES - protected wildlife habitat. There has been no assessment against the Significant Residual Impact Guideline, DSDIP, 2014 (SRI guideline) to determine whether project impacts on the plants will likely be significant.

2. Palms proposed to be removed must be spatially represented at an appropriate scale in relation to the proposed clearing footprint. Note that indirect impacts will occur if there is clearing proposed within 100m of the plants.

3. A discussion must be provided on the likely threats to the species from the proposed development including both direct impacts from habitat clearing and indirect threats such as changes to hydrology.

4. Mitigation measures must be provided that show actions taken to avoid and minimise any clearance of Myola Palms. This should address whether the species can be propagated and what specific rehabilitation measures will be undertaken.

**Commented [RM3]:** I haven't included any requirements about clearing permits. That is more pertinent to post-approval and can be conditioned. At this stage the priority is to have a more robust assessment on the likely presence of the plant and potential impacts.

**Commented [RM4]:** A rehabilitation plan is proposed in task 3 of 21.2.2 Flora and Fauna of the EMP.

8.7.5.1  
Potential residual impacts to flora

Table 8-3, p.27

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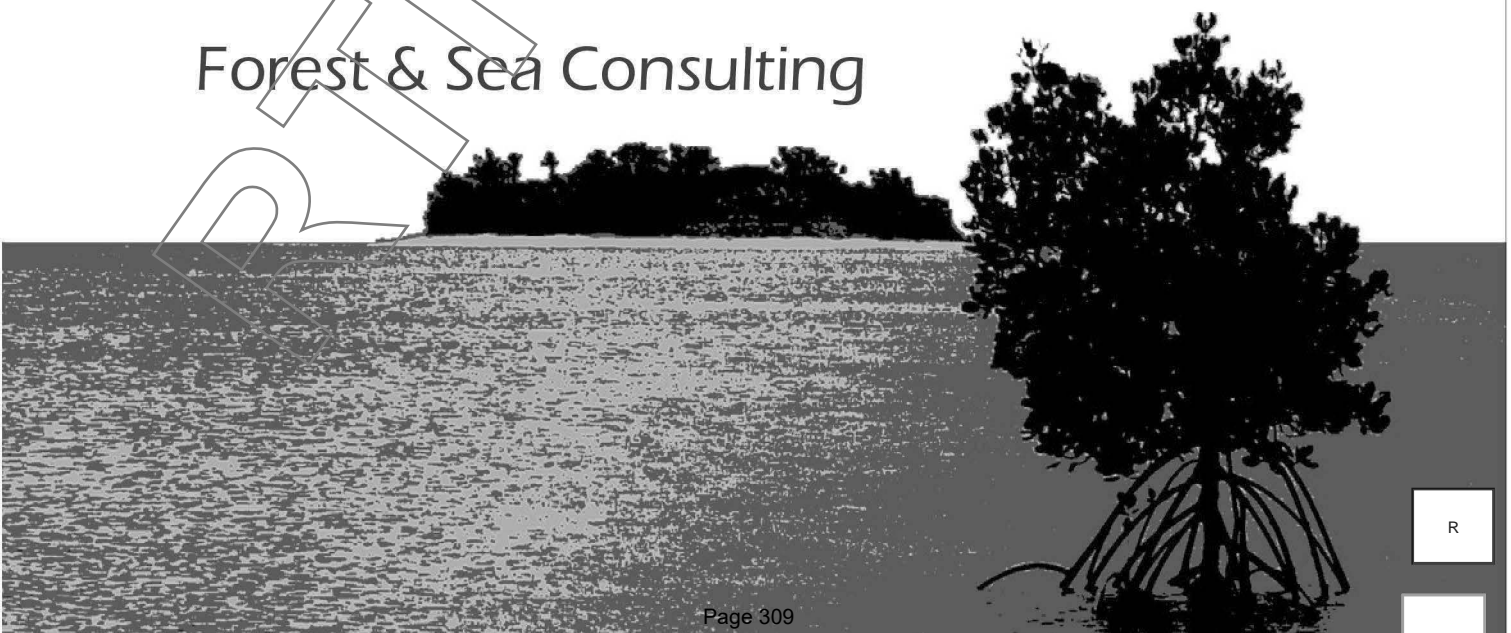


Present Distribution and Viability of the  
Myola Palm: *Archontophoenix myolensis*  
and an Opportunistic Search for  
Endangered Fauna

**Environment North**

April 2006  
C136-C100c-am

Forest & Sea Consulting



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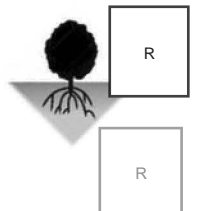
*Signed on Behalf of Forest & Sea Pty Ltd*

*Director's Signature ...*

*Date...*

*Copy Number...*

RTI RELEASES



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## Annexures

**Annexure 1** – Myola Palm Survey Plan

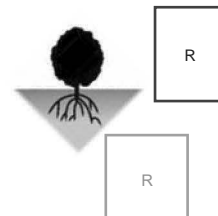
**Annexure 2** – Myola Palm Species Description

**Annexure 3** – Visual Guide to *Archontophoenix* Palms

**Annexure 4** – Map of Myola Palm Locations

**Annexure 5** – Aerial View of Main Stand

**Annexure 6** – Photo Essay of Myola Palms and Habitat



# 1 Introduction

## 1.1 Purpose of Study

The presence of rare and threatened species has been raised as a potential development constraint on future development of the Myola area. Of most concern is a rare palm known as the Myola palm (*Archontophoenix myolensis*) which is only known from the Myola study area and the adjacent Barron River. Also of concern was the possible existence of endangered stream-dwelling frogs that were thought to inhabit the creeks of the study area. This report was commissioned to provide more information on location and number of remaining Myola Palms and to comment *where possible* on the existence of the frogs and other species listed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

This report was prepared by Andrew Mitchell of Forest & Sea Consulting between December 2005 and March 2006. It is based on a desktop and field assessments of Myola Palm distribution and on discussions with other local botanists.

## 1.2 Study Area

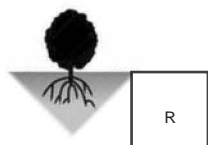
The investigations extended to all areas where Myola Palms were thought to be potentially present, including places outside the Myola Structure Plan planning area as shown on **Annexure 1**.

## 1.3 Information on Myola Palms

Myola Palms are classed as Endangered under both State and Commonwealth Legislation. Interfering with the palms would require a permit under the Queensland Nature Conservation Act and under the Commonwealth Environmental Protection and Biodiversity Conservation Act.

It is possible that Myola Palms were once more common than they are now. In 1987 when the author was involved in the development of the Townsville Palmettum under the direction of the late Robert Tucker (an internationally recognised palm authority) there were discussions about the presence of several varieties of Alexandra palm and an ongoing effort to categorise these varieties. Robert reported unsourced information on how 'heart of palm' was a dish served at the Kuranda Pub. Heart of palm is obtained by cutting down palm trees and removing the soft white leaf bud from crownshaft, which is at top of the trunk. Naturally, the palms are destroyed. Widespread collection of palm hearts around Kuranda was said to have been taken place several decades ago to keep the pub supplied, with local aborigines actually doing most of the collection. This according to Robert was the reason why Myola Palms are rare today.

The official history of the Myola Palm begins in 1994. Until 1994, there was only one recognised *Archontophoenix* palm in Far North Queensland, the ubiquitous Alexandra Palm (*A. alexandrae*). A revision of the genus *Archontophoenix* resulted in three new locally occurring species being recognised in addition to the regular Alexandra palm. The Myola palm was one of these newly recognised species. Superficially the Myola palm is similar to other *Archontophoenix* species, however a number of features distinguish *A. myolensis* as a genuine species rather than a taxonomic artefact. A full list of these features is provided in the original description (Dowe and Hodel 1994) - **Annexure 2** and an illustrated guide is presented in **Annexure 3**.



Prior to European settlement the Myola palm appears to have been the only *Archontophoenix* sp present in the Kuranda-Myola area (A K Irvine and J Clarkson pers comms). Conversely the Myola palms is not known to occur outside the Kuranda-Myola area. The Myola palm's entire known distribution is limited to the lower reaches of Warril Creek and an approximately 5 km long section of the Barron River between Warril Creek and the Barron Falls. The small non-overlapping distribution of Myola palms provides some separation from related species which occur in the nearby lowlands and uplands and has possibly helped to protect *A. myolensis* from hybridisation or competition with these species. Myola palms occupy at an altitude range of 300-400 m, Alexandra palms generally occur below 300 m and the Walsh River Palm (*A. maxima*) occurs along creeks to the east and north of Tinaroo Dam from 800-1200 m altitude. Peak flowering of *A. myolensis* is also a few months out of synchrony with *A. alexandrae* which also reduces the risk of hybridisation. It is not known if *A. myolensis* can hybridise, however *A. alexandrae* does create sterile off-spring with *A. cunninghamii*, a species from central and southern Queensland.

Currently, all *Archontophoenix* species are grown in many landscapes in the Kuranda area and some have even begun to naturalise in gullies and forest edges. The presence of all *Archontophoenix* species and the wide range of habitats in which each of these species can be found (eg. full sun, full shade, in creek, on hill) creates a need to very careful in establishing the species of any given palm. Palms vary in appearance depending on their growing conditions and many of the characters used to identify Myola palms occasionally occur in other species (eg. a glaucous crownshaft).

## 2 Methods

### 2.1 Desktop Survey

The proposal for this field study was prepared based on a rapid review of regional ecosystem mapping for potential palm habitat and of herbarium records for known Myola Palm locations. **Annexure 1** shows the distribution of remnant vegetation and of herbarium records of Myola Palms.

Regional ecosystem mapping (2001 and 2003) was used to predict where the palms were most likely located, however it became apparent that the main population of Myola palms was located on a creek in land that is mapped as "cleared" in regional ecosystem mapping so this approach had to be abandoned. Herbarium records were also of little value in determining the location of the remaining palms as most of the records predate GPS and the locational information is of low accuracy. As a result, this study had to change approach after being commissioned. The alternative approach was interpretation of aerial imagery, which is discussed in a later section.

### 2.2 Discussions with Local Experts

Discussions were held with most locally recognised professional and amateur botanists regarding the known distribution of Myola Palms. Botanists consulted during this survey included:

- Bruce Wannan (Biodiversity Officer – Environmental Protection Agency);
- Mike Olsen (LAMR Consulting);
- Nigel Tucker (Biotropica Australia);
- Robert Jago (Environment Officer –Douglas Shire Council);
- Peter Stanton (Vegetation Mapping Consultant);

Present Distribution and Viability of the Endangered Myola Palm  
Myola Planning Study – Environment North  
by *Forest & Sea Consulting* (C136-C100-am)



- Gary Sankowski (Retired, previously Yuruga Nursery);
- Anthony Irvine (Retired, previously CSIRO);
- John Clarkson (Botanist - DPI Mareeba); and
- John Dowe (Botanist JCU Townsville).

John Dowe is one of the authors who prepared the formal description of *A. myolensis* in 1994.

John Clarkson has previously investigated the distribution on Myola Palms and had prepared a written report. The report no longer exists however John was able to provide valuable information on the distribution of the palm more than one decade before the present report.

Anthony Irvine has a forest garden which includes plantings of all *Archontophoenix* species. Having all of the species in a common environment provided a means of determining which features could be used to distinguish between the palms in the field. It should be noted that Anthony planted the palms prior to the description of *A myolensis* and the seeds were therefore legally collected.

### **2.3 Research**

The Myola palm was formally described on 1994, by John Dowe and Donald Hodel. A copy of the relevant sections of the published species description is presented in **Annexure 2**. No other formal research on this species could be found.

### **2.4 Species Comparisons**

As all of *Archontophoenix* species have been grown horticulturally around Myola and have been dispersed across the landscape, it is vital that anyone investigating Myola Palms be able to identify Myola palms from other *Archontophoenix* species. At the time this study was commissioned, there was no satisfactory guide that could be used for identifying each of the species of palms in the field. The best materials at hand were the original species description by Dowe and a descriptive fact sheet from the Palm and Cycad Society of Australia (PASCOA). Unfortunately, those resources made use of features which not possible to observe in many cases, for example fruit shape as most palms did not have fruit. Existing descriptions also related to palms growing in different habitats. Much of the variation in *Archontophoenix* palms is due to their growing conditions, so it is vital to observe each species in similar conditions to build up confidence in palm identification. The visual guide is presented in **Annexure 3**.

### **2.5 Aerial Photo Interpretation**

Access permission was not available to all landholdings with potential palm habitat as determined by the initial desktop survey/habitat modelling and it was not possible to investigate these properties on the ground. However, recently flown aerial photography proved to be of large enough scale that in many cases, palms could be spotted directly on the contact prints or even more efficiently on the scanned aerial photography. The aerial photographs provided full stereo pair coverage of the study area and were at a scale of 1:13 000 taken for Mareeba Shire Council in late 2005/early 2006.

Two approaches were used, the first was to use a full size stereoscope to observe the aerial photos in stereo and the other was to review digitally enhanced aerial photography using a GIS. Use of a stereoscope enabled small creeks to be identified and for old growth forest to be distinguished from regenerating forest cover. Potential palm habitat



was mapped directly on a GIS which displayed georeferenced copies of the scanned aerial photographs (provided by GIS dept of Mareeba Shire Council). The GIS provided coordinates for locating the potential habitat in the field. Unfortunately the contact prints (aerial photos) were very dark and grainy (underexposed?) and palms could not reliably be distinguished from other vegetation.

The digitally enhanced aerial imagery had been processed to improve the colour and visible detail and although it could not be used to map the landscape in the manner of the stereoscope, its increased resolution allowed groups of palms to be identified. Groups of palms have a different canopy texture to trees. Solitary palms are difficult to identify in forest contexts. Areas identified as potential palm habitat with the stereoscope were revisited with the GIS at high magnification and some were removed as potential sites as it became clear that no palms were visible in the canopy. Small palms or even mature palms which do not rise above a canopy (eg. near where railway crosses Warril Ck) cannot be found by aerial photographic interpretation so there is some potential for palms being missed by this technique.

A map of the areas identified by aerial photo interpretation for subsequent field investigation is presented in **Annexure 4**.

## **2.6 Field Surveys**

The Barron River distribution of Myola Palms was investigated by rafting down the river on 8 February 2006 and taking GPS points and photos of all palms encountered on either side of the river. Creeks entering the Barron were also investigated by this method as far as they were navigable. GPS points and photos of the palms on the Barron will be available on request.

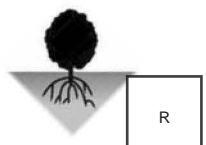
A drive-by survey was taken on 25 March 2006 of the road network within the study area and all road fringes and creek crossings were scanned for palms.

The majority of field survey effort however was on foot and was directed at the locations that were identified from the aerial photography. Boundaries of these areas were preloaded into a GPS to enable them to be efficiently located in the field.

## **2.7 Fauna Survey**

The fauna survey was opportunistic only, meaning that whilst searching palm habitat, red goshawks and endangered frogs would be reported if found. During the study all watercourses encountered were searched for tadpoles, mature frogs and a general eye was kept out for all raptors.

No frogs of any type were encountered and this is probably a result of frogs being nocturnal. Although opportunistic fauna surveys often turn up interesting fauna, they are not a substitute for targeted surveys. A targeted survey would be required if red goshawks or rare frogs were known to occur in the area. As this opportunistic fauna survey was only conducted in areas where palms were thought to be present, a separate preferably targeted fauna survey would be needed to cover areas which were not subject to field inspection during this survey. In total, the opportunistic search effort that was expended was approximately 12 hours.





Some non-target species were detected including a grey goshawk which was seen perched in mature regrowth acacia trees at Warril Creek. Rafting down the river in the early morning, past the tall riparian trees, provided a reasonable opportunity to hear or see raptors, however none were detected. No tadpoles were detected in any of the pools encountered either despite some pools appearing to be suitable habitat. The only finding that can be made is that this opportunistic study did not find the animals and that if they occur in the study area, it is probably at low density.

It should be noted that the upper sections of creeks within the study are relatively or completely undisturbed rainforest creeks and potentially provide suitable habitat for many species of rainforest fauna including rare species.

### 3 Findings and Discussion

#### 3.1 Reliability and Coverage of Survey

All of the Myola Structure Planning Area was examined using aerial imagery and the results presented in this report should have a reasonable reliability. Individual palms can be missed by such a survey, however large colonies of palms are reasonably visible. Creeks which closely match the known habitat preferences of the Myola Palm can also be identified. The most promising of these areas were investigated in the field.

#### 3.2 Distribution Myola Palm

Myola palms were only located in the Warril Creek system and on the banks of Barron River (refer **Annexure 4-5**). Two palms were found on the Barron River upstream of the confluence of Warril Creek with the Barron and it is probable that these palms are the result of dispersal of seed by birds, rather than from seed dispersed down river from unknown palm populations. Due to rapid decrease in rainfall that occurs when the Barron River is followed inland, it is unlikely that suitable habitat exists upstream of the study area. Birds also relish most native palm fruits, especially fruit from Alexandra palms and it is hard to imagine that Myola palms aren't similarly attractive. Considerable dispersal of Myola palms seed probably occurs within the study area.

Downstream of Warril Creek, the number of Myola Palms on the banks of the Barron River increased, however the palms were still at very low densities (~50 palms in 5 km). Single palms and occasional small groups were located along the river at varying intervals of between 100-400 m. Directly opposite the confluence of Warril Creek and the Barron is a small rainforest creek that penetrates inland for approximately 50 m before becoming unnavigable by raft. No Myola palms were visible in the unnavigable part of the stream of which a few tens of metre were visible. This creek had approximately 10 semi-mature palms and after Warril Creek, has the second highest density of palms. Most of the Myola palms were located on the northern bank of the Barron River. They seem to prefer habit where bottlebrushes or Lomandra might grow. These places generally have shoals of river stones and coarse sand which is permanently moist. Palms were most common in areas with semi shade or which were shaded from the dry season and afternoon sun (banks facing the south and east respectively).

Warril Creek contains probably 75% of all remaining Myola Palms. Just downstream of the confluence of Warril Creek with the Barron, there is an overflow channel (50 m long) and sandy level that supports a small stand with approximately 50 immature palms, as well as approximately six very large palms. Between the confluence and the road bridge





over Warril Creek are approximately 5-10 large immature and mature palms. Upstream of the road bridge, in an area that can be viewed from the concrete bicycle path, is the main population of palms with approximately 80 semi-mature and mature palms. Nearly all fully mature palms in existence occur in this short section which is approximately 100 m long. The section ends at a low voltage power line clearing which cuts through the riparian strip. Palms do occur upstream of the power line at lower densities and most of these palms are seedlings or semi-mature palms. Very few of those palms would be capable of producing fruit as the palms have not yet reached fruiting age and it is likely that these palms represent growth from bird dispersed fruit. Only the dense stand of palms immediately upstream from the road bridge would be self-sustaining.

Several mature palms were located on the western branch of Warril Creek (ie. The branch of the creek that splits from the main creek approximately 100m upstream of the road bridge). The lower 100 m of this stream supports approximately 10-15 large palms. were located. Numerous immature palms were located along the edges of the stream, number from 100-200 with most palms having either no trunk or less than 3 m of trunk. The western branch of the creek was followed for approximately 900 m to Kingfisher Road. Small palms were visible such regularity along this stream, it is likely that some mature fruiting palms occur upstream of areas investigated. Three palms which appeared to be of flowering size were visible from the road reserve in the creek to the west of Kingfisher Rd (permission to access this property had not been sought).

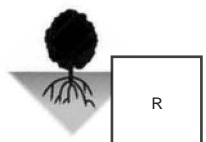
A single mature palm was also located at the top of crest of a ridge approximately 1 km from the main stand. This single individual was quite old and may have grown before the area was developed. It was the strongest demonstration that whilst the palm is usually associated with water, it may occasionally occur on rainforest hills as well as along creeks. In ecological terms, the fundamental niche of the palm (where it is capable of growing) includes creek banks and rainforest hills. However its realised niche (the situation where it can out compete other plant species) is the margins of sheltered, permanent creeks. Approximately 95% of the observed palms would have been on the waterline of a permanent creek.

The distribution of Myola Palms observed in the during this study closely accords with the results of discussions with other Botanists. A photo essay showing Myola palms and their habitat is presented in **Annexure 6**.

### **3.3 Viability of Palm Populations**

The main stand of palms on Warril creek appears to be stable in the short term as the mature palms are likely to survive for another 5-20 years. Generally however, small stands are susceptible to chance events (catastrophes like floods and bad luck such as all mature palms dying from old age at the same time) and their stability is not guaranteed. Some natural recolonisation of previously cleared palm habitat appears to be occurring in the reaches of Warril Creek immediately upstream from the main stand as seedlings and semi-mature palms are present in this area but mature palms are absent. Given time and a continuation of current conditions, it is likely that the number of palms will gradually increase in areas upstream of the main stand. Downstream of the main stand, Warril Creek is quite rocky and there appears to be fewer suitable places for palms so it is likely that the number of palms will not increase in this 100 m long section of creek.

Palm populations on the Barron River appear to be in significant decline and it is unlikely that the palms on the Barron River contribute significantly to the perpetuation of the species. Environmental conditions on the Barron River have changed radically in the past



half century and even in the past decades. Recently arrived weeds now totally dominate the flood scoured lower banks of the river, which is the microhabitat that the palm appears to prefer. Seedling palms now have to compete with dense growths of Singapore daisy, guinea grass and even *Hymenachne* – an aquatic grass. It is apparent that Palm seedlings have low survival rates when faced with competition from these species. Generally the palms only survive weed competition in locations that are very rocky or very damp and shaded, a pattern that is already observable in the remaining palms.

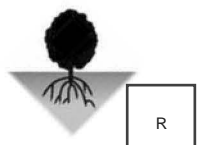
Discussion regarding the numbers of palms on the Barron River with John Clarkson also suggested that there has been a significant decline in palm numbers during the previous decade. John indicated that they were quite easy to locate when he conducted his survey approximately one decade ago. This survey found only a minor *Myola* palm presence on the Barron River.

### 3.4 Ecology of the Palm

Discussions with people who have grown *Myola* Palms indicate that they are very susceptible to drying out, particularly in the seedling stage. With the possible exception of the Mt Lewis palm, other *Archontophoenix* species have enough tolerance of drying out to be useful landscape plants. The rapid mortality on loss of moisture mitigates against the horticulture industry wanting to grow *Myola* palms commercially. Their similarity to other hardier *Archontophoenix* species also means that there is little horticultural reason to produce *Myola* palms.

It is possible that *Myola* palms are specialised riparian species. Even allowing that their present distribution may be an artefact of past clearing and harvesting practices, it is still probable that the species preferred habitat is dark loamy creek and river banks. It has been suggested that as the main stand of the species is located on a stretch of creek that is subject to prolonged immersion, that the species is adapted to tolerating standing water or soils saturated with seepage from adjacent high ground. Warril Creek is unusual in that it has a long level bed that is submerged for most or all of the year. Many mature palms are located at or just above the permanent waterline. According to local opinion, occasional log jams can result in the water level rising and staying at high levels for periods of weeks. Flooding for such a period would be fatal to many tree species whereas palms can often tolerate periods of flooding. If this information is accurate, then Warril Creek would have an unusual ecological force moulding the local population of *Myola* palms. It is unlikely however that the species requires standing water for seedling establishment as a number of advanced seedlings were located high on the creeks banks up to 10 m from the waterline. It was even suggested in Dowe & Hodel 1994, that the fibres of the *Myola* palm fruit readily fray to form a stiff brush around the seed to improve the ability of the floating seed become caught on the riverbanks.

The PASCOA fact sheet on *Myola* Palms states that they grow on volcanic soils, however no volcanic soils were observed within the study area. All of the soils present were of metamorphic origin and the exposed rock in Warril Creek was Barron River metamorphics (angular rocks with layers formed from marine sediment – same as face of Barron Falls). Reviewing the regional ecosystem mapping confirms that the only landzones present within the study area are metamorphic hills and alluvial landscapes, no volcanic landforms were present. However, when planted on degraded creeks with volcanic soils on the southern tablelands, *Myola* palms grow well.



On the Barron River, the palms occurred on high steep riverbanks, usually the northern bank, which is shaded in winter and only at the edge of the forest. Tree growth on these banks often is inhibited by rock or other factors. Some palms also occurred in stony riffles where water filters through sands and gravels. These sites are relatively flood exposed. Myola Palms were rarely found on degraded grassy riverbanks and were not found in heavy riparian rainforest growing on alluvial river terraces. In these locations, luxuriant growth of riparian rainforest trees such as river cherries seems to preclude colonisation by Myola palms.

Generally it appears that that Myola Palms are scarce or absent in smaller rainforest creeks with steep gradients and sandy or stony beds. Upper Warril Creek (>1.5 km from confluence with Barron River) is of this character and does not appear to have many Myola Palms. Lawyer cane is abundant in the upper reaches of creeks and ground surveys only cover 200-300 m per hour. A walkthrough of a creek system such as the main channel of Warril Creek would take approximately a full day as there are many places where the terrain is too steep and slippery to be negotiable or large tangle of lawyer cane have to be skirted. A few other creeks of similar character and size were investigated and no Myola Palms were observed in any of them.

Natural mortality from flooding and from being crushed by falling trees was observed and appears to occur at relatively high rates for small and intermediate sized palms.

### **3.5 Threatening Processes**

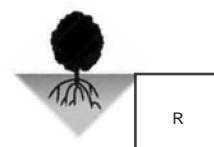
A number of threatening processes appear to have reduced palm numbers over time and these processes have the ability to impact both the main remaining stand and the scattered palms elsewhere.

The most acute threats include:

- Clearing;
- Changes to stream hydrology;
- Weed invasion; and
- Recruitment failure;

Most of the remaining palms are on the very edge of Warril Creek, a location that suggests the scope for accidental clearing is low, however clearing related impacts in adjacent areas could damage the viability of the palm population. Clearing in adjacent areas could remove areas which the Myola Palm appears to be colonising such as the flats that extend beside the creek. A clearing event could also result in trees being felled on to the palms or could facilitate weed invasion by increased light leaking into the riparian rainforest strip.

Changes to stream hydrology that could potentially occur include increased drainage, reduced flow and sedimentation. If the rocky bar near the road bridge over Warril Creek is damaged, it could lead to the loss of the permanently ponded section of the creek bed which supports the main stand of palms. Reduction in water flows down the stream may also result in loss of water quality or quantity with stream sections inhabited by palms. Potentially the most likely impact of disturbance in the catchment would be sedimentation. Sedimentation is likely to be most acute in the permanently ponded section of the stream and this is where water velocity is low and sediment is likely to collect. Deposition of layers of silt or clay on the stream bed and bank would result in a reduction of oxygen penetration into the stream banks and it is likely that the mature



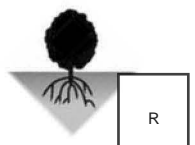
palms would significantly weakened as their roots systems would become oxygen stressed.

As flooding washed away some of the palms or bends them over with debris, any increase in the velocity of floodwaters may also be significant. An increase in the cleared area or area of hard surfaces could potentially increase the severity of flooding in Warril Creek.

Weed invasion is a major threat to the palm population. Exotic plants such as Singapore daisy, giant bramble, guinea grass, *Hymenance* and even coffee all colonise and form dense infestations in palm habitat. It is very likely that increasing levels of infestation by these existing weeds will lead to further declines in palm numbers on the Barron River, where flood disturbance has facilitated these weeds getting a foothold. Warril Creek has small areas infested with these weeds due to the lack of widespread disturbance, and the weeds that are present have not yet increased to threatening levels. Most weeds species occupy all of the available space in the understorey and greatly reduce the number of places where palm seedlings can establish. A few weeds are capable of killing adult palms. Guinea grass fires appear to have killed some of the palms on the banks of the Barron River. *Thunbergia* is also present in some places on the river bank and is killing trees. At present *Thunbergia* does not appear to be affecting any palms, but it remains a serious threat should it be arise in a significant palm habitat. It is likely that a whole range of new weeds will disperse down the creek when the Myola area is developed and it is unlikely that the Myola palm will be able to maintain its population without intervention should the level of weed infestation on the stream banks significantly increase.

Recruitment failure refers to a species losing the ability to successfully reproduce. Often rare species suffer from pollination failure as the individuals become too widely dispersed for insect vectors to efficiently spread pollen. Sometimes inbreeding depression also occurs. Pollination failure may be significant for preventing reproductive success in the widely distributed individuals on the Barron River although weeds are also a likely source of recruitment failure in this area. Currently, it appears that the species is capable of producing sufficient viable seed to survive where mature palms are present at higher densities. An example is the development of small areas of seedlings underneath the planted palms in Anthony Irvine's garden.

Recruitment failure due to hybridisation could also potentially lead to the loss of the Myola palm. It is not known if Myola palms hybridise with other *Archontophoenix* species. Indeed hybrid palms may be very hard to detect as *Archontophoenix* palms can be very variable. If sterile hybrids were to arise at Warril Creek, they could potentially out grow and out compete the Myola palms.



## 4 Conclusion

Between 80-150 mature *Myola* palms remain. The only significant stand of *Myola* palms is located on a small section of Warril Creek. A small stretch of creek extending approximately 100 m upstream from the road bridge contains approximately 50% of all known remaining individuals. Other parts of Warril Creek would contribute approximately a further 25% of individuals and the remaining 25% is located on the banks of the Barron River.

The stand just upstream of Warril Creek bridge has approximately 50-100 mature palms and a full range of plant sizes from seedling to mature palm. Approximately 60 semi-mature or mature palms were actually counted, however the some parts of the stand were not accessible. Currently the stand of palms upstream of Warril Creek bridge is the only viable stand of *Myola* Palms remaining. Upper Warril Creek had either juvenile palms only or solitary large palms with little evidence of successful reproduction. As large numbers of small to intermediate sized palms were found on Warril Creek and western branch of Warril Creek, it appears the species is extending its range – indirect evidence that species was previously reduced by collection. Care should be taken to protect the areas where small palms are frequent.

The Barron River population is unlikely to recover as a result of the high level of weed infestation on the banks – weed control is almost futile in moist, fertile riverbanks which are subject to regular flooding. It is likely that *Myola* palms will maintain a small presence on the Barron that depends on seed produced in Warril Creek.

Without assistance the outlook for *Myola* Palms is not very hopeful. The viability of the one remaining stand could easily be lost as a result of the increasing weediness of creeks that accompanies development. Small development related changes to the riparian strip such as increased light leakage do to clearing of adjacent forest or the introduction of common garden plants such as Singapore daisy or New Guinea Balsam could add a competitive pressure that leads to the decline of the *Myola* Palm. Sedimentation of Warril Creek also poses a potential threat, particularly if the bed is raised as the palms growing at the waterline could be drowned.

As the palms are concentrated in a very small area, they are vulnerable to a catastrophic event such as a cyclone or major flood. Whilst the palms would probably survive either event, damage to the forest would unleash weed infestations that are currently suppressed by the presence of an intact canopy. Weeds already present within the Warril Creek system are capable of opportunistic invasion of the main stand.

## 5 Recommendations

*Myola* palms are endangered. Actions that could be taken to reduce the risk of losing the species could include:

- Protecting the main stand of palms and its surrounding rainforest habitat by some form of legal protection;
- Phasing out planting of other species of *Archontophoenix* by revegetation groups along the Barron River and encouraging planting of *Myola* Palms in all potentially suitable habitat instead; and



- Growing and planting Myola Palms as widely as possible on **other** creeks and dams in the Kuranda area and even in suitable non-local creeks such as the supplemented creeks in the Mareeba Area.

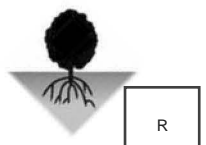
If Myola palms are grown for planting out, they should **not** be planted on Warril Creek. Palms grown from collected seed tend to be closely related. Swamping an existing natural population with planted progeny often results in inbreeding depression and loss of genetic diversity due to genetic drift.

To enable the species to be legally grown, the EPA will need to issue permits for collection of seed.

## 6 References

Dowe J. and Hodel D. R. (1994) A Revision of Archontophoenix H. Wendl. & Drude (Arecaceae). *Austrobaileya* 4 (2) pgs 165-174 (2001).

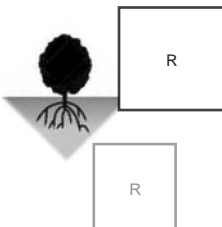
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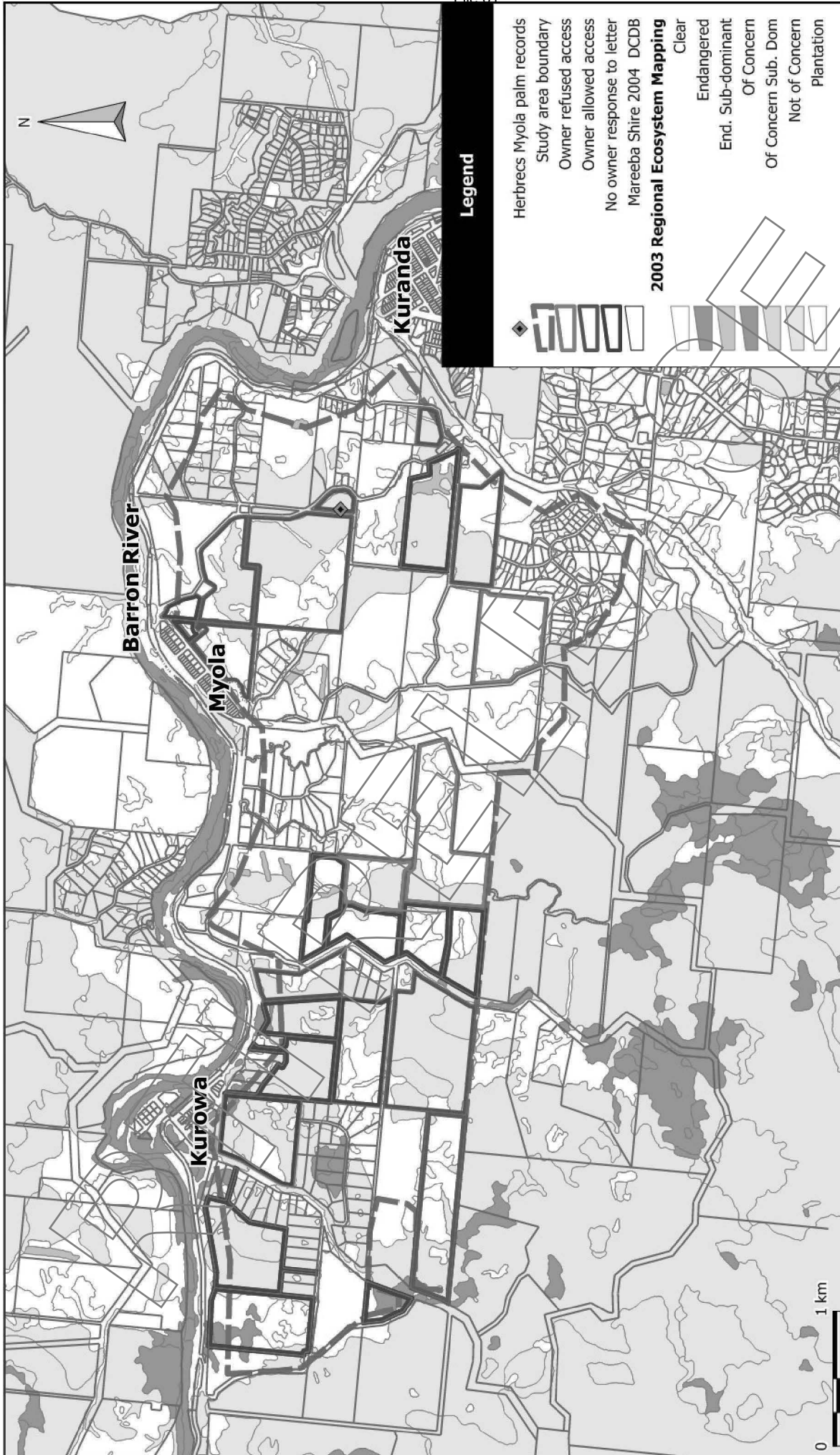
# Annexure 1

## Myola Palm Survey Plan

RTI RELEASE







Forest & Sea Consulting  
 Plan C136-CP2  
 Drafted 6 April 2006  
 Scale 1:40 000 @ A4

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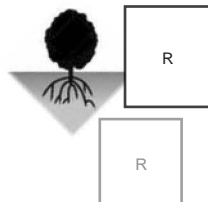
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## Annexure 2

### Myola Palm Species Description

RTI RELEASE



## A Revision of *Archontophoenix* H.Wendl. & Drude (Arecaceae)

John L. Dowe and Donald R. Hodel

### Summary

Dowe, John L. & Hodel, Donald R. (1994). A Revision of *Archontophoenix* H.Wendl. & Drude (Arecaceae). *Austrobaileya* 227–244. The genus *Archontophoenix* H.Wendl. & Drude (Arecaceae) is revised and accepted as containing six species. Four new species, *A. maxima*, *A. myolensis*, *A. purpurea* and *A. tuckeri* are named. *A. alexandrae* (F.Muell.) H.Wendl. & Drude and *A. cunninghamiana* (H.Wendl.) H.Wendl. & Drude are maintained. Notes on distribution and ecology are included, as are separate keys for vegetative material and flowering/fruitlet material.

**Keywords:** Arecaceae - Australia, *Archontophoenix alexandrae*, *Archontophoenix cunninghamiana*, *Archontophoenix maxima*, *Archontophoenix myolensis*, *Archontophoenix purpurea*, *Archontophoenix tuckeri*.

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### Introduction

*Archontophoenix* is a genus of moderate to large, single stemmed, pinnate-leaved, monoecious Arecoid palms endemic to eastern Australia. Greatest speciation has occurred in the moist subequatorial and tropical regions of northern Queensland between 10°S and 26°S where five of the six species occur. The sixth species extends from tropical central Queensland, 21°S, to warm-temperate New South Wales, 35°S.

### Taxonomic History

The genus was established by Wendl. & Drude (1875), comprising *A. alexandrae*, *A. alexandrae* var. *schizanthera*, *A. cunninghamiana* and *A. veitchii*. Benth. (1878) did not recognise the new genus, maintaining some of the species in *Ptychosperma*, though Hooker (1883) recorded *Archontophoenix* with two species. F.M. Bailey (1902) listed *A. alexandrae*, *A. beatriceae*, *A. cunninghamiana* and *A. jardinei*, but subsequently excluded the latter species (Bailey 1913). Domin (1915) listed only *A. alexandrae* and *A. cunninghamiana*. Cook (1915) created a new genus, *Loroma*, for taxa which he considered should not be included in, though were closely allied to, *Archontophoenix*. Cook's collections were

from cultivated plants growing in Southern California. Burret (1928) corrected Cook's interpretation as well as errors by Drude (1882) and Dammer (1902) who had both named cultivated plants of *Archontophoenix* as species of the unrelated South American *Jessenia*. L.H. Bailey (1935) provided the first detailed synopsis of the genus since its establishment, listing *A. alexandrae*, *A. alexandrae* var. *beatriceae* and *A. cunninghamiana*. Bailey's work was the last serious taxonomic treatment. Recently, Uhl & Dransfield (1987 p.369) noted the genus had two species but suggested that "3–5 new species need to be described".

The possibility of undescribed species has been recognised for some time (Bailey 1935; Moore 1965; Tracey 1982; Rodd 1983; Jones 1984; Tucker 1988). Some of these taxa have received 'tag names' based on their locality, for example 'Mt Lewis *Archontophoenix*', 'Rocky River *Archontophoenix*' and 'Myola *Archontophoenix*'; such names have been adopted in both botanical and horticultural literature.

### Materials and methods

This revision is the result of field studies undertaken in Queensland and New South Wales, an assessment of herbarium materials in BH, BRI, MEL, MO, NSW and QRS, a review of literature and unpublished field notes made by

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researchers during the last three decades. Cultivated specimens in The Palmetum and Anderson Park Botanic Gardens, Townsville, Mt Coottha Botanic Gardens, Brisbane and Honolulu Botanic Gardens, Hawaii, have been examined.

The keys have been constructed from both fresh and preserved material, supplemented with field observations.

### Generic relationships

*Archontophoenix* is included in the subtribe Archontophoenicinae, which includes seven genera distributed in eastern Australia, New Caledonia, New Zealand and on Lord Howe and Norfolk Islands (Uhl & Dransfield 1987). This subtribe is characterised by palms with a tall, solitary, erect trunk; well developed crownshaft; pinnate leaves; inflorescence infrafoliar; two bracts enclosing the inflorescence more or less equal in length; inflorescence branches divaricate; flowers usually asymmetric, inserted spirally on the rachillae; gynoceium pseudomonomerous; fruit with more or less apical stigmatic remains; and the seed with a basal embryo.

The pattern of distribution of the Archontophoenicinae is similar to that of other rainforest taxa and is indicative of a discrete phytogeographic and floristic region centred on Australasia and islands in the South-west Pacific. This 'relictual' flora (Webb *et al.* 1986), in most parts, has descended from elements which are considered autochthonous to the now dispersed East Gondwanan sub-continent (Morat *et al.* 1986). Further support for an East Gondwanan origin for the subtribe (Dowe in press) is found in the lack of any closely related taxa to *Archontophoenix* occurring in areas to the north of the Australian mainland.

The most closely related genus, *Chambeyronia* Vieill. (2 spp.), occurs in New Caledonia. *Rhopalostylis* H. Wendl. & Drude, (2 spp. & 1 subsp.) from New Zealand and Norfolk Island, and *Hedyscepe* H. Wendl. & Drude (1 sp.) from Lord Howe Island, are also closely related. Other genera in the subtribe occur in New Caledonia. *Kentiopsis* Brongn. (1 sp.) and *Mackeeia* H.E. Moore (1 sp.) are closely related to each other but are distant from *Archonto-*

*phoenix*. *Actinokentia* Dammer (2 spp.) is morphologically isolated within the subtribe. Moore & Uhl (1984) suggested that the New Caledonia Archontophoenicinae may represent a single introduction, an assessment based on the uniformity of leaf anatomy within the New Caledonia genera.

The characters used to separate *Archontophoenix* from other genera in the subtribe include: fruit with seed endosperm ruminant; mesocarp with dispersed tannin cells; staminate flowers asymmetric; pistillode prominent.

### Relative distribution, abundance and morphological variation

Three of the species, *A. alexandrae*, *A. cunninghamiana* and *A. tuckeyi*, have an extensive distributional range both latitudinally and altitudinally and occupy many different habitats.

*A. alexandrae* shows little morphological variation throughout a latitudinal range of 1 400 km. It is ubiquitous in the swampy lowlands between Cooktown and Sarina. *A. cunninghamiana*, covering a range of almost 2000 km, exhibits a moderate increase in lamina thickness and overall reduction in size in the southern area of its distribution. This species and *A. alexandrae* display a sympatric occurrence in the Eungella area of central Queensland. This area is the northern limit of distribution of *A. cunninghamiana*, where it is confined to altitudes above 600 m. *A. alexandrae* extends from sea-level to about 800 m. Although these species are known to hybridise in cultivation, there is no evidence to suggest that hybridisation occurs in these sympatric populations. The barrier preventing natural hybridity has not been established. *A. tuckeyi*, covering some 450 km in range from Cape York to McIlwraith Range, exhibits a moderate decrease in leaf size and trunk height in northern parts of its range. It is less abundant than the two preceding species, but still common throughout its range.

The remaining species, *A. maxima*, *A. myolensis* and *A. purpurea*, are of limited distribution and abundance. The first two species are rare, restricted to single drainage systems. *A. maxima* is confined to highland

areas (800–1200 m altitude) of the western Atherton Tablelands in the upper reaches of the Walsh River and its tributaries and the Mount Haig Range where it is locally abundant. *A. myolensis* occurs in lowland forest (350–400 m altitude) in the vicinity of Warrill Creek/Barron River west of Kuranda. The known population comprises less than 100 mature individuals and has an endangered conservation status. *A. purpurea* is confined to the upland/highland (400–1200 m altitude) granitic massifs of Mounts Lewis, Spurgeon and Finnigan, where it is locally abundant.

The characters used to delimit species in this revision are listed in **Table 1**. Diagnostic fruit and floral characteristics of the species are given in **Table 2**.

### Taxonomy

**Archontophoenix** H. Wendl. & Drude, *Linnaea* 39: 182, 211 (1875). **Type:** *A. alexandrae* (F. Muell.) H. Wendl. & Drude (lecto: fide Uhl & Dransfield 1987). L.H. Bailey, *Gentes Herb.* 3(8): 404–405 (1935); Uhl & Dransfield, *Genera Palmarum* 368–369 (1987).

*Loroma* O.F. Cook, *Journ. Washington Acad. Sc.* 5: 117 (1915). **Type:** *L. amethystina* O.F. Cook.

Moderately tall, solitary, erect, emergent, pleonanthic, monoecious palms. Trunks slender, frequently with a swollen base; leafscars prominent or not; internodes short or long. Leaves paripinnate, reduplicate, cleanly deciduous. Sheaths tubular, forming an elongate crownshaft eventually splitting opposite the petiole, green, brown or purple. Ligule absent. Petiole absent to moderately long. Rachis long. Pinnae linear-acute, inserted in a single plane along rachis, subopposite, erect to semi-pendulous, rigid or lax; midrib prominent, secondary ribs frequently present abaxially; abaxial surface green or with silver/grey scales, sometimes very dense to give silver/grey colour. Ramenta lacking, or present on midrib abaxially, medi-fixed. Inflorescence infrafoliar at maturity, branched to 3 or 4 orders, erect to pendulous panicle, branches divaricate, protandrous. Bracts enclosing inflorescence 2, the prophyll

attached at base of peduncle fully enclosing the peduncular bract; peduncular bract inserted slightly above attachment of prophyll, tubular; bracts deciduous immediately prior to floral anthesis; small to moderate rameal bracts often present. Peduncle stout, short. Rachis much longer than the peduncle. Rachillae erect or pendulous, elongate, zig-zagged throughout or only toward the apex. Flowers unisexual, sessile, lilac/purple or white/cream/light green, in well-spaced triads of a single pistillate flower subtended by a pair of staminate flowers one either side, borne spirally throughout the rachillae, or only on the proximal portion and then with staminate flowers distally, in pairs or solitary. Staminate flowers asymmetric in bud, three imbricate sepals, three valvate petals; petals much longer than sepals. Stamens 9–35; anthers dorsifixed, near the middle, basally bifid, apically pointed, latrorse; filaments curved or deflexed. Pollen white, elliptic, monosulcate, exine tectate, finely reticulate. Pistillode cylindrical, about as long as stamens, tapered, apically lobed. Pistillate flowers smaller than the staminate, symmetric; three imbricate sepals; three imbricate petals briefly valvate at the apex; staminodes three, tooth-like; gynoeceum unilocular, uniovulate; style short; stigmas three, recurved. Fruit conic-ovoid, ellipsoid, globose to sub-globose, one-seeded, coral pink, red or dark brick-red at maturity; stigmatic remains apical or sub-apical; epicarp thin, smooth or lightly pebbled; mesocarp thin, with fine to thick longitudinal fibres, terete or flat, unbranched or branched; endocarp thin, crustaceous or brittle, non-operculate; seed ovoid, globose to sub-globose, hilum lateral, raphe fibres elongate, anastomosing, adherent to the seed; endosperm ruminant; embryo basal. Germination adjacent-ligular. Eophyll bifid.

Six species endemic to eastern Australia in coastal and near-coastal lowlands and ranges; generally not found further inland than the Great Dividing Range, from sea-level to 1200 m altitude, extending almost continuously in favourable habitats from Cape York, Qld, 10°40'S to Durras Mountain, NSW, 35°10'S.

**Derivation of name:** from the Greek *archon*, king or ruler, and *phoenix*, palm.

**Table 1. Characters used to delimit the species of *Archontophoenix*.****Seed**

- 1 degree of rumination of endosperm (shallow to deep)

**Fruit**

- 2 degree of adherence of raphe fibres to the seed (weak to strong)
- 3 degree to which mesocarp fibres are embedded in the endocarp (shallow to deep)
- 4 thickness of fibres in the mesocarp (thin to thick)
- 5 position of stigmatic remains (apical or sub-apical)
- 6 size

**Flowers**

- 7 orientation of the staminal filament (curved or deflexed)
- 8 number of stamens
- 9 colour (cream-white or lilac/purple)

**Inflorescence**

- 10 size
- 11 colour of axes (cream/white or green)
- 12 order of branching (3 or 4 orders)
- 13 stiffness or flaccidness of inflorescence branches

**Leaf**

- 14 ramenta on the midrib on abaxial pinna surface (absent or present)
- 15 silver/grey scales on the abaxial pinna surface (absent or present)
- 16 degree of lateral twist (moderate to strong)
- 17 colour of the crownshaft (green or other)

**Table 2: Floral and fruit details of *Archontophoenix* species.**

Species	Stamens (#)	Filament orientation	Fruit length (mm)	Mesocarp fibres diameter (mm)
<i>A. alexandrae</i>	9-16	curved	8-14	1
<i>A. cunninghamiana</i>	9-18	deflexed	10-15	1
<i>A. maxima</i>	11-16	curved	11-15	1
<i>A. myalensis</i>	14-24	curved	13-21	0.5
<i>A. purpurea</i>	20-35	curved	20-26	2
<i>A. tuckeri</i>	13-19	curved	15-25	3



**Key to species of *Archontophoenix* based on fresh vegetative material of mature plants**

1. Crownshaft dark-green, blue-green, bronze-green, brown or purple ..... 2  
Crownshaft lime-green, whitish green, light to mid-green ..... 4
2. Pinnae lacking ramenta abaxially on midrib; crownshaft blue-green,  
Warrill Creek/Barron River (Qld) ..... 4. *A. myolensis*  
Pinnae with ramenta abaxially on midrib ..... 3
3. Pinnae lacking silver/grey scales abaxially; crownshaft not blue-green,  
Eungella (Qld) to Batemans Bay (NSW) ..... 2. *A. cunninghamiana*  
Pinnae with silver/grey scales abaxially; crownshaft plum purple; Mts  
Lewis, Spurgeon and Finnigan (Qld) ..... 5. *A. purpurea*
4. Leaves usually less than 3.5 m long, with less than 55 pinnae each side of  
rachis; pinnae tending to be semi-pendulous at the apex; crownshaft lime-  
green, Cape York to McIlwraith Range (Qld) ..... 6. *A. tuckeri*  
Leaves usually 3.5 m or more long, with 60 or more pinnae each side of  
rachis; pinnae usually rigid; crownshaft light to mid-green ..... 5
5. Leaves ascending, held rigid; petiole absent or very short; Western Atherton  
Tablelands (Qld) ..... 3. *A. maxima*  
Leaves arching; petiole present, short to long; Bathurst Bay to Baffle Ck  
(Qld) ..... 1. *A. alexandrae*

**Key to species of *Archontophoenix* based on floral/fruit characteristics**

1. Fruit more than 14 mm long ..... 2  
Fruit less than 14 mm long ..... 3
2. Stamens more than 20 ..... 5. *A. purpurea*  
Stamens less than 20 ..... 6. *A. tuckeri*
3. Flower segments lilac/purple; staminal filaments deflexed ..... 2. *A. cunninghamiana*  
Flower segments white/cream; staminal filaments not deflexed ..... 4
4. Mesocarp fibres less than 0.5 mm wide, unravelling in the dried state ..... 4. *A. myolensis*  
Mesocarp fibres more than 0.5 mm wide, not unravelling in the dried state ..... 5
5. Flowers widely spaced on the rachillae; floral bracts round and low, anthers  
to 2 mm long ..... 3. *A. maxima*  
Flowers closely spaced on the rachillae; floral bracts raised with sharp  
margins; anthers 3.4–4 mm long ..... 1. *A. alexandrae*

1. *Archontophoenix alexandrae* (F. Muell.)  
H. Wendl. & Drude, *Linnaea* 39: 212  
(1875); *Ptychosperma alexandrae*  
F. Muell., *Fragm.* 5: 47, 213, 143, 44 (1865).  
**Type:** Queensland, PORT CURTIS DISTRICT:  
Fitzroy R., scrub near upper flats, Jul  
1866, *Bowman* [MEL 516571–516577]  
(holo: MEL (7 sheets)).

*Archontophoenix alexandrae* var.  
*schizanthera* H. Wendl. & Drude, *Linnaea*  
39: 212, Pl. 3, Fig. 6 (1875). **Type:** Queens-  
land, NORTH KENNEDY DISTRICT:  
Rockingham Bay, Jul 1866, *Bowman* s.n.  
(holo: MEL).

a moderate lateral twist. The petiole is frequently lacking, but if present can be 20 cm long on mature plants. The petiole is flat adaxially or shallowly concave in the proximal portion rather than moderately to deeply concave as in other *Archontophoenix* species.

**4. *Archontophoenix myolensis* Dowe sp. nov.**

*A. alexandrae* (F. Muell.) H. Wendl. & Drude affinis sed fructibus reliquiis stigmatum subapicalibus, foliis longioribus, pinnarum costis flexuosis, foliorum vaginis venetis differt. **Typus:** Queensland. COOK DISTRICT: Myola, Warrill Ck, 16°48'S, 145°36'E, gallery rainforest, 350 m, *A.K. Irvine* 1780, 30 May 1976 (holo: QRS).

Palm to 20 m tall. Trunk to 30 cm DBH, green to grey, expanded to 50 cm at the base, smooth becoming fissured with age. Leaves 9–12 in the crown, to 4 m long, with a moderate lateral twist, 68–71 pinnae per side. Crownshaft 74–95 cm long, blue-green, tapered toward the apex, prominent bulges below the attachment of the petiole. Petiole to 22 cm long, to 4 cm wide by 2.5 cm thick, concave above, convex below. Rachis to 380 cm long, becoming sharply ridged above in the distal portion, convex below. Pinnae to 110 cm long, to 6.5 cm wide, coriaceous, dark green adaxially, with persistent moderately dense silver/grey scales abaxially. Midrib prominent on both surfaces, light green, moderately brittle, to 11 secondary ribs prominent abaxially; pinnae become lax with age. Ramenta lacking. Inflorescence 50–157 cm long, to 60 cm wide, branched to 4 orders, axes light cream initially, becoming light green in infructescence. Prophyll to 45 cm long, winged with a beak at the apex, thin texture; peduncular bract to 42 cm long, strongly beaked at the apex, papery. Third acuminate bract to 80 mm long by 9 mm wide, attached slightly above the attachment of the peduncular bract. Fourth bract to 14 mm long by 2.5 mm wide. Fifth bract, to 7 mm long, acuminate, subtends first rachis branch. Peduncle 8.5–23 cm long, 5–7.2 cm wide by 2.8–3 cm thick, green. Rachis to 70 cm long with 21–23 branches. Rachillae thin, to 4 mm wide at attachment of basal triad, becoming mildly zig-zagged in the distal portion. Triads borne on proximal 2/3–7/8 of rachillae. Flowers white/

cream. Floral bracts not prominent. Staminate flowers 5.5–9 mm high, 3–3.8 mm wide in bud. Sepals 1.5–3 mm high, to 2.5 mm wide. Petals 7–7.8 mm long, 1.5–3.8 mm wide, both surfaces with scattered light brown scales densest toward the base and the apex of the inner surface; petals detach easily. Stamens 14–24. Anthers to 3 mm long. Filaments curved, 3.5 mm long, cream/brown with rusty brown/red scales present. Pistillode tapered, to 4 mm long, sometimes longitudinally grooved, cream with brown/red scales toward the base, 2 or 3 terminal lobes. Pistillate flower with sepals and petals about equal in length, to 5 mm high. Fruit conic-ovoid-elongate, 13–21 mm long, 10–12 mm in diameter, red at maturity. Epicarp waxy. Stigmatic remains prominent, subapical. Calyx 2–3 mm high. Mesocarp fibres terete or flat, thin to thick, to 0.5 mm wide, branched, forked about midway, shallowly embedded in the endocarp. Endocarp crustaceous. Seed ovoid-elongate, 14–20 mm long, 8–9.5 mm wide, dull light brown, hilum narrow, raphe fibres strongly adherent. Endosperm moderately ruminant. Epiphyll remains undivided until 3rd to 5th leaf. Cytology not studied. **Fig. 1. B<sub>1</sub> – B<sub>3</sub>.**

**Representative specimens:** Queensland. COOK DISTRICT: Myola, Warrill Ck, creek bank about 100 m upstream from confluence with Barron R., 400 m, May 1993, *Dowe* 107 (BR).

**Distribution and habitat:** This species is known only from the Myola area, 5 km NW of Kuranda, on Warrill Ck and nearby southern banks of the Barron River downstream from their confluence. It occurs in riverine rainforest at 350–400 m altitude on metamorphic rocks.

**Phenology:** Flowering occurs from May to July. Mature fruit has been observed from December to March.

**Etymology:** Named for the type locality, Myola.

**Conservation:** This is an endangered species which is not conserved in any declared reserve or national park. The total population covers less than 10 km<sup>2</sup>, and is estimated to have less than 100 individuals. The appropriate conservation rating is 2E (cf. Briggs & Leigh 1988).

**Typification:** The type collection contains leaf and inflorescence sections, staminate and pistillate flowers, and fruit.

**Notes:** *Archontophoenix myolensis* is primarily distinguished by fruit with sub-apical stigmatic remains, rather than apical as in all other species, and mesocarp fibres which are loosely attached and 'unravel' readily to stand away from the endocarp, a feature which may aid settling of the seed in rheophytic conditions. The crownshaft has a blue-green tinge. The pinnae resemble *A. cunninghamiana* in gross appearance in that they tend to become lax and pendulous, though in surface features they are most similar to *A. alexandrae*, though the silver/grey scales on the abaxial surface are less dense than in that species.

**5. *Archontophoenix purpurea* Hodel & Dowe sp. nov.** insignis foliorum vaginis purpureis, fructibus grandissimis, pinnarum pagina abaxiali combinatione squamarum canarum et costae ramentis distincta. **Typus:** Queensland. COOK DISTRICT: Mt Lewis, montane rainforest, amongst granite boulders, 1 200 m altitude, 17 Apr 1993, *M. Ferrero* 101 (holo: BRI).

Palm to 25 m tall. Trunk to 45 cm DBH, expanded at the base, green to whitish/grey, smooth in the distal portion becoming deeply fissured with age, with slightly raised leafscars 3 cm wide, internodes to 10 cm wide. Leaves 7–15 in the crown, to 4(6) m long, held flat or with a moderate lateral twist, 55–85 pinnae per side; new leaf frequently with a bronze tinge. Crownshaft 105–150 cm long, obscurely but densely longitudinally striate, abaxially dark blue/grey/green covered with dense glaucous bloom and moderate to densely flecked with deciduous reddish/mahogany scales giving the sheath a plum-purple colour, glossy coppery-brown adaxially. Petiole to 40 cm long, to 12 cm wide narrowing to 1.5 cm at the rachis, convex below with a light coloured band extending to the sheath, concave above with central flat ridge to 3 mm high. Rachis to 4 m long, becoming sharply ridged above distally, convex below, light green adaxially and silvery lepidote abaxially throughout. Pinnae to 105 cm long, to 7.5 cm wide, rigid, coriaceous (brittle in the dried state), glossy light green adaxially, with persistent dense silver/grey scales abaxially.

Midrib prominent on both surfaces, brittle, to 10 secondary ribs on lower surface. Ramenta present on midrib below (sometimes absent), to 5 cm long, medi-fixed, twisted, red/brown, irregularly positioned, most noticeable towards the base of the pinnae in the proximal half of the leaf. Inflorescence 50–135 cm long, to 65 cm wide, branched to 4 orders, axes initially light-green, becoming dark green in infructescence. Prophyll to 140 cm long, to 25 cm wide, glabrous or covered with reddish-brown scales. Peduncular bract attached 5 cm above prophyll, to 78 cm long, to 11 cm wide, glabrous, fibrous. A third bract to 11 cm long and 2.3 cm wide, acuminate, positioned slightly above attachment of peduncular bract. Peduncle to 25 cm long, 5.5–9(15) cm wide, with irregularly placed persistent brown scales, densest abaxially. Rachis to 65 cm long, up to 12 first order branches, angular in the proximal portion, terete distally. Rachillae up to 111 per inflorescence, to 85 cm long, irregularly zig-zagged, to 7 mm wide at attachment of proximal triad, tapering to 3.5 mm wide at distal triad. Triads borne on proximal 2/3–7/8 of rachillae, paired staminate flowers distally. Flowers cream with green suffusions. Floral bracts prominent, sharp (particularly in the dried state), angular. Staminate flowers 6–7 mm high, 4–5 mm wide in bud, white tinged with green, opening to 17 mm in diameter at anthesis; petals not easily detached. Petals 8–11 mm long, 3–5 mm wide, small brown scales on both surfaces but densest on the inner surface. Stamens 20–35, to 9 mm tall. Anthers to 6 mm long, dorsifixed near middle. Filaments curved, purple/brown with fine elongate brown/red-brown scales. Pistillode, about as long as stamens, with shallow longitudinal ridges, apex broad, lobed, light brown. Pistillate flower globose, white tinged with green, to 6.5 mm high. Fruit ovoid-ellipsoid-globose, 20–26 mm long, 18–22 mm in diameter, red/crimson at maturity. Stigmatic remains prominent, apical, (light coloured ring to 4 mm in diameter surrounds stigmatic remains in dried state). Calyx 3–9 mm high. Epicarp glossy, minutely pebbled (dries markedly pebbled). Mesocarp fleshy, fibres flat, to 2 mm wide, branched, overlaid and interspersed with thin straight fibres, some deeply embedded in the

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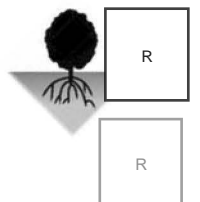
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## Annexure 3

### Visual Guide to *Archontophoenix* Palms

RTI RELEASE



# Archontophoenix alexandrae

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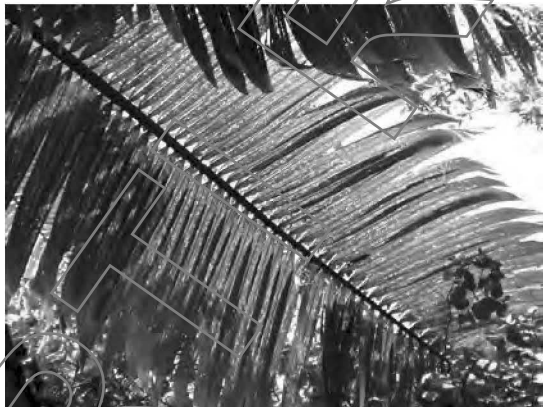
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1. Base is has a concave taper (AKI)
2. Leaves and leaflets are generally stiff rather than curving (Catana Swamp near Smithfield)
3. Inflorescence is large and usually pendulous, even when only in flower- berries are small and round and when ripening fade to yellow or peach before turning red (garden in Edge Hill).
4. Leaflets crowd the stem and it is hard to see through to the new leaf spear at the top (AKI)
5. Dense grey-white undersurface on leaf dulls transmitted light (AKI)
6. Some palms have a dome of adventitious roots (AKI)

(AKI = plants cultivated by Anthony Irvine)

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# Archontophoenix maxima

File 01

1



2



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6



1. *A. maxima* is the largest of the *Archontophoenix sp* - the relative size can be appreciated by comparing the bases of these mature palms, in the foreground (*A. maxima*), with the base in the background (*A. alexandrae*) - (Rockhampton Botanic Gardens).
2. Crownshaft is blue-green and on specimens grown in good conditions, is as large as a person (Cairns Base Hospital)
3. The main stalk of the inflorescence is very thick - diagnostic feature. (AKI)
4. Leaflets begin about 15-20 cm and sometimes further from the crownshaft and it is possible to see the new leaf from below. Leaflets are fairly stiff (Cairns Base Hospital)
5. Inflorescence is large and 6. has small red, round fruits - both inflorescence and fruit are superficially similar to *A. alexandrae*. (AKI).

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# Archontophoenix myolensis <sup>File 01</sup> 1



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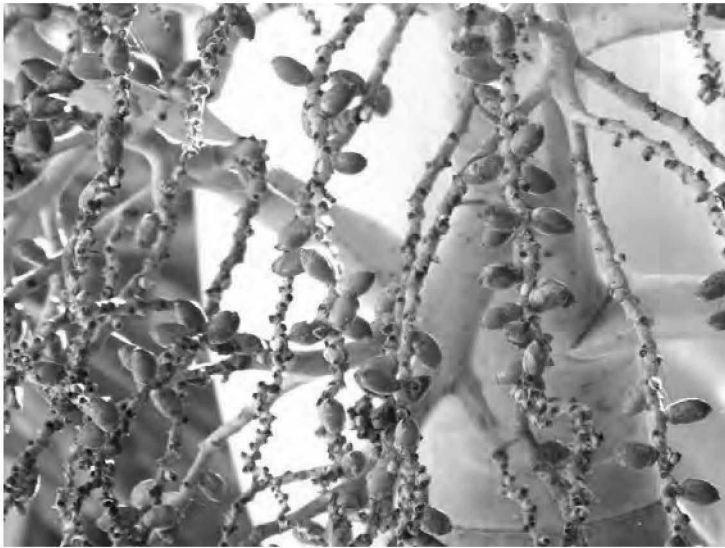
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- 1 & 3. Base of trunk has a convex taper, whereas *A. alexandrae* has a concave taper. The bursting of the base into irregular flakes also seems to be a feature of *A. myolensis*. (Warril Creek and AKI).
- 2. Most myola palms lean out from the edge of creek banks and all the leaves are angled, toward the sky, with leaves at the back being held high and leaves at the front held low (Barron River).
- 4. The crownshaft is variable in colour from near beige to bluey green to pastel brown. Leaflets start a little distance from the crown shaft and the new leaf is clearly visible.
- 5. Thin leaves transmit green light when illuminated in direct sunlight and leaflets droop at the tips

R

R

# Archontophoenix myolensis <sup>File 01</sup> 2



3 1

4



5



1. Fruit of *A. myolensis* are elongate not round, and the bump on the end of the fruit is off-centre (main diagnostic character)(AKI)
2. Two myola palms at Warril Creek showing pastel green and pastel brown crownshafts. The relatively small inflorescence has a pendulous main branch and the higher order branches are fairly short.
3. View of another inflorescence (AKI).
4. Unlike *A. alexandrae*, fruit of this species transition from dark green to red, passing through brown on the way. From the ground the fruit look like roasted coffee beans in size and colour.
5. Another view showing the lack of leaflets near the crownshaft and visibility of new leaves.

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# Archontophoenix tuckeri

File 01



# Archontophoenix purpurea



1. *A. tuckeri* is from the northern part of Cape York Peninsula. It has the largest seeds and smallest numbers of seeds (AKI).
2. *A. tuckeri* may also be the smallest and finest of the Archontophoenix palms, however when grown in full sun and good conditions, *A. tuckeri* is hard to tell from *A. alexandrae*.
3. A diagnostic feature for *A. tuckeri* is that the inflorescence only branches to 3rd order whereas other *Archontophoenix* species have inflorescences that branch to 4th order.
4. The Mt. Lewis palm, *Archontophoenix purpurea* has a distinctive purple brown crown shaft.

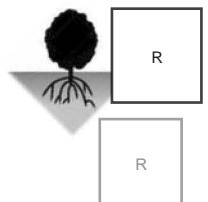
R

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## Annexure 4

### Map of Myola Palm Locations

RTI RELEASE



# Locations of Myola Palms and Search Areas

Environment North

File 01



**Notes:**  
 Yellow boxes indicate areas on properties with access permission where palm foliage could be seen in aerial photography. In many cases the palms turned out to be lawyer vine or tree ferns. Aerial photos used in this plan date from 1997 and may not reflect current extent of remnant vegetation.

R

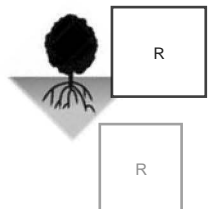
Forest & Sea Consulting  
 Plan C136-CP3b  
 Revised 10 April 2005  
 Scale 1:20 000 @ A3



# Annexure 5

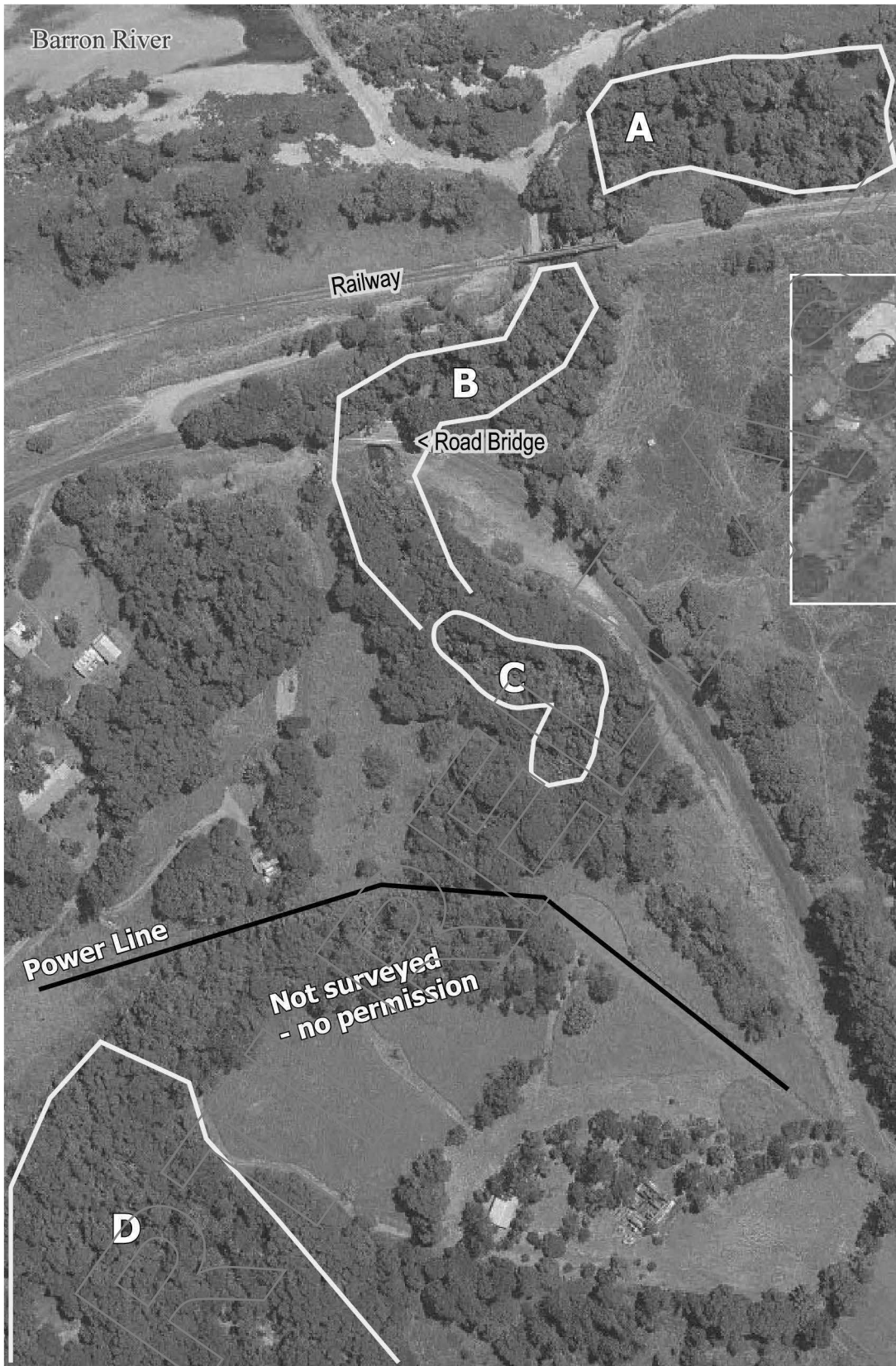
## Aerial View of Main Stand

RTI RELEASE



# Aerial Photograph of the Main Stand of Myola Palms

Environment  
North



**Inset** - shows some palms in a garden context. Palms in the forest are similar but are much harder to spot.

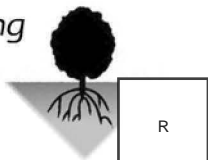
Power Line

Not surveyed  
- no permission

100 m

- Notes:**
- A** - Overflow channel with stand of palms
  - B** - Lower part of Warril Creek with several mature palms
  - C** - Main stand which contains majority of mature palms
  - D** - Several mature palms are located at confluence of Warril Creek and western branch of Warril Creek

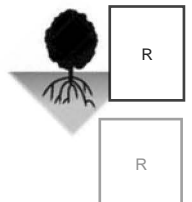
Forest & Sea Consulting  
 Plan C136-C4  
 Revised 28-7-2005  
 Scale 1:2 000 @ A4



## Annexure 6

### Photo Essay of Myola Palms and Habitat

RTI RELEASE

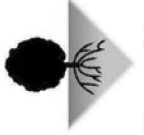




- Left:** Upper Warril Creek has a sandy bottom and rapid flow - palms were absent or at low density in this habitat.
- Centre:** First Myola palm - most palms in upper Warril Creek are this size and most are in flood swept positions
- Right:** Some juvenile Myola palms at 50 m up the western branch of Warril Creek



- Left:** Typical position of mature palm - at waterline in permanently ponded section of creek
- Centre:** A log jam of the type that is said to sometimes produce extended inundation which may be ecologically important to the palm.
- Right:** A group of Myola palms visible from the road bridge (upstream side)



Pages 279 through 287 redacted for the following reasons:

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78B(2)(e)

# *Aboriginal Cultural Heritage Act* **2003** **Duty of Care Guidelines**

Gazettal Date: 16 April 2004

RELEASABLE

# PART 1 – Information to Assist in Using these Guidelines

## 1.0 Preamble

### 1.1

The *Aboriginal Cultural Heritage Act 2003* (“the Act”) commenced on 16 April 2004. The Act binds all persons, including the State, and is intended to provide effective recognition, protection and conservation of Aboriginal cultural heritage.

## Principles Underlying the *Aboriginal Cultural Heritage Act 2003*

### 1.2

The following fundamental principles underlie the Act’s main purpose:

- the recognition, protection and conservation of Aboriginal cultural heritage should be based on respect for Aboriginal cultural and traditional practices;
- Aboriginal people should be recognised as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage;
- it is important to respect, preserve and maintain knowledge, innovations and practices of Aboriginal communities and to promote understanding of Aboriginal cultural heritage;
- activities involved in recognition, protection and conservation of Aboriginal cultural heritage are important because they allow Aboriginal people to reaffirm their obligations to “law and country”;
- there is a need to establish timely and efficient processes for the management of activities that may harm Aboriginal cultural heritage.

## Distinction between Aboriginal cultural heritage and Native Title

### 1.3

Aboriginal cultural heritage values should not be confused with native title. As with non-Aboriginal heritage values, Aboriginal cultural heritage can exist on an area regardless of the nature of land tenure. The existence of Aboriginal cultural heritage in an area does not mean that native title exists over that area.

## Definition of Aboriginal cultural heritage

### 1.4

The Act defines Aboriginal cultural heritage as anything that is:

- a significant Aboriginal area in Queensland; or
- a significant Aboriginal object; or
- evidence, of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.

A significant Aboriginal area or object must be particularly significant to Aboriginal people because of either or both of the following:

- Aboriginal tradition;
- the history, including contemporary history, of any Aboriginal Party for the area.



## Aboriginal cultural heritage areas do not have to contain physical markings

### 1.5

In the same way as non-Aboriginal heritage values are capable of protection, it is not necessary for an area to contain markings or other physical evidence indicating Aboriginal occupation or otherwise denoting the area's significance for the area to be protected as a significant Aboriginal area under the Act.

## Role of the Aboriginal Party

### 1.6

The views of the Aboriginal Party for an area are key in assessing Aboriginal cultural heritage and managing any activity likely to excavate, relocate, remove or harm Aboriginal cultural heritage.

### 1.7

In assessing a significant Aboriginal area the legislation provides that regard may also be had to authoritative anthropological, biogeographical, historical and archaeological information.

### 1.8

Before an area can be registered on the Aboriginal Cultural Heritage Register, the person seeking to register the area must be able to demonstrate that the application is consistent with this information.

### 1.9

Appropriately qualified persons such as anthropologists, archaeologists and historians can also provide valuable assistance in this regard.

## Due Diligence – The Precautionary Approach

### 1.10

The Act requires that a person must exercise due diligence and reasonable precaution before undertaking an activity which may harm Aboriginal cultural heritage.

## Aboriginal cultural heritage duty of care

### 1.11

Section 23(1) of the Act states that a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "cultural heritage duty of care").

### 1.12

Section 23(2) of the Act states that without limiting the matters that may be considered by a Court required to decide whether a person has complied with the cultural heritage duty of care in carrying out an activity, the Court may consider the following:

- the nature of the activity, and the likelihood of its causing harm to Aboriginal cultural heritage;
- the nature of the Aboriginal cultural heritage likely to be harmed by the activity;
- the extent to which the person consulted with Aboriginal parties about the carrying out of the activity, and the results of the consultation;



- whether the person carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of the Aboriginal cultural heritage, and the extent of the study or survey;
- whether the person searched the database and register for information about the area affected by the activity;
- the extent to which the person complied with cultural heritage duty of care guidelines;
- the nature and extent of past uses in the area affected by the activity.

## Meeting the Duty of Care

### 1.13

Section 23 of the Act provides that a person who carries out an activity is taken to have complied with the cultural heritage duty of care in relation to Aboriginal cultural heritage if –

(a) the person is acting –

- under the authority of another provision of this Act that applies to the Aboriginal cultural heritage; or
- under an approved Cultural Heritage Management Plan that applies to the Aboriginal cultural heritage; or
- under a native title agreement or another agreement with an Aboriginal Party, unless the Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
- in compliance with gazetted cultural heritage duty of care guidelines; or
- in compliance with native title protection conditions, but only if the cultural heritage is expressly or impliedly the subject of the conditions; or

(b) the person owns the Aboriginal cultural heritage, or is acting with the owner's agreement; or

(c) the activity is necessary because of an emergency, including for example, a bushfire or other natural disaster.

## Duty of Care Guidelines

### 1.14

Section 28 of the Act states that the Minister may by gazette notice notify guidelines (“cultural heritage duty of care guidelines”) identifying reasonable and practicable measures for ensuring activities are managed to avoid or minimise harm to Aboriginal cultural heritage.

### 1.15

There is no offence in not complying with the cultural heritage duty of care guidelines. However, complying with the guidelines affords strict compliance with the cultural heritage duty of care. Where Aboriginal cultural heritage is harmed by an activity, and the activity is not otherwise covered by sections 23(3), 24(2), 25(2) or 26(2) of the Act, failure to have complied with the guidelines may result in prosecution under the Act. Maximum penalties for contravening the cultural heritage duty of care are \$117 800 for an individual and \$1 178 000 for a corporation.

## Another Option for Legal Protection

### 1.16

The Act expressly recognises that the views of the Aboriginal Party for an area are key in assessing and managing any activity which is likely to harm Aboriginal cultural heritage. Under the Act, there is provision for voluntary agreements and Cultural Heritage Management Plans with the relevant Aboriginal Party. You have a complete defence under the Act in relation to any activity undertaken in accordance with such agreements or Cultural Heritage Management Plans.

## Other Information

### 1.17

*Ask First – A guide to respecting Indigenous heritage places and values*, released by the Australian Heritage Commission, provides a practical guide to consulting and negotiating with Aboriginal people about their cultural heritage. Available from the Australian Heritage Commission website:

<http://www.environment.gov.au/heritage/ahc/publications/ask-first-guide-respecting-indigenous-heritage-places-and-values>

### 1.18

The Land Court of Queensland can assist in the provision of mediation in relation to Aboriginal cultural heritage matters.

### 1.19

Persons and organisations involved in activities likely to impact on Aboriginal cultural heritage may wish to consider strategic planning in relation to cultural heritage as well as training, monitoring, audit and review of their cultural heritage management systems.

### 1.20

Should you require assistance in determining your responsibilities under these guidelines, you should contact the Cultural Heritage Unit, Department of Aboriginal and Torres Strait Islander Partnerships on 1300 378 401.

## PART 2 – Guidelines under section 23(1) of the *Aboriginal Cultural Heritage Act 2003*: reasonable and practicable measures for ensuring activities are managed to avoid or minimise harm to Aboriginal cultural heritage

### 2.0 Introduction

#### 2.1

These guidelines have been gazetted as cultural heritage duty of care guidelines by the Minister responsible for the administration of the legislation under section 28 of the *Aboriginal Cultural Heritage Act 2003* and identify reasonable and practicable measures for ensuring that activities are managed to avoid or minimise harm to Aboriginal cultural heritage in a way that meets the duty of care requirements under section 23 of the *Aboriginal Cultural Heritage Act 2003*.

#### 2.2

These guidelines recognise that it is unlikely that Aboriginal cultural heritage will be harmed where:

- the current or proposed activity is on an area previously subject to significant ground disturbance and the activity will impact only on the area subject to the previous disturbance; or
- the impact of the current or proposed activity is unlikely to cause any additional harm to Aboriginal cultural heritage than that which has already occurred<sup>1</sup>.

#### 2.3

It is important to note that these guidelines do not permit activities which, although causing no surface disturbance or no additional surface disturbance to an area, may harm scarred or carved trees or rock art without the agreement of the Aboriginal Party for the area or a Cultural Heritage Management Plan undertaken pursuant to Part 7 of the Act.

### 3.0 Definitions

#### 3.1

The definitions used in the Act apply in relation to these guidelines.

#### 3.2

In addition to the definitions used in the Act, the following definitions are used within these guidelines:

<sup>1</sup> This is not to say that a particular area may not continue to have importance under Aboriginal tradition or history even though it has been subject to significant ground disturbance. The Melbourne Cricket Ground, for example, is located on the site of an important Aboriginal meeting place – whilst this important value continues to exist it cannot generally be further harmed by maintenance or use as the area has been completely developed.

“Cultural Heritage Find,” means a significant Aboriginal object or, evidence of archaeological or historic significance of Aboriginal occupation of an area of Queensland, or Aboriginal human remains, found in the course of undertaking an activity covered by these guidelines.

“Developed Area” means that the area is developed or maintained for a particular purpose such as use as a park, garden, railway, road or other access route, navigation channel, municipal facility or infrastructure facility, such as power lines, telecommunication lines or electricity infrastructure.

“No Additional Surface Disturbance” means surface disturbance not inconsistent with previous surface disturbance.

“Significant Ground Disturbance” means:

disturbance by machinery of the topsoil or surface rock layer of the ground, such as by ploughing, drilling or dredging;

the removal of native vegetation by disturbing root systems and exposing underlying soil.

“Surface Disturbance” means any disturbance of an area which causes a lasting impact to the land or waters during the activity or after the activity has ceased.

## 4.0 The nature of the activity and the likelihood of its causing harm to Aboriginal cultural heritage – Section 23(2)(a)

### Activities involving No Surface Disturbance (Category 1)

#### 4.1

Where an activity involves no Surface Disturbance of an area it is generally unlikely that the activity will harm Aboriginal cultural heritage and the activity will comply with these guidelines.

#### 4.2

In these circumstances, it is reasonable and practicable for the activity to proceed without further cultural heritage assessment.

#### 4.3

The following are examples of activities that may proceed under category 1:

- walking<sup>2</sup>
- driving along existing roads and tracks (within the existing alignment) or other infrastructure footprint
- aerial surveys
- navigating through water
- cadastral, engineering, environmental or geological surveys using methods (such as GPS systems) which do not cause surface disturbance

<sup>2</sup> Although activities such as walking through a culturally significant place are permitted under this guideline, it is important to be aware that merely being present in a culturally significant place may cause offence to Aboriginal people and, where this is known, due respect should be paid to these cultural sensitivities.

- photography

## Activities causing No Additional Surface Disturbance (Category 2)

### 4.4

Where an activity causes No Additional Surface Disturbance of an area it is generally unlikely that the activity will harm Aboriginal cultural heritage or could cause additional harm to Aboriginal cultural heritage to that which has already occurred, and the activity will comply with these guidelines.

### 4.5

In these circumstances, subject to the measures set out in paragraphs 4.7 – 4.11, it is reasonable and practicable for the activity to proceed without further cultural heritage assessment.

### 4.6

The following are examples of activities that may generally proceed under category 2:

- Cultivation of an area which is currently subject to cultivation
- Grazing cattle on an area where cattle are currently grazed
- Use and maintenance of existing roads, tracks and power lines within the existing infrastructure alignment, or other infrastructure footprint
- Use, maintenance and protection of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area where such services and utilities are currently being provided
- Use, maintenance and protection of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area immediately adjacent to where such services and utilities are currently being provided providing the activity does not involve additional surface disturbance
- Tourism and visitation activities on an area where such activities are already taking place

## Excavating, relocating, removing or harming Aboriginal cultural heritage

### 4.7

If at any time during the activity it is necessary to excavate, relocate, remove or harm a Cultural Heritage Find the activity should cease immediately. You must notify the Aboriginal Party for the area and seek their advice and agreement as to how best this may be managed to avoid or minimise harm to the Aboriginal cultural heritage. Paragraph 6.0 sets out examples of features highly likely to constitute or contain a Cultural Heritage Find.

## Reaching Agreement

### 4.8

It is advisable that the terms of any agreement you reach with the Aboriginal Party for the area be recorded and documented in the event of future disputes.

## Failure To Reach Agreement

### 4.9

Where agreement cannot be reached with the Aboriginal Party for the area, you continue to have a duty of care obligation under section 23 of the Act and must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage including, where necessary, through the development of a Cultural Heritage Management Plan under Part 7 of the Act.

## Aboriginal Cultural Heritage Register and Aboriginal Cultural Heritage Database

### 4.10

An activity under category 2 that will excavate, relocate, remove or harm Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database should not proceed without the agreement of the Aboriginal Party for the area or a Cultural Heritage Management Plan undertaken pursuant to Part 7 of the Act.

### 4.11

Information regarding Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database may be obtained from the Cultural Heritage Unit.

## 5.0 The nature and extent of past uses in the area affected by the activity - Section 23(2)(g)

### Developed Areas (Category 3)

#### 5.1

Where an activity is proposed in a Developed Area it is generally unlikely that the activity will harm Aboriginal cultural heritage and the activity will comply with these guidelines.

#### 5.2

In these circumstances, subject to the measures set out in paragraphs 5.8 - 5.12, it is reasonable and practicable that the activity proceeds without further cultural heritage assessment.

#### 5.3

The following are examples of activities that may generally proceed within a Developed Area:

- Use and maintenance of existing roads, tracks and power lines within the existing alignment, or other infrastructure footprint;
- Use and maintenance of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area where such services and utilities are currently being provided.

### Areas previously subject to Significant Ground Disturbance (Category 4)

#### 5.4

Where an activity is proposed in an area, which has previously been subject to Significant Ground Disturbance it is generally unlikely that the activity will harm Aboriginal cultural heritage and the activity will comply with these guidelines.

#### 5.5

In these circumstances, subject to the measures set out in paragraphs 5.6 - 5.12, it is reasonable and practicable that the activity proceeds without further cultural heritage assessment.

## 5.6

In some cases, despite an area having been previously subject to Significant Ground Disturbance, certain features of the area may have residual cultural heritage significance. These features are set out in paragraph 6.0 of these guidelines.

## 5.7

It is important to be informed about any cultural heritage significance that may attach to these features and extra care must be taken prior to proceeding with any activity that may cause additional surface disturbance to the feature, or the area immediately surrounding the feature which is inconsistent with the pre-existing Significant Ground Disturbance. In these circumstances, it is necessary to notify the Aboriginal Party and seek:

- Advice as to whether the feature constitutes Aboriginal cultural heritage, and
- If it does, agreement as to how best the activity may be managed to avoid or minimise harm to any Aboriginal cultural heritage.

## Excavating, relocating, removing or harming a Cultural Heritage Find

## 5.8

If at any time during the activity it is necessary to excavate, relocate, remove or harm a Cultural Heritage Find the activity should cease immediately. You must notify the Aboriginal Party for the area and seek their advice and agreement as to how best this may be managed to avoid or minimise harm to the Aboriginal cultural heritage. Paragraph 6.0 sets out examples of features highly likely to constitute or contain a Cultural Heritage Find.

## Reaching Agreement

## 5.9

It is advisable that the terms of any agreement you reach with the Aboriginal Party for the area be recorded and documented in the event of future disputes.

## Failure To Reach Agreement

## 5.10

Where agreement cannot be reached with the Aboriginal Party for the area, you continue to have a duty of care obligation under section 23 of the Act and must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage including, where necessary, through the development of a Cultural Heritage Management Plan under Part 7 of the Act.

## Aboriginal Cultural Heritage Register and Aboriginal Cultural Heritage Database

## 5.11

An activity under category 3 or category 4 that will excavate, relocate, remove or harm Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database should not proceed without the agreement of the Aboriginal Party for the area or a Cultural Heritage Management Plan undertaken pursuant to Part 7 of the Act.



## 5.12

Information regarding Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database may be obtained from the Cultural Heritage Unit.

### Activities causing additional surface disturbance (Category 5)

## 5.13

A category 5 activity is any activity, or activity in an area, that does not fall within category 1, 2, 3 or 4.

## 5.14

Where an activity is proposed under category 5 there is generally a high risk that it could harm Aboriginal cultural heritage. In these circumstances, the activity should not proceed without cultural heritage assessment. Cultural heritage assessment should involve consideration of the matters a Court may consider under section 23(2) of the Act, set out in paragraph 1.12 of the Preamble to these guidelines.

## 5.15

Particular care must be taken where it is proposed to undertake activities causing additional surface disturbance to the features likely to have cultural heritage significance, set out in paragraph 6.0 of these guidelines.

## 5.16

It is important to be informed about any cultural heritage significance that may attach to these features and extra care must be taken prior to proceeding with any activity that may cause additional surface disturbance of the feature, or the area immediately surrounding the feature. Where an activity is proposed under category 5, it is necessary to notify the Aboriginal Party and seek:

- Advice as to whether the feature constitutes Aboriginal cultural heritage; and
- If it does, agreement as to how best the activity may be managed to avoid or minimise harm to any Aboriginal cultural heritage.

### Excavating, relocating, removing or harming a Cultural Heritage Find

## 5.17

If at any time during the activity it is necessary to remove or relocate or harm a Cultural Heritage Find the activity should cease immediately. You must notify the Aboriginal Party for the area and seek their advice and agreement as to how best this may be managed to avoid or minimise harm to the Aboriginal cultural heritage. Paragraph 6.0 sets out examples of features highly likely to constitute or contain a Cultural Heritage Find.

### Reaching Agreement

## 5.18

It is advisable that the terms of any agreement you reach with the Aboriginal Party for the area be recorded and documented in the event of future disputes.



## Failure To Reach Agreement

### 5.19

Where agreement cannot be reached with the Aboriginal Party for the area, you continue to have a duty of care obligation under section 23 of the Act and must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage including, where necessary, through the development of a Cultural Heritage Management Plan under Part 7 of the Act.

## Aboriginal Cultural Heritage Register and Aboriginal Cultural Heritage Database

### 5.20

An activity under category 5 that will excavate, relocate, remove or harm Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database should not proceed without the agreement of the Aboriginal Party for the area or a Cultural Heritage Management Plan undertaken pursuant to Part 7 of the Act.

### 5.21

Information regarding Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database may be obtained from the Cultural Heritage Unit.

## 6.0 The nature of the Aboriginal cultural heritage likely to be harmed by the activity - Section 23(2)(b)

### 6.1

The following features are highly likely to have cultural heritage significance. These features include, but are not limited to:

**Ceremonial places:** The material remains of past Aboriginal ceremonial activities come in the form of earthen arrangements or bora grounds and their associated connecting pathways, and stone circles, arrangements and mounds. Indigenous people used these places for ceremonies, including initiation and inter-group gatherings.

**Scarred or carved trees:** Scars found on large mature trees often indicate the removal of bark by Indigenous people to make material items like canoes, containers, shields and boomerangs. Carved trees generally feature larger areas of bark that have been removed and carved lines deeply etched into the timber. Carvings include geometric or linear patterns, human figures, animals and birds.

**Burials:** Pre-contact Aboriginal burials are commonly found in caves and rock shelters, midden deposits and sand dunes. Burial sites are sensitive places of great significance to Indigenous people.

**Rock art:** Queensland has a rich and diverse rock art heritage. Rock art sites can include engravings, paintings, stencils and drawings. Paintings, stencils and drawings may have been done for everyday purposes, but are often used for ceremonial and sacred functions. Engravings include designs scratched, pecked or abraded into a rock surface.

**Fish traps and weirs:** Fish traps and weirs are stone or wooden constructions designed to capture aquatic animals, predominantly fish. Traps are considered as structures made

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predominantly from stone to form a type of pen or enclosure. Weirs are constructions designed to block the natural flow of water in creeks, streams and other watercourses.

**Occupation sites:** These are places where the material remains of human occupation are found. Such sites contain discarded stone tools, food remains, ochre, charcoal, stone and clay hearths or ovens, shell middens and shell scatters, including deposits found in rock shelters and caves. These deposits may be buried. Other evidence of occupation sites includes the remains of Aboriginal dwellings or "gunyahs".

**Quarries and artefact scatters:** Quarries are places where raw materials such as stone or ochre were obtained through either surface collection or sub-surface quarrying. Stone collected or extracted from stone quarries was used for the manufacture of stone tools. Ochre, a type of coloured clay, was utilised by Indigenous people in rock art and for body and wooden tool decoration.

**Grinding grooves:** Grinding grooves represent the physical evidence of past tool making or food processing activities. They are generally found near water sources. The presence of long thin grooves may indicate where the edges of stone tools were ground. Food processing activities such as seed grinding can leave shallow circular depressions in rock surfaces.

**Contact Sites:** The material remains of Indigenous participation in the development of Queensland after the arrival of European settlers. These include former or current Aboriginal missions, native mounted police barracks and historical camping sites.

**Wells:** Rock wells are reliable water sources that have been altered by Indigenous people for the storage of water. The presence of wells often indicates the location of routes frequently travelled by Indigenous people in the past.

## 6.2

Landscape features, which may also have cultural heritage significance include:

- Rock outcrops
- Caves
- Foreshores and coastal dunes
- Sand Hills
- Areas of biogeographical significance, such as natural wetlands
- Permanent and semi-permanent waterholes, natural springs.
- Particular types of native vegetation<sup>3</sup>
- Some hill and mound formations

<sup>3</sup> Unless otherwise provided for under these guidelines (such as provisions in relation to scarred trees or places entered onto the Aboriginal Cultural Heritage Register or Database), the control and maintenance of native vegetation by pruning and lopping may proceed, subject to the provisions of the *Vegetation Management Act 1999* and other relevant legislation.

## 6.3

The views of the Aboriginal Party for an area are key in helping assess the Aboriginal cultural heritage significance of these kinds of features.

## 6.4

Appropriately qualified persons such as anthropologists, archaeologists and historians can also provide valuable assistance.

## 7.0 The extent to which the person consulted with Aboriginal parties about the carrying out of the activity and the results of the consultation - Section 23(2)(c)

## 7.1

The views of the Aboriginal Party for an area are key in assessing and managing any activity likely to excavate, relocate, remove or harm Aboriginal cultural heritage.

## 7.2

*Ask First – A guide to respecting Indigenous heritage places and values*, released by the Australian Heritage Commission, provides a practical guide to consulting and negotiating with Aboriginal people about their cultural heritage. Available from the Australian Heritage Commission website:

<http://www.environment.gov.au/heritage/ahc/publications/ask-first-guide-respecting-indigenous-heritage-places-and-values>

## 7.3

Any activity undertaken in accordance with an agreement with the relevant Aboriginal Party for the area satisfies the Aboriginal cultural heritage duty of care under the Act.

## Reaching Agreement

## 7.4

It is advisable that the terms of any agreement you reach with the Aboriginal Party for the area be recorded and documented in the event of future disputes.

## Failure To Reach Agreement

## 7.5

Where agreement cannot be reached with the Aboriginal Party for the area, you continue to have a duty of care obligation under section 23 of the Act and must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage including, where necessary, through the development of a Cultural Heritage Management Plan under Part 7 of the Act.

## 8.0 Whether the person carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of Aboriginal cultural heritage, and the extent of the study or survey - Section 23(2)(d)

### 8.1

A cultural heritage study or a cultural heritage survey should be carried out where it is necessary to identify and assess the Aboriginal cultural heritage values of an area, for example where an activity is likely to excavate, relocate, remove or harm Aboriginal cultural heritage.

### 8.2

A cultural heritage study or survey can be undertaken as part of the process for developing a Cultural Heritage Management Plan under Part 7 of the Act.

### 8.3

Although it may be a useful reference point, you should not rely solely on information contained within the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database in deciding whether or not to undertake a cultural heritage study or survey. Neither should you rely solely on archaeological information about an area, as this may not address the particular significance of the area as a result of Aboriginal tradition or the history of the Aboriginal Party for the area.

### 8.4

As highlighted in *Ask First – A guide to respecting Indigenous heritage places and values*, you should not rely solely on previous work to identify significant Aboriginal cultural heritage, as the Aboriginal people involved in previous studies or surveys may not have disclosed the existence of cultural heritage places as they may not have been under immediate threat at the time the earlier study was undertaken.

### 8.5

Further guidance on when a cultural heritage study or survey is required may be obtained by:

- Seeking the views of the Aboriginal Party for the area and ascertaining from the Aboriginal Party as to whether a study or survey is required;
- Seeking information from the Aboriginal Cultural Heritage Register and the Aboriginal Cultural Heritage Database as to whether there are any known cultural heritage values that could be affected by your activity<sup>4</sup>;
- Seeking advice from appropriately qualified persons such as anthropologists, archaeologists and historians;
- Assessing the nature of the Aboriginal cultural heritage likely to be harmed;
- Assessing the nature of the activity and the likelihood of its causing harm to Aboriginal cultural heritage:

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<sup>4</sup> It is important to note that an assessment needs to be made as to whether your activity will indirectly harm Aboriginal cultural heritage not located directly within the area of actual activity e.g. damming a creek may impact on Aboriginal cultural heritage downstream from the dam.

- Assessing the nature and extent of past uses in the area affected by the activity;
- Seeking further advice from the Cultural Heritage Unit.

## 8.6

The Aboriginal Party for the area must be given the opportunity to be involved in undertaking the cultural heritage study or survey and their advice must be sought as to how best to manage any activity, which may harm cultural heritage identified by the study or survey.

## 9.0 Whether the person searched the database and register for information about the area affected by the activity - Section 23(2)(e)

### 9.1

An activity that will excavate, relocate, remove or harm Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database should not proceed without the agreement of the Aboriginal Party for the area or a Cultural Heritage Management Plan undertaken pursuant to Part 7 of the Act.

### 9.2

Information regarding Aboriginal cultural heritage entered on the Aboriginal Cultural Heritage Register or the Aboriginal Cultural Heritage Database may be obtained from the Cultural Heritage Unit.

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Pages 304 through 321 redacted for the following reasons:

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78B(2)(e)

**From:** [Rachel Small](#)  
**To:** "WEBB Alison"; "James.Newman@des.qld.gov.au"  
**Subject:** FW: Resolutions of the 2018 Pama Summit  
**Date:** Wednesday, 19 December 2018 10:53:01 AM  
**Attachments:** [image001.png](#)

Hi Alison and James

The link to Pama Summit resolutions is <http://pamafutures.org.au/2018summit/>. As advised, the web site gives no direction as to who are Pama Futures directors, managers or project officers.

Key Resolution affecting the States tenure resolution and joint management programs is as follows:

**Joint Management Agreements**

14. We, Cape York Pama at the 2018 Summit,

- i. Acknowledge that the traditional owners gathered here at the Cape York Land Council summit reject the existing national park regime implemented across the Cape York native title footprint which is riding on the back of our native title claims and Aboriginal Land Act 1991 transfers, and in doing so work in opposition to the rights and interests of Traditional Owners in Cape York.
- ii. Call on Balkanu and the CYLC to serve notice on the Queensland Government that the national park regime be renegotiated to reflect the rights and interest of native title holders and future national park areas to be moved across to operational management of traditional owners themselves.
- iii. Call on the North Queensland Land Council to support our call for these changes and join us in calling on the government to renegotiate the national park regime.
- iv. Call for all future discussions/negotiations to be part of collective agreements from here on in.
- v. Resolve to support the traditional owners of the Jardine River and Heathlands areas in achieving a just outcome for the future of their land and the future of Heathlands Ranger Station.

Regards

Rachel

**Rachel Small** | Manager (Special Projects)  
 Cape York Peninsula Tenure Resolution  
 Department of Aboriginal and Torres Strait Islander Partnerships  
 T: 07 4036 5619

---

**From:** Natalie E Muir  
**Sent:** Monday, 17 December 2018 11:41 AM  
**To:** Florence Bridger <[Florence.Bridger@datsip.qld.gov.au](mailto:Florence.Bridger@datsip.qld.gov.au)>; Karrell Ross <[Karrell.Ross@datsip.qld.gov.au](mailto:Karrell.Ross@datsip.qld.gov.au)>  
**Subject:** Resolutions of the 2018 Pama Summit  
<http://pamafutures.org.au/2018summit/>

**Condolences and Honour: Mabo Family**

1. We, Cape York Pama at the 2018 Summit,
  - i. Offer our condolences to the Mabo family for the loss of Dr Ernestine Bonita Mabo AO.
  - ii. We honour her role in pursuit of justice and in supporting her husband achieving Native Title justice for Aboriginal and Torres Strait Islander peoples and ridding Australia of the curse of *terra nullius*.
  - iii. Acknowledge the legacy of the Mabo family for First Nations and Australia at large.
  - iv. Take this time to urge Australians to consider an appropriate public recognition through an annual day of recognition on 3 June.

**Pama Lives Matter**

2. We, Cape York Pama at the 2018 Summit,
  - i. Express how appalled we are at recent events concerning police treatment of Aboriginal and Torres Strait Islander people in Cooktown and Bandyup Women's Prison in Perth.

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- ii. Call for the end to the systemic violence and high incarceration rates that Aboriginal and Torres Strait Islander people face.
- iii. Call for a full and fair inquiry into the horrific circumstances of these traumatising events, because Pama Lives Matter.

**Stolen Wages**

3. We, Cape York Pama at the 2018 Summit,

- i. Believe that the settlement made with Aboriginal and Torres Strait Islander people whose wages were stolen by the Queensland Government was unfair, unlawful, and robbed them of their just entitlements.
- ii. Support the approximately 6000 claimants in their class action against the State, noting that tragically, approximately 50 claimants have died since the class action started.
- iii. Call upon the Queensland Government to enter into settlement negotiations with these claimants before the remaining claimants die and so that their families can receive justice.
- iv. Call upon the Union Movement, the Christian Churches and other Faiths, and all Australians of goodwill to support real justice for the stolen wages.

**Rangers Co-op**

4. We, Cape York Pama at the 2018 Summit,

- i. Received an update on the co-design work undertaken in relation to ranger services in Cape York and the concept of a Pama Rangers network.
- ii. Call upon Pama Rangers to commence negotiations with the Commonwealth to establish a Pama Rangers network, representatives to be selected by each sub region with at least one elder from each sub region.

**Fishing Co-op**

5. We, Cape York Pama at the 2018 Summit,

- i. Discussed the concept of a co-operative structure for the fishing industry to benefit Native Title holders and communities.
- ii. Supported increased involvement in the Fishing Industry, with a particular focus on developing young Pama fishers and their enterprises.
- iii. Call for the exploration of collaborative arrangements with existing fishing industry in the Torres Strait.
- iv. Consider new opportunities, including all species, in the Cape.
- v. Call on the Commonwealth and State Governments to provide licenses to Pama and Torres Strait fishers.

**Great Dreaming Track**

6. We, Cape York Pama at the 2018 Summit,

- i. Believe in the Great Dreaming Track's potential to develop sustainable industry and call for collaboration to create jobs in the Cape by attracting new tourists.
- ii. Call for collaboration with fellow TOs in our regions to create a business together to show-off our country and showcase our culture.
- iii. Want capacity building and infrastructure to begin immediately to commence pilot operations in initial areas during 2019.
- iv. Believe the project's structure provides wanted empowerment opportunities and ensures the benefits will be captured in community.
- v. Know the young people of Cape York are excited for the project and committed to pursuing careers in business



and tourism with The Great Dreaming Track – both directly and indirectly with the Great Dreaming Track's partners.

### **Cape York Land Council (CYLC) Restructure**

7. We, Cape York Pama at the 2018 Summit,

- i. Acknowledge the presentation of the KPMG Business Case and note its endorsement by the CYLC Board of Directors.
- ii. Note that the CYLC will be restructured from a Corporations (CATSI) Corporation to a *Corporations Act*
- iii. Call upon the Land Council to
  - i. provide a full memorandum of information on the proposed restructure and the proposed constitution of CYLC to all its members in accordance with the rules of the corporation
  - ii. present for approval of the members of the corporation at a special general meeting to be properly convened
    - retain the name Cape York Land Council
  1. seek registration as a native title representative body for a six-year period from the Minister.

### **One Claim**

8. We, Cape York Pama at the 2018 Summit,

- i. Continue to support the One Claim so that the remaining 51% of Cape York can be vested in the Native Title Holders.
- ii. Call upon Aboriginal Shire Councils to support the One Claim on behalf of Pama.
- iii. Express our concern that the Cook and other Shire Councils' opposition to the One Claim will mean that in 2020, the 250<sup>th</sup> Anniversary of James Cook's landing at Cooktown there will still be lack of recognition of native title in the region by the Council, even though Native Title existed everywhere in 1770.
- iv. Acknowledge that there are concerns about Prescribed Body Corporate arrangements related to One Claim but understand that this is a matter that has to be authorised by the Native Title holders at the conclusion of the claim.
- v. Call upon the Land Council to provide appropriate information to all claimants in relation to the conduct of the claim and the PBC arrangements.
- vi. Call upon the State Government and respondent parties to not spread misinformation about the One Claim and to negotiate in good faith a settlement of the claim.
- vii. Acknowledge that if any individual applicant wishes to withdraw as an Applicant they may do so by contacting the CYLC lawyers in writing, however, the Native Title rights of the groups involved in One Claim will need instructions from all Native Title holders.

### **Constitutional Recognition**

9. We, Cape York Pama at the 2018 Summit,

- i. Reiterate our 2017 support for the *Uluru Statement from the Heart*.
- ii. Acknowledge the recent report of the Joint Select Committee that focuses on a First Nations voice.
- iii. Call upon the Parliament to put a referendum to the Australian people within the next Parliament.
- iv. Urge Pama, and particularly the Cape York Leadership Program to mobilise Pama Youth, to be at the forefront on the campaign for Constitutional Recognition.

### **Campfire Governance**

10. We, Cape York Pama at the 2018 Summit,

- i.Reiterate our support for the concept of our campfire governance.
- ii.Call on federal and state governments to formally acknowledge and support the importance of on country family, tribe and clan networks and the positive impact on Pama wellbeing and lands.

**Community Partnerships Interface**

11. We, Cape York Pama at the 2018 Summit,

- i.Call for strong partnership interfaces in our sub regions that are inclusive, transparent, gender balanced and respect the rights and responsibilities of Traditional Owners and the leadership of local Aboriginal Councils and their Mayors.
- ii.Understand that Empowerment plans for sub regions are developed by the people of the sub region.
- iii.Call for ongoing support from the Cape York regional organisations in communities.
- iv.Call for Partnership Tables that bring government to us in our communities to negotiate on our priorities and make joint decisions about investing in them.
- v.Call for Federal and State Governments to delegate authority for decisions to the officials that sit on these tables.

**Regional Partnerships Interface**

12. We, Cape York Pama at the 2018 Summit,

- i.Call for a Regional Partnership Authority to be established with delegates from each sub region to work on matters that go across the region.
- ii.Call for Federal and State Governments to recognise its authority in legislation.

**Opportunity Account**

13. We, Cape York Pama at the 2018 Summit,

- i.Received a report on the concept of an Opportunity Account as a potential new project for 2019 which would establish a mobile platform for the provision of opportunities to individuals and families.
- ii.Support the development of this concept by Cape York Partnership with appropriate technology partners such as DXC and the Federal government.

**Joint Management Agreements**

14. We, Cape York Pama at the 2018 Summit,

- i.Acknowledge that the traditional owners gathered here at the Cape York Land Council summit reject the existing national park regime implemented across the Cape York native title footprint which is riding on the back of our native title claims and *Aboriginal Land Act 1991* transfers, and in doing so work in opposition to the rights and interests of Traditional Owners in Cape York.
- ii.Call on Balkanu and the CYLC to serve notice on the Queensland Government that the national park regime be renegotiated to reflect the rights and interest of native title holders and future national park areas to be moved across to operational management of traditional owners themselves.
- iii.Call on the North Queensland Land Council to support our call for these changes and join us in calling on the government to renegotiate the national park regime.
- iv.Call for all future discussions/negotiations to be part of collective agreements from here on in.
- v.Resolve to support the traditional owners of the Jardine River and Heathlands areas in achieving a just outcome for the future of their land and the future of Heathlands Ranger Station.

**Too Deadly for Diabetes**

15. We, Cape York Pama at the 2018 Summit,

- i. Are excited to hear from former Apunipima CEO, Barb Flick and Ray Kelly from NSW in relation to the Too Deadly for Diabetes program.
- ii. Are only too aware of the misery and suffering of our people with Type 2 Diabetes.
- iii. Believe that nothing effective is happening to combat the terrible impact of this disease and that it will continue to grow as a problem for future generations.
- iv. Call upon the Regional organisations including CYP, Balkanu, CYLC, Apunipima and other regional health organisations, to put together an effective and appropriate plan to tackle Diabetes and implement the Too Deadly for Diabetes program in Cape York as soon as possible.
- v. Call upon CYP to convene a workshop of representatives from all of the communities in early 2019 to put together a plan of action.

**CDP**

16. We, Cape York Pama at the 2018 Summit,

- i. Will build the capability of our local organisations to deliver front-end CDP services ourselves, so we can take back community control, with regional support where needed.
- ii. Call for 100% of CDP investment currently leaving each of our communities to be re-invested back into our local economies.

**Native Title Compensation**

17. We, Cape York Pama at the 2018 Summit,

- i. Urge the Cape York Land Council to develop a strategy for the advancement of compensation claims under Native Title legislation and any other relevant basis of claim.

**Carbon rights**

18. We, Cape York Pama at the 2018 Summit,

- i. Express concern that carbon rights have been allocated over Pama land in Cape York without obtaining the free, prior and informed consent of landowners.
- ii. Commend the successful action by the Land Council to invalidate the grant of carbon rights without native title holder consent.
- iii. Insist that no rights to carbon and other energy exploitation such as solar be granted to third parties without an Indigenous Land Use Agreement.
- iv. Warn Pama landowners in Cape York to be careful about carbon theft and to go through a full and proper process of consultation and free, prior and informed consent of all native title holders and not just boards of directors of Land Trusts and PBCs.
- v. Condemn the parasitic industry that has developed in the carbon economy and the unscrupulous way in which rights are being taken over indigenous lands.

**Preservation of our Rights**

19. We, Cape York Pama at the 2018 Summit,

- i. Become increasingly aware of the “divide and rule” tactics of environmental groups and elements of the Qld Government in turning individuals and some members of land holding groups against other groups and against regional organisations representing Cape York Pama.
- ii. Are aware that a greens operative was the nominated contact person for an anti-Pama Futures press statement – and that the operative has connections with the Australian Conservation Foundation (ACF) and was a former associate of former Greens Senator Bob Brown.

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- iii. Call upon the ACF, the Wilderness Society, WWF, the Pew Foundation and other green groups to refrain from causing division between Pama.
- iv. Are appalled that such environmentalists would attack the social and economic development agendas of indigenous people in pursuit of their green agendas.
- v. Affirm the Unity and Solidarity of Cape York Pama and our right to regional collective organisation and the right to collectively bargain through our Land Council.

**Congratulations to our Young People**

20. We, Cape York Pama at the 2018 Summit,

- i. Are ecstatic about the wonderful young leaders we have growing in our movement under the nurturing of Cape York Leaders Program including our boarding school students and those attending University.
- ii. Are so proud of our young scholars at Djarragun College, Cape York Aboriginal Australia Academy, Girl Academy and our schools across the Cape.
- iii. Believe that these young people are our future and the future is in great hands.
- iv. We congratulate them on all of their wonderful achievements in 2018.
- v. Call upon everyone in Cape York to mentor and support these young people in their future path by providing opportunities to further consolidate their career aspirations.
- vi. Urge those receiving a higher education to know that if they feel alone in a setting that they are not alone, they have the support of their community elders and all Cape York Pama with them.

**Natalie Muir**

Principal Policy Officer, Economic Policy  
Department of Aboriginal and Torres Strait Islander Partnerships  
Ph. 07. 30036431



***I acknowledge Aboriginal and Torres Strait Islander people as the Traditional Owners of this country throughout Australia, and their connection to land and community.***

***I pay my respect to all Traditional Owners, and to the Elders both past and present.***

Pages 328 through 330 redacted for the following reasons:

-----  
78B(2)(e)

**From:** WALLACE Lyn  
**To:** Ross Macleod; Karrell Ross  
**Subject:** World Heritage Article  
**Date:** Wednesday, 16 January 2019 12:51:59 PM  
**Attachments:** image001.png  
image002.png

FYI - link below to interesting perspective on Australia's World Heritage

[https://theconversation.com/australias-problem-with-aboriginal-world-heritage-82912?utm\\_source=facebook&utm\\_medium=facebookbutton&fbclid=IwAR2nZXxuUhwYjisK20Yem1fST6Bot8eHTpSrN2wFOnoEtI0tKMhuvgE8o0Y](https://theconversation.com/australias-problem-with-aboriginal-world-heritage-82912?utm_source=facebook&utm_medium=facebookbutton&fbclid=IwAR2nZXxuUhwYjisK20Yem1fST6Bot8eHTpSrN2wFOnoEtI0tKMhuvgE8o0Y)

**Lyn Wallace**

Manager World Heritage Unit

Conservation and Biodiversity Programs | Conservation and Biodiversity Strategy  
Department of Environment and Sciences

P 3330 5309

Level 27, 400 George St, Brisbane QLD 4000  
GPO Box 2454, Brisbane QLD 4001

*Acknowledging, respecting and working with the Traditional Owners to ensure the preservation of Queensland's World Heritage areas: Fraser Island (K'gari), Australian Fossil Mammal Sites – Riversleigh, Gondwana Rainforests of Australia, Wet Tropics of Queensland and the Great Barrier Reef.*



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If you have received this message in error, you are asked to inform the sender as quickly as possible and delete this message and any copies of this message from your computer and/or your computer system network.

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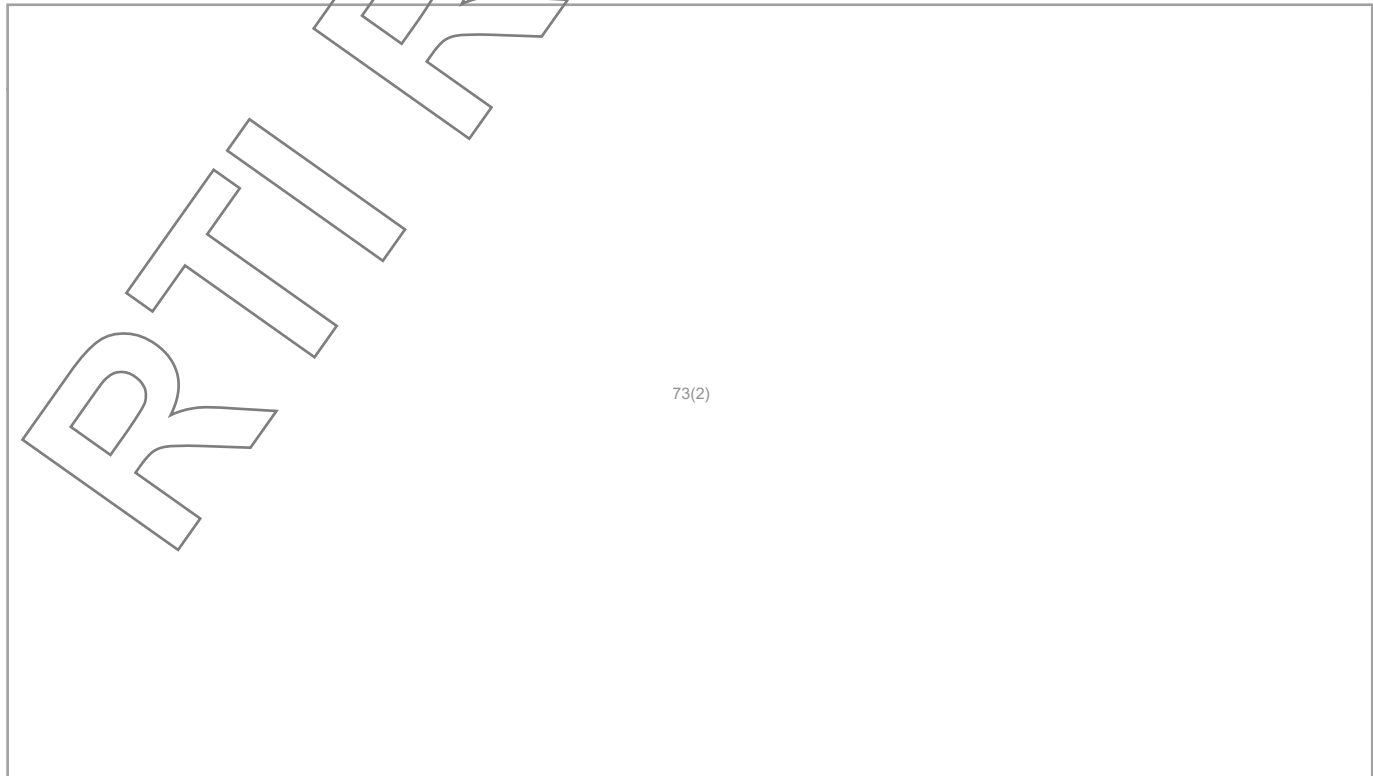
Pages 332 through 445 redacted for the following reasons:

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78B(2)(e)

Third party personal information

**Subject:** FW: Indigenous World Heritage Representative - professional development opportunity  
**Date:** Monday, 4 March 2019 9:30:30 AM  
**Attachments:** [image001.png](#)  
[image004.png](#)  
[image007.png](#)  
[Selection criteria - Indigenous representation - World Heritage delegation 2019.pdf](#)  
**Importance:** High

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<b>Temporary Development Opportunity – Australian World Heritage Delegation – World Heritage Representative (Indigenous)</b>	
Date approved:	28 February 2019
Closing date:	12 March 2019
Job Title:	World Heritage Representative (Indigenous)
Classification:	Open
Division:	Heritage, Reef and Marine Division
Branch:	Marine and International Heritage Branch
Section:	International Heritage Section
<p><b>Note:</b> this is a non-remunerated professional development opportunity for an Indigenous Australian person. Persons seeking to apply must obtain approval from their employer for a reassignment of duties for approximately 25-27 business days, interspersed from early April to mid-July. This will include attendance at the 43<sup>rd</sup> session of the World Heritage Committee in Baku, Azerbaijan (30 June-10 July 2019). The Heritage, Reef and Marine Division, Department of the Environment and Energy, will cover the costs of travel associated with domestic and/or international meetings as required for preparation and attendance at the 2019 World Heritage Committee meeting. There is also an expectation that the successful applicant will provide professional feedback on the development opportunity and mentoring support for the Indigenous World Heritage representative in 2020.</p>	
<b>Security</b>	
Highest level of Classified material handled in position:	Protected
Security clearance level required:	Baseline
<p><b>Note:</b> If a security clearance is required the successful applicant must obtain and maintain the appropriate security clearance level for the duration of their employment in the position. The Department of the Environment and Energy is able to assist with this process.</p>	
<b>Duty statement</b>	
<p>Australia's World Heritage delegation (a team of seven) reports to the Head of Delegation, Mr Stephen Oxley, First Assistant Secretary, Heritage, Reef and Marine Division. Information about the Department's priorities for Australia's term on the World Heritage Committee (2017-2021) is at <b>Attachment A</b>.</p>	
1.	<p>Work as part of the Australian World Heritage delegation to prepare for and attend the 43<sup>rd</sup> session of the World Heritage Committee in 2019. Provide information and advice on properties for consideration by the Committee, including (but not limited to):</p> <ul style="list-style-type: none"> <li>• State of Conservation reports for cultural and natural World Heritage properties;</li> <li>• Nominations for new World Heritage listings.</li> </ul> <p>The role may also include other duties as required to support the Australian delegation. This will involve working from your current work station (approximately five to seven business days).</p>
2.	<p>Bring an Indigenous perspective to the assessment, protection and management of cultural and natural World Heritage matters for consideration under the World Heritage Convention.</p>
3.	<ul style="list-style-type: none"> <li>• Participate in pre-planning meetings with the Australian World Heritage delegation (approximately three business days in Canberra); and</li> <li>• Attend the 43<sup>rd</sup> session of the World Heritage Committee in Baku, Azerbaijan (approximately 17 days including travel and weekends).</li> </ul>
4.	<p>As part of a cooperative high-performing team, operate under broad direction and apply good judgement to undertake work that is complex and/or sensitive.</p>
5.	<p>By 1 October 2019, share information and learning experiences, including:</p> <ol style="list-style-type: none"> <li>a written summary of reflections and lessons learned,</li> <li>recommendations for future development opportunities of this nature,</li> <li>a case study to share with the Department's Indigenous Advisory Committee and Reconciliation Action Committee.</li> </ol>
6.	<p>By 1 February 2020, attend a meeting/teleconference with the Heritage, Reef and Marine Division to provide longer-term development learnings and feedback.</p>

7.	In the lead up to the 44 <sup>th</sup> session of the World Heritage Committee in 2020, provide mentoring support (as required) for the next Indigenous representative on Australia's World Heritage delegation.
<b>Selection criteria</b>	
All criteria will be assessed in relation to the candidate's ability to perform in accordance with: <ul style="list-style-type: none"> <li>i. The APS Values, APS Code of Conduct and APS Employment Principles;</li> <li>ii. The principles of equity and workplace diversity;</li> <li>iii. Workplace health and safety; and</li> <li>iv. The Duty Statement.</li> </ul>	
1.	Demonstration of how the opportunity to participate as a member of Australia's World Heritage delegation would benefit your professional career development, and how it will contribute to your organisation's goals and objectives.
2.	Ability to work as a collaborative member of a high-performing team.
3.	Ability to interpret and analyse information of a technical, complex and/or sensitive nature, including clear communication of complex information orally and in writing.
4.	Qualifications and/or experience in a heritage field is preferred. This may include volunteer work in an organisation that manages or researches cultural and/or natural heritage values.
5.	Willingness to work within the framework of the Australia Government's responsibilities as a member of the World Heritage Committee under the <i>Convention Concerning the Protection of the World Cultural and Natural Heritage</i> (the World Heritage Convention).
<b>Eligibility and other requirements for the position</b>	
<p>This is an identified position open to Aboriginal and Torres Strait Islander applicants as an affirmative measure under section 8(1) of the <i>Racial Discrimination Act 1975</i>. Confirmation of Aboriginality must be provided by applicants with the submission of their application.</p> <p>Applicants must have their manager's approval to apply for and participate in the temporary development opportunity on Australia's World Heritage delegation.</p>	
<b>Application Details</b>	
<p>Applications should consist of an expression of interest including a short pitch (less than two pages) that takes into consideration the duties and selection criteria and demonstrates your suitability for the role. An up-to-date resume, including the contact details of two referees, is also required. One referee should be your current manager.</p> <p>Applications should be emailed to: <a href="mailto:AustraliaWorldHeritage@environment.gov.au">AustraliaWorldHeritage@environment.gov.au</a></p> <p>Information for applicants with disabilities: <a href="http://www.environment.gov.au/about/jobs/applicants-with-disabilities.html">www.environment.gov.au/about/jobs/applicants-with-disabilities.html</a></p> <p>To obtain more information about the temporary opportunity please contact the person below:</p>	
<b>Name:</b> Mahani Taylor	
<b>Phone:</b> 02 6274 2002	
<b>Email:</b> <a href="mailto:mahani.taylor@environment.gov.au">mahani.taylor@environment.gov.au</a>	

**Attachment A**

## International Objectives and Priorities for Australia's Membership Term on the World Heritage Committee – 2017-2021

- **Our Approach to Membership and Decision-making – Credibility**
  - Be consistent with the Convention and Operational Guidelines (following the rules).
  - Be evidenced based.
  - Support a representative and balanced World Heritage List (e.g. balanced representation of regions, more natural heritage and cultural landscapes).
  - Support a credible list – work to ensure nominated places clearly have Outstanding Universal Value; place more focus on conservation and management of existing World Heritage places.
  - Support initiatives to limit number of nominations considered each year (allowing more resources to flow to conservation initiatives).
  - Be transparent about our position on individual properties (i.e. work on a 'no surprises' basis to communicate our position to other Committee members and States Parties).
- **Climate Change**
  - Shape direction on the update of the World Heritage Convention Climate Change Policy and implementation of the Policy.
- **World Heritage System Funding Pressures**
  - Assist the World Heritage Centre to source additional sources of funding (preferably long term) for the World Heritage Fund (that pays for implementation of the Convention).
- **Policy Reform**
  - Nomination Process – Engage in reform of the nomination process to ensure nominated places clearly have Outstanding Universal Value and to enable more focus on conservation and management of existing World Heritage places. This reform must include the process for preparing, communicating and considering advisory bodies' advice.
  - State of Conservation Process – Support improvements in State of Conservation process, particularly properties on the list of World Heritage in Danger – to assist States Parties to implement measures towards the desired state of conservation of properties.
  - More Consistent Decision-making by the World Heritage Committee - Finalise the World Heritage Policy Compendium to enable it to be used by the Committee and States Parties.
- **Capacity Building**
  - Ensure that the \$1.6 million in Official Development Assistance (ODA) for World Heritage is allocated to actions that support our World Heritage Strategy membership priorities.
  - Ensure some ODA funded projects showcase/share Australia's strengths.
  - Retain flexibility to adjust our funding priorities to deal with new issues that may arise.
  - Support Indigenous representation in international World Heritage activities for professional capacity development.

Pages 450 through 590 redacted for the following reasons:

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78B(2)(e)

**From:** [Rachel Small](#)  
**To:** [Lyn Wallace \(DES\)](#)  
**Subject:** LEOLA went through yesterday afternoon :-)  
**Date:** Wednesday, 27 March 2019 10:37:00 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

Regards  
Rachel

**Rachel Small** | Manager (Special Projects)

**Cape York Peninsula Tenure Resolution Program**

Department of Aboriginal and Torres Strait Islander Partnerships

**P:** 07 40365 619 **M:** Mobile phone number **E:** [rachel.small@atsip.qld.gov.au](mailto:rachel.small@atsip.qld.gov.au)

Level 3, William McCormack Place 2, 5B Sheridan Street, Cairns QLD 4870

PO Box 4597, Cairns QLD 4870

[www.atsip.qld.gov.au](http://www.atsip.qld.gov.au)

**Free call from a landline to the office:** 1800 153 826

RTI RELEASE



**From:** Rachel Small  
**To:** WALLACE Lyn  
**Subject:** Re: [Redacted] Third party personal information  
**Date:** Wednesday, 27 March 2019 11:44:32 AM  
**Attachments:** image002.png  
image006.png

Hi Lyn

[Redacted] It was LEOLA so CYPHA AND ALA amendments.  
Prohibition of mining and RNTBC land ownership. NROLA will be s16.  
I think well done to you and Ross.

[Redacted]  
78B(2)(e)

Sent from my iPhone

On 27 Mar 2019, at 11:14 am, WALLACE Lyn <Lyn.Wallace@des.qld.gov.au> wrote:

Ok – no worries! Just wanted to say congrats and check that the mining prohibition went through ok ... (or was that in the NROLA?)

<!--[if !vml]--><image002.png><!--[endif]--> **Lyn Wallace**

**Manager World Heritage Unit**

Partnerships Branch | Cultural Capability and Connections  
Department of Environment and Sciences

**P** 3330 5309 **M** [Redacted] Mobile phone number  
Level 4, 400 George St, Brisbane QLD 4000  
GPO Box 2454, Brisbane QLD 4001

*Acknowledging, respecting and working with the Traditional Owners to ensure the preservation of Queensland's World Heritage areas: Fraser Island (K'gari), Australian Fossil Mammal Sites – Riversleigh, Gondwana Rainforests of Australia, Wet Tropics of Queensland and the Great Barrier Reef.*

<image004.jpg>

---

**From:** Rachel Small [mailto:Rachel.Small@datsip.qld.gov.au]

**Sent:** Wednesday, 27 March 2019 11:02 AM

**To:** WALLACE Lyn <Lyn.Wallace@des.qld.gov.au>

**Subject:** [Redacted]

Talk later

Regards  
Rachel

<!--[if !vml]--><image006.png><!--[endif]--> **Rachel Small** | Manager (Special

Projects)

**Cape York Peninsula Tenure Resolution Program**

Department of Aboriginal and Torres Strait Islander Partnerships

P: 07 40365 619 M  Mobile phone number E: [rachel.small@datsip.qld.gov.au](mailto:rachel.small@datsip.qld.gov.au)

Level 3, William McCormack Place 2, 5B Sheridan Street, Cairns QLD 4870

PO Box 4597, Cairns QLD 4870

[www.datsip.qld.gov.au](http://www.datsip.qld.gov.au)

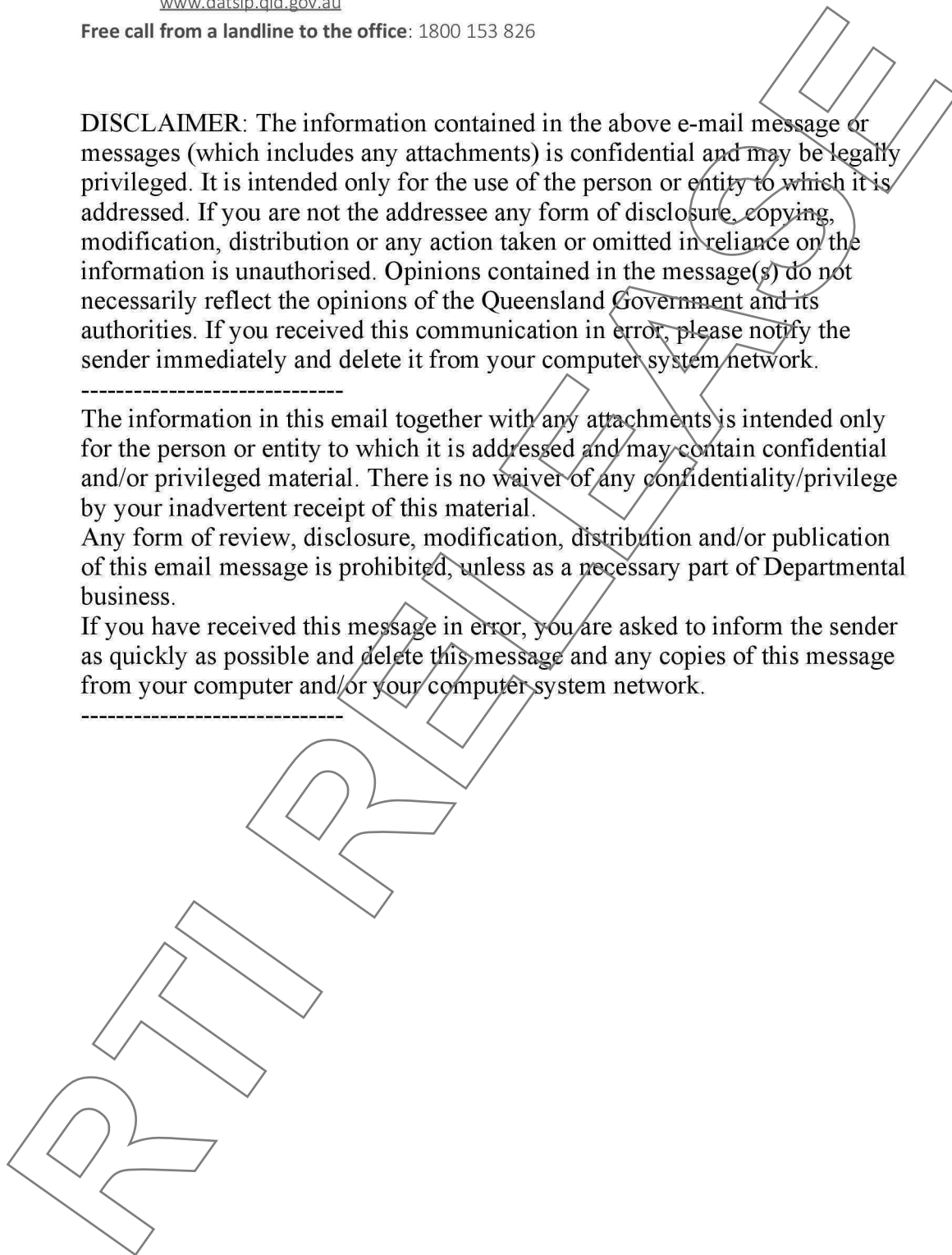
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Pages 594 through 597 redacted for the following reasons:

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78B(2)(e)



# Registration test decision

Application name North Eastern Peninsula Sea Claim

Name of applicant Bernard Richard Charlie, Trevor Henry Lifu, Paul Joseph Ah Mat, Michael Thomas Solomon, Jennifer Jill Thompson, Reginald Williams

NNTT file no. QC2017/003

Federal Court of Australia file no. QUD115/2017

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

For the reasons attached, I do not accept this claim for registration pursuant to s 190A of the *Native Title Act 1993* (Cth).

For the purposes of s 190D(3), my opinion is that it is not possible to determine whether the claim satisfies all of the conditions in s 190B because of a failure to satisfy s 190C.

**Date of decision:** 26 May 2017

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Heidi Evans

Delegate of the Native Title Registrar pursuant to sections 190, 190A, 190B, 190C, 190D of the *Native Title Act 1993* (Cth) under an instrument of delegation dated 20 November 2015 and made pursuant to s 99 of the Act.

# Reasons for decision

## *Introduction*

[1] This document sets out my reasons, as the delegate of the Native Title Registrar (the Registrar), for the decision to not accept the claim for registration pursuant to s 190A of the Act.

[2] The Registrar of the Federal Court of Australia (the Federal Court) gave a copy of the North Eastern Peninsula Sea Claim claimant application to the Registrar on 6 March 2017 pursuant to s 63 of the Act. This has triggered the Registrar's duty to consider the claim made in the application under s 190A of the Act.

[3] Given that the claimant application was made on 27 February 2017 and has not been amended, I am satisfied that neither subsection 190A(1A) nor subsection 190A(6A) apply.

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

## **Similarities with the Northern Peninsula Sea Claim application**

[5] The application was filed on the same day as the Northern Peninsula Sea Claim application. There are three common persons between the applicant for the Northern Peninsula Sea Claim application, and the applicant for the current application. Both applications were filed by Cape York Land Council (CYLC) as the legal representative for the applicants.

[6] The apical ancestors with reference to whom the members of the native title claim group are described are identical for both applications, except that the Northern Peninsula Sea Claim application names a further 11 apical ancestors, or ancestor couples, in addition to the eight that are common between the two applications. It is my understanding, therefore, that the native title claim group is a broader group of persons for the Northern Peninsula Sea Claim application when compared with the claim group for the current application.

[7] The areas covered by each of the applications is relatively proximate. The Northern Peninsula Sea Claim application covers an area primarily consisting of waters off the north west coast of Cape York, Queensland. The current application covers an area primarily consisting of waters off the northern east coast of Cape York, and including a number of islands around the tip of the Cape.

[8] The factual basis material contained in each of the applications is identical, consisting of Schedules F, G and M. The native title rights and interests claimed in relation to each application, set out in Schedule E, is also identical.

[9] Noting these similarities between the applications, I have considered it appropriate that I rely on my reasons in the decision not to accept the Northern Peninsula Sea Claim application (decision of 25 May 2017) at those conditions where the information before me for my consideration is identical to the information contained in that application. Specifically, I refer to ss 190B(4), 190B(5), 190B(6) and 190B(7).

[10] For the reader's convenience, I have repeated those reasons below at the conditions referred to, but noted that they are an exact copy of what appears at that condition in the Northern Peninsula Sea Claim application decision.

[11] I note that the applicant for the Northern Peninsula Sea Claim application and the applicant for the current application were advised of the deficiencies with their respective applications in advance of my decisions not to register the claims, however no additional material was provided.



## *Procedural and other conditions: s 190C*

### **Subsection 190C(2)**

#### **Information etc. required by ss 61 and 62**

The Registrar/delegate must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

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

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

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

[15] Below I consider each of the particular parts of ss 61 and 62, which require the application to contain details/other information or to be accompanied by an affidavit or other documents.

#### **Native title claim group: s 61(1)**

[16] A description of the native title claim group appears in Schedule A. It is only where, on the face of the application, it appears that not all of the persons comprising the native title claim group are included in that description, or where the description is of a sub-group or part only of the actual native title claim group, that the application will fail to meet this condition – *Doepel* at [36].

[17] Having considered the description before me, there is nothing to indicate that it seeks to exclude certain persons, or that it describes only part of the actual native title claim group.

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

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

[19] These details appear at Part B of the Form 1.

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

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

[21] My concern at this condition is only that information identifying the native title claim group, in the terms prescribed by s 61(4), is contained in the application – *Wakaman People 2 v Native Title Registrar and Authorised Delegate* [2006] FCA 1198 (*Wakaman*) at [34]. I am not to consider the correctness of that information or whether the description provided is ‘sufficiently clear’ – see *Wakaman* at [34] and *Gudjala People 2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [31] and [32].

[22] As above, a description of the persons comprising the native title claim group appears at Schedule A.

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

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

[24] The application is accompanied by six affidavits, one sworn by each of the applicant persons. The affidavits contain identical statements, and having considered those statements, it is my view that they address the matters prescribed by ss 62(1)(a)(i) to (v).

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

**Details required by s 62(1)(b)**

[26] Subsection 62(1)(b) requires that the application contain the details specified in ss 62(2)(a) to (h), as identified in the reasons below.

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

[27] This information appears in Schedule B, and Attachment B to Schedule B.

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

[28] The map is contained in Attachment C to Schedule C.

*Searches: s 62(2)(c)*

[29] Information about these searches appears at Schedule D.

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

[30] Schedule E contains this description.

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

[31] The factual basis material is contained in Schedule F.

*Activities: s 62(2)(f)*

[32] These activities are set out in Schedule G.

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

[33] Details of other applications are set out in Schedule H.

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

[34] Information about these notices is contained in Schedule HA.

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

[35] Details of s 29 notices appear at Schedule I.

*Conclusion*

[36] The application contains the details specified in ss 62(2)(a) to (h), and therefore contains all details and other information required by s 62(1)(b).

### **Subsection 190C(3)**

#### **No common claimants in previous overlapping applications**

The Registrar/delegate must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:

- (a) the previous application covered the whole or part of the area covered by the current application, and
- (b) the previous application was on the Register of Native Title Claims when the current application was made, and
- (c) the entry was made, or not removed, as a result of the previous application being considered for registration under s 190A.

[37] The application does not satisfy the condition at s 190C(3).

[38] It is only where there is a previous application that meets all three criteria set out at ss 190C(3)(a), (b) and (c) that the requirement for me to consider the possibility of common claimants between the claim group for the previous application and the claim group for the current application is triggered – *Western Australia v Strickland* [2000] FCA 652 (*Strickland FC*) at [9].

[39] The criterion at s 190C(3)(a) is satisfied. Schedule H states that the applicant is aware of five overlapping applications: Torres Strait Regional Sea Claim (QUD6040/2001), Kaurareg People #1 (QUD266/2008), Kaurareg People #2 (QUD267/2008), Kaurareg People #3 (QUD362/2010) and Gudang Yadheykenu People (QUD269/2008). The geospatial assessment and overlap analysis of the application area prepared by the Tribunal's Geospatial Services (dated 8 March 2017) confirms that these five applications overlap the current application.

[40] The criterion at s 190C(3)(b) is satisfied. The geospatial assessment provides that these five applications were on the Register at the time the current application was made. The Torres Strait Regional Sea Claim has appeared in an entry on the Register since July 2002 and has not been removed since that time. The Kaurareg People #1 and Kaurareg People #2 applications have appeared in an entry on the Register since February 2009 and have not been removed since that time. The Kaurareg #3 application has appeared in an entry on the Register since December 2010 and has not been removed since that time. The Gudang Yadheykenu People application has appeared in an entry on the Register since March 2009 and has not been removed since that time.

[41] The criterion at s 190C(3)(c) is satisfied. From my research of the Tribunal's databases, I am aware that all five previous applications were entered onto the Register following their being considered by a delegate of the Registrar pursuant to s 190A.

[42] It follows that I must consider whether any of the persons comprising the native title claim group for the current application, are also members of the native title claim groups for the five previous applications. My view is that there are common members between the claim groups. Schedule O states:

Some of the members of the claim group are also members by virtue of common apical ancestry descent of the following native title claim groups for the applications specified below that have been made in relation to part of the area covered by this application...

[43] Following this statement, Schedule O names the Kaurareg People #1, Kaurareg People #2, Kaurareg People #3 and the Gudang Yadheykenu People applications.

[44] On this basis, I cannot be satisfied that no person included in the native title claim group for the current application was a member of the native title claim group for any previous application.

### **Subsection 190C(4)**

#### **Authorisation/certification**

Under s 190C(4) the Registrar/delegate must be satisfied that either:

- (a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application, or

- (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Note: The word *authorise* is defined in section 251B.

Section 251B provides that for the purposes of this Act, all the persons in a native title claim group authorise a person or persons to make a native title determination application . . . and to deal with matters arising in relation to it, if:

- a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group . . . authorise the person or persons to make the application and to deal with the matters in accordance with that process; or
- b) where there is no such process—the persons in the native title claim group . . . authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision-making agreed to and adopted by the persons in the native title claim group . . . in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

Under s 190C(5), if the application has not been certified as mentioned in s 190C 4(a), the Registrar cannot be satisfied that the condition in s 190C(4) has been satisfied unless the application:

- (a) includes a statement to the effect that the requirement in s 190C(4)(b) above has been met, and
- (b) briefly sets out the grounds on which the Registrar should consider that the requirement in s 190C(4)(b) above has been met.

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

[46] Schedule R provides that the application is not certified. The requirement at s 190C(4)(b) applies in these circumstances.

[47] I am not satisfied that the requirement at s 190C(4)(b) is met. The information before me is insufficient in detail to allow me to be satisfied of the 'fact of authorisation' – see *Doepel* at [78].

[48] I am, however, satisfied that the information about authorisation is sufficient for the purposes of s 190C(5). That is, it contains the statement prescribed by s 190C(5)(a), and 'briefly' sets out the grounds on which the Registrar should consider the requirement of authorisation met (s 190C(5)(b)).

[49] While a detailed explanation of the authorisation process may not be required, authorisation is a 'matter of considerable importance and fundamental to the legitimacy of native title determination applications' – *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [57]. Where the material consists only of formulaic statements, it is unlikely to satisfy the Registrar's delegate of the fact of authorisation by all members of the native title claim group – see *Strickland* at [57] and *Doepel* at [78].

[50] The information about authorisation consists of a brief statement in Schedule R, and in the affidavits sworn by the applicant persons pursuant to s 62(1)(a). It asserts that an agreed to decision-making process was used by the native title claim group to authorise the applicant to make the application and deal with matters arising in relation to it. Where this type of decision-making process forms the basis of the applicant's authority, there is no requirement that 'all' the members of the group are involved in making the decision. The material must, however, explain how the members of the group were given 'every reasonable opportunity' to participate in the decision-making process – *Lawson on behalf of the 'Pooncarie' Barkandji (Paakantyi) People v Minister for Land and Water Conservation NSW* [2002] FCA 1517 (*Lawson*) at [25].

[51] The material states that it was at a meeting of the claim group in Injinoo on 21 May 2015 that the decision to authorise the applicant was made. There is no further information before me, however, about that meeting. Relevant facts might address how the members of the group were notified of the meeting, when they were notified, and whether they were offered assistance to attend the meeting.

[52] In *Ward v Northern Territory* [2002] FCA 171, where the applicant's authority was also given at a meeting of the claim group, O'Loughlin J found the information before him regarding that meeting 'wholly deficient'. His Honour asked the following hypothetical questions about the meeting (at [24]), indicating the type of information that may be required to satisfy the condition at s 190C(4)(b):

...Who convened it and why was it convened? To whom was notice given and how was it given? What was the agenda for the meeting? Who attended the meeting? What was the authority of those who attended? Who chaired the meeting or otherwise controlled the proceedings of the meeting? By what right did that person have control of the meeting? Was there a list of attendees compiled, and if so, by whom and when? Was the list verified by a second person? What resolutions were passed or decisions made? Were they unanimous, and if not, what was the voting for and against a particular resolution? Were there any apologies recorded?

[53] His Honour held that these questions might not need to be answered on any formal basis, however the substance of the questions must be addressed by the material – at [25].

[54] Having considered the brief material before me, it is my view that it does not address any of these details of the authorisation meeting asserted. Consequently, I cannot be satisfied that the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.



## *Merit conditions: s 190B*

### **Subsection 190B(2)**

#### **Identification of area subject to native title**

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

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

[56] As above, a map of the application area is contained in Attachment C to Schedule C, and a description of the boundaries of that area is contained in Attachment B to Schedule B. Information identifying areas within the external boundary that are excluded from the application is contained in Schedule B. It is my view that this approach to describing excluded areas is sufficient at this condition – *Strickland v Native Title Registrar* [1999] FCA 1530 (*Strickland*) at [50] to [55].

[57] Attachment B is entitled 'Identification of Boundaries', and has been prepared by the Tribunal's Geospatial Services. It describes the external boundary of the application area by metes and bounds, referring to the mainland high water mark, non-freehold parcels, Local Government boundaries and coordinate points. It specifically excludes the land and waters subject to native title determinations QUD6040/2001 Torres Strait Regional Sea Claim, QUD157/2011 Northern Cape York Group #1 and QUD6073/1998 Warraber People, and native title determination application QUD673/2014 Cape York United Number 1.

[58] The map at Attachment C is a colour copy of an A3 map, titled 'North Eastern Peninsula Sea Claim', which has also been prepared by the Tribunal's Geospatial Services. It is dated 23 November 2016 and includes:

- the application area depicted by bold blue outline and hatching;
- the Comalco ILUA depicted by red outline;
- a commencement point;
- scale bar and coordinate grid; and
- notes relating to the source, currency and datum of data used to prepare the map.

[59] The geospatial assessment provides that the map and description are consistent and identify the application area with reasonable certainty. Having considered the information before me about the area covered by the application, I agree with the assessment, and consider that the information allows for the boundaries of the area to be identified on the earth's surface.



### Subsection 190B(3)

#### Identification of the native title claim group

The Registrar must be satisfied that:

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

[60] The application satisfies the condition at s 190B(3).

[61] The focus of my consideration at this condition is whether the application 'enables the reliable identification of the persons in the native title claim group' – *Doepel* at [51]. The correctness of that information or whether the persons described do in fact qualify as members of the native title claim group is not a matter I am permitted to consider – at [37].

[62] The description of the native title claim group in Schedule A appears as follows:

The native title group is made up of all persons descended by birth or adoption from the following apical ancestors:

Peter (Pahding) Pablo;  
 Wymarra (Wymara Outaiakindi);  
 Matthew (Charlie) Gelapa;  
 Annie Blanco;  
 Ela/Illa (father of Tommy Dodd, Polly and Tommy Somerset)  
 Woonduinagrun and Tariba (parents of Tom Redhead);  
 Charlotte Ware;  
 Queen Baki and Chief Tchiako / Tchiaku / Chiaku.

[63] It is my understanding, therefore, that there are two criteria governing the persons comprising the native title claim group. An individual must either be a biological descendant of one of the named apical ancestors, or they must be a descendant by means of adoption from one of the named ancestors.

[64] I accept that identifying at any one point in time those persons comprising the group would require some factual inquiry. However I do not consider this fatal to the application at this condition – *Western Australia v Native Title Registrar* [1999] FCA 1591 at [67]. In *WA v NTR*, Carr J found a description using the same criteria sufficient for the purposes of s 190B(3).

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

## Subsection 190B(4)

### Native title rights and interests identifiable

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

[66] My reasons here are an exact copy of my reasons at this condition in the decision not to accept the Northern Peninsula Sea Claim application for registration, dated 25 May 2017.

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

[68] As above, a description of the native title rights and interests claimed appears at Schedule E. It is my understanding that paragraph two of the description includes a right to exclusive possession, and that paragraph one clarifies where within the application area those exclusive rights are claimed.

[69] It is further my understanding that paragraph four of Schedule E sets out three non-exclusive rights and interests, and paragraph three specifies the area within the boundary of the application area where those non-exclusive rights and interests are claimed. The remaining paragraphs of the schedule set out limitations on the extent and operation of the rights and interests claimed.

[70] The test of identifiability at s 190B(4) is whether the claimed native title rights and interests are 'understandable and have meaning' – *Doepel* at [99]. In applying this test, I have had regard to the definition of 'native title rights and interests' in section 223(1) of the Act. I have not, however, undertaken an individual assessment of whether each right or interest claimed satisfies that definition, as I consider this a more appropriate task for the condition at s 190B(6) regarding whether the rights and interests can be prima facie established. This is addressed in my reasons below at that condition.

[71] It is my view that the description of the rights and interests claimed is clear and easily understood, and that the rights and interests set out in Schedule E have meaning as native title rights and interests. There is nothing ambiguous in the description. On that basis, the requirement is met.

## Subsection 190B(5)

### Factual basis for claimed native title

The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:

- (a) that the native title claim group have, and the predecessors of those persons had, an association with the area, and

- (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interest, and
- (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

[72] My reasons here are an exact copy of my reasons at this condition in the decision not to accept the Northern Peninsula Sea Claim application for registration, dated 25 May 2017.

[73] The application does not satisfy the condition of s 190B(5) because the factual basis is not sufficient to support each of the assertions at ss 190B(5)(a), (b) and (c).

[74] The factual basis material is contained in Schedules F, G and M.

[75] The information necessary to satisfy the condition at s 190B(5) 'must be in sufficient detail to enable a genuine assessment of the application by the Registrar' and be 'something more than assertions at a high level of generality' – *Gudjala People #2 v Native Title Registrar* [2008] FCAFC 157 (*Gudjala 2008*) at [92].

[76] Further, the material must be in sufficient detail so that it can be understood as applying to the particular native title rights and interests claimed, by the particular native title claim group, over the particular land and waters of the application area – see *Gudjala People #2 v Native Title Registrar* [2007] FCA 1167 (*Gudjala 2007*) at [39].

[77] The factual basis information consists largely of generalised facts which lack this level of specificity to the claim area, the native title claim group, and the native title rights and interests claimed.

[78] In my reasons below I address the particular deficiencies of the material in addressing each of the three assertions set out in the three paragraphs of s 190B(5).

#### **Reasons for s 190B(5)(a)**

[79] In support of the assertion at s 190B(5)(a), information that speaks to an association between the predecessors of the whole group and the area over the period since sovereignty may be required – *Gudjala 2007* at [52]. The only information before me addressing an association of the predecessors of the group with the area at sovereignty, or European settlement, consists of general non-specific statements. For example, Schedule F states: 'The members of the native title claim group and their predecessors have at all times since sovereignty had an association with the Claim Area by reference to their traditional laws and customs'. There is no information about the association of the named apical ancestors of the group with places within the application area.

[80] The factual basis in support of the assertion at s 190B(5)(a) must also address an association of the group and its predecessors with the entirety of the area – *Martin v Native Title Registrar* [2001] FCA 16 (*Martin*) at [26]. While there are some references in Schedule F to certain places on

the coastline of Cape York, communities on Cape York, and camps in the vicinity of the application area, noting that the application area primarily covers waters, rather than land, it is my view the information is insufficient in supporting an asserted association with the application area. The factual basis must have geographical particularity to the land and/or (in this case) waters of the application area to satisfy s 190B(5)(a) – *Martin* at [26].

[81] It may also be necessary that the factual basis speak to an association of the claim group as a whole with the area – *Gudjala 2007* at [52]. The information does not speak in sufficient detail about the association particular members of the native title claim group have with the area presently, nor does it speak to the type of association, whether it be spiritual and/or physical – see *Martin* at [26]. It does not provide examples describing the association of particular named individuals or families of the claim group with certain places within the application area.

[82] Schedule F provides that many members of the native title claim group and many of the predecessors of the group ‘live or have lived on or in the vicinity of the Claim Area in communities such as New Mapoon, Old Mapoon, Umagico, Bamaga, Injinoo and Seisia’. This is an example of the highest level of detail provided about the assertion at s 190B(5)(a), however I note that none of these places fall within the boundary of the application area.

[83] It follows that the information is not sufficient to meet the requirement at s 190B(5)(a).

#### **Reasons for s 190B(5)(b)**

[84] The material sets out in detail the laws and customs acknowledged and observed by the native title claim group presently. The material asserts that these laws and customs are ‘traditional’, however there is no explanation of *how* they are traditional. At s 190B(5)(b), the material must address how the laws and customs of the claim group are rooted in the laws and customs of a society at sovereignty, or at least European settlement – see *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA58 (*Yorta Yorta*) at [46]; *Gudjala 2007* at [63]. It is not sufficient to merely assert that laws and customs currently acknowledged and observed are traditional – *Gudjala People #2 v Native Title Registrar* [2009] FCA1572 (*Gudjala 2009*) at [53].

[85] Traditional laws and customs are those that have been passed down through the generations to the members of the native title claim group – *Yorta Yorta* at [46]; *Gudjala 2009* at [52] and [53]. The material does not address the way in which this transfer of knowledge has occurred, other than in general, non-specific terms.

[86] The material at s 190B(5)(b) may also be required to address the claim group’s acknowledgement and observance of laws and customs pertaining to the claim area – *Gudjala 2009* at [74]. While the laws and customs are set out in detail, there is no information addressing how those laws and customs are acknowledged and observed by members of the group today in relation to the particular area covered by the application.

[87] Section 190B(5)(b) requires the factual basis to speak to the existence of a pre-sovereignty society, and to identify the persons who acknowledged and observed normative laws and customs at that time – *Gudjala 2009* at [37] and [52]. The information addressing this matter speaks in general terms about the predecessors of the claim group comprising a ‘single society’ who ‘shared laws and customs’, and who ‘inhabited and occupied the lands and waters in and around the application area’ at sovereignty – see Schedule F. This information is insufficient to support the assertion at s 190B(5)(b).

### Reasons for s 190B(5)(c)

[88] Noting the reference in the wording of s 190B(5)(c) to ‘those laws and customs’, where the Registrar’s delegate cannot be satisfied that the factual basis is sufficient to support the assertion at s 190B(5)(b), regarding the existence of traditional laws and customs, it follows that the application cannot satisfy the requirements of s 190B(5)(c).

[89] At this condition, the material must address how the native title claim group have continued to hold their native title rights and interests by acknowledging and observing the laws and customs of a pre-sovereignty society, and how they have done so in a substantially uninterrupted way – *Yorta Yorta* at [47] and [87].

[90] Therefore, the factual basis must speak to the existence of a society at sovereignty acknowledging and observing traditional laws and customs from which the present laws and customs were derived and were traditionally passed to the claim group. It must also speak to continuity in the observance of laws and customs by the group and its predecessors, going back to sovereignty or at least European settlement – *Gudjala 2007* at [82].

[91] As above, my view is that the material is insufficient to support an assertion regarding traditional laws and customs, derived from the normative laws and customs of a society at sovereignty in the application area. It follows that it is not sufficient to support an assertion of continuity in the acknowledgement and observance of traditional laws and customs by the group and its predecessors. The information within the application that does speak to the assertion at s 190C(5)(c) is not at a sufficient level of detail and consists only of general statements addressing this matter. The following excerpt from Schedule F is an example of this material:

The members of the native title claim group and their predecessors have at all times since sovereignty acknowledged and observed without substantial interruption the traditional laws and customs, in particular the laws and customs referred to in this Schedule. These laws and customs have been handed down generation by generation to the native title claim group by word of mouth and common practice of their ancestors – see at [80].

[92] Consequently, this condition is not met.

## Subsection 190B(6)

### Prima facie case

The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

[93] My reasons here are an exact copy of my reasons at this condition in the decision not to accept the Northern Peninsula Sea Claim application for registration, dated 25 May 2017.

[94] The application does not satisfy the condition of s 190B(6).

[95] Native title rights and interests, in accordance with the definition of that term in s 223(1), are those that are 'possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders'. Therefore, where an application fails to satisfy the requirement at s 190B(5)(b), it follows that it cannot satisfy the requirement at s 190B(6).

[96] It is for this reason that the application does not satisfy the condition. As I was not satisfied the factual basis is sufficient to support an assertion regarding traditional laws and customs at s 190B(5)(b), I cannot consider any of the rights and interests claimed prima facie established as native title rights and interests, held pursuant to the traditional laws and customs of the native title claim group.

## Subsection 190B(7)

### Traditional physical connection

The Registrar must be satisfied that at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application, or
- (b) previously had and would reasonably be expected to currently have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to the land or waters) by:
  - (i) the Crown in any capacity, or
  - (ii) a statutory authority of the Crown in any capacity, or
  - (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

[97] My reasons here are an exact copy of my reasons at this condition in the decision not to accept the Northern Peninsula Sea Claim application for registration, dated 25 May 2017.

[98] The application does not satisfy the condition of s 190B(7).

[99] A 'traditional physical connection' is one where 'the relevant connection [is] in accordance with laws and customs of the group having their origin in pre-contact society' – *Gudjala 2007* at [89]. As above, at s 190B(5)(b) I was not satisfied that the factual basis was sufficient to support



traditional laws and customs, derived from the laws and customs of a society at settlement, and acknowledged and observed by the native title claim group. It follows that the application cannot satisfy this condition.

[100] Notwithstanding this, were the condition at s 190B(5)(b) met, my view is that the information within the application addressing the subject matter of s 190B(7) is insufficient to satisfy the requirement. At this condition, the applicant is required to present 'evidentiary material' that allows me to be satisfied of particular facts – see *Doepel* at [18]. The 'focus is upon the relationship of at least one member of the claim group with some part of the claim area' – *Doepel* at [18].

[101] Again, the material speaks only in general terms about the connection of members of the claim group with the application area. It does not include information that names one or more persons within the group and describes time they have spent at a particular location within the application area undertaking activities pursuant to their laws and customs.

[102] It follows that the requirement is not met.

### **Subsection 190B(8)**

#### **No failure to comply with s 61A**

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that because of s 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

Section 61A provides:

(1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

(2) If:

(a) a previous exclusive possession act (see s 23B) was done in relation to an area; and

(b) either:

(i) the act was an act attributable to the Commonwealth; or

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23E in relation to the act;

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

(3) If:

(a) a previous non-exclusive possession act (see s 23F) was done in relation to an area; and

(b) either:

(i) the act was an act attributable to the Commonwealth, or

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in s 23I in relation to the act;

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

(4) However, subsection (2) or (3) does not apply to an application if:



- (a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made; and
- (b) the application states that section 47, 47A or 47B, as the case may be, applies to it.

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

*Section 61A(1)*

[104] Section 61A(1) provides that a native title determination application must not be made in relation to an area for which there is an approved determination of native title. The geospatial assessment provides that there are no determinations of native title covering any part of the application area.

*Section 61A(2)*

[105] Section 61A(2) provides that a claimant application must not be made over areas covered by a previous exclusive possession act, unless the circumstances described in subparagraph (4) apply. The information in Schedule B identifying areas excluded from the application includes 'any area in relation to which a previous exclusive possession act [...] was done in relation to the area'.

*Section 61A(3)*

[106] Section 61A(3) provides that an application must not claim native title rights and interests that confer possession, occupation, use and enjoyment to the exclusion of all others in an area where a previous non-exclusive possession act was done, unless the circumstances described in s 61A(4) apply. The description of the native title rights and interests clarifies at paragraph [1(a)] that exclusive native title is only claimed 'where there has been no extinguishment to any extent of native title rights and interests'.

**Conclusion**

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

**Subsection 190B(9)**

**No extinguishment etc. of claimed native title**

The application and accompanying documents must not disclose, and the Registrar/delegate must not otherwise be aware, that:

- (a) a claim is being made to the ownership of minerals, petroleum or gas wholly owned by the Crown in the right of the Commonwealth, a state or territory, or
- (b) the native title rights and interests claimed purport to exclude all other rights and interests in relation to offshore waters in the whole or part of any offshore place covered by the application, or

- (c) in any case, the native title rights and interests claimed have otherwise been extinguished, except to the extent that the extinguishment is required to be disregarded under ss 47, 47A or 47B.

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

*Section 190B(9)(a)*

[109] Schedule Q states that no claim is made to minerals, petroleum or gas

*Section 190B(9)(b)*

[110] Schedule P states that no claim is made to exclusive possession of any offshore places.

*Section 190B(9)(c)*

[111] There is nothing within the application and accompanying material to indicate that the native title rights and interests claimed have been otherwise extinguished.

### **Conclusion**

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

[End of reasons]

# Attachment A

## Summary of registration test result

Application name	North Eastern Peninsula Sea Claim
NNTT file no.	QC2017/003
Federal Court of Australia file no.	QUD115/2017
Date of registration test decision	26 May 2017

### Section 190C conditions

Test condition	Subcondition/requirement	Result
s 190C(2)		Aggregate result: Met
	re s 61(1)	Met
	re s 61(3)	Met
	re s 61(4)	Met
	re s 62(1)(a)	Met
	re s 62(1)(b)	Aggregate result: Met
	s 62(2)(a)	Met
	s 62(2)(b)	Met
	s 62(2)(c)	Met
	s 62(2)(d)	Met
	s 62(2)(e)	Met
	s 62(2)(f)	Met
	s 62(2)(g)	Met
	s 62(2)(ga)	Met

Test condition	Subcondition/requirement	Result
	s 62(2)(h)	Met
s 190C(3)		Not met
s 190C(4)		Overall result: Not met
	s 190C(4)(a)	NA
	s 190C(4)(b)	Not met

## Section 190B conditions

Test condition	Subcondition/requirement	Result
s 190B(2)		Met
s 190B(3)		Overall result: Met
	s 190B(3)(a)	NA
	s 190B(3)(b)	Met
s 190B(4)		Met
s 190B(5)		Aggregate result: Not met
	re s 190B(5)(a)	Not met
	re s 190B(5)(b)	Not met
	re s 190B(5)(c)	Not met
s 190B(6)		Not met
s 190B(7)(a) or (b)		Not met
s 190B(8)		Aggregate result: Met
	re s 61A(1)	Met
	re s 61A(2) and (4)	Met

Test condition	Subcondition/requirement	Result
	re ss 61A(3) and (4)	Met
s 190B(9)		Aggregate result: Met
	re s 190B(9)(a)	Met
	re s 190B(9)(b)	Met
	re s 190B(9)(c)	Met

[End of document]

Pages 620 through 639 redacted for the following reasons:

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78B(2)(e)