Federal Court of Australia

Douglas on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland (No 2) [2024] FCA 385

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| File number(s): | QUD 20 of 2019 |
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| Judgment of: | **COLLIER J** |
|  |  |
| Date of judgment: | 18 April 2024 |
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| Catchwords: | **NATIVE TITLE** – application to be joined as a respondent party to a native title determination application pursuant to s 84(5) of the *Native Title Act 1993* (Cth) – whether joinder applicant is person whose interest may be affected by determination of native title – whether joinder applicant acting in representative capacity - whether in interests of justice to allow joinder – whether adequate justification for delay – where existing parties prejudiced if joinder allowed |
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| Legislation: | *Federal Court of Australia Act 1976* (Cth) ss 37M, 37N *Native Title Act 1993* (Cth) ss 68, 84(5), 87A, 203BB |
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| Cases cited: | *Bell on behalf of the Wakka Wakka People #3 v State of Queensland (No 2)* [2022] FCA 370  *Bell on behalf of the Wakka Wakka People #4 v State of Queensland (No 2)* [2022] FCA 371  *Bell on behalf of the Wakka Wakka People #4 v State of Queensland (No 3)* [2023] FCA 1114  *Blackburn v Wagonga Local Aboriginal Land Council* [2021] FCAFC 210; (2021) 287 FCR 1  *Blucher on behalf of the Gaangalu Nation People* [2018] FCA 1369  *Dimer on behalf of the Marlinyu Ghoorlie Claim Group v State of Western Australia* [2023] FCA 930  *Douglas on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland* [2023] FCA 615  *Forrest on behalf of the Kakarra Part A Native Title Claim Group v State of Western Australia* [2023] FCA 529  *Harrington-Smith on behalf of the Darlot Native Title Claim Group v State of Western Australia* [2022] FCA 114  *Hoolihan on behalf of the Gugu Badhun People #3 and State Minister for the State of Queensland (No 2)* [2023] FCA 1589  *Isaacs on behalf of the Turrbal People v State of Queensland* (No 2) [2011] FCA 942  *Vea Vea on behalf of the Wadja People v State of Queensland* [2020] FCA 405 |
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| Division: | General Division |
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| Registry: | Queensland |
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| National Practice Area: | Native Title |
|  |  |
| Number of paragraphs: | 62 |
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| Date of hearing: | 20 November 2023 |
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| Counsel for the Applicant: | Mr D Freeburn |
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| Solicitor for the Applicant: | Queensland South Native Title Services Limited |
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| Counsel for the First Respondent: | Ms E Longbottom KC with Mr N Boyd |
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| Solicitor for the First Respondent: | Crown Law |
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| Counsel for the Prospective Respondent: | The prospective respondent appeared in-person |

ORDERS

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|  | | QUD 20 of 2019 |
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| BETWEEN: | MICHAEL DOUGLAS & ORS ON BEHALF OF THE KABI KABI FIRST NATION TRADITIONAL OWNERS NATIVE TITLE CLAIM GROUP  Applicant | |
| AND: | STATE OF QUEENSLAND  First Respondent  THE COMMONWEALTH OF AUSTRALIA  Second Respondent  **BUNDABERG REGIONAL COUNCIL** (and others named in the Schedule)  Third Respondent  **GREGORY KITSON**  Prospective Respondent | |

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| order made by: | COLLIER J |
| DATE OF ORDER: | 18 April 2024 |

THE COURT ORDERS THAT:

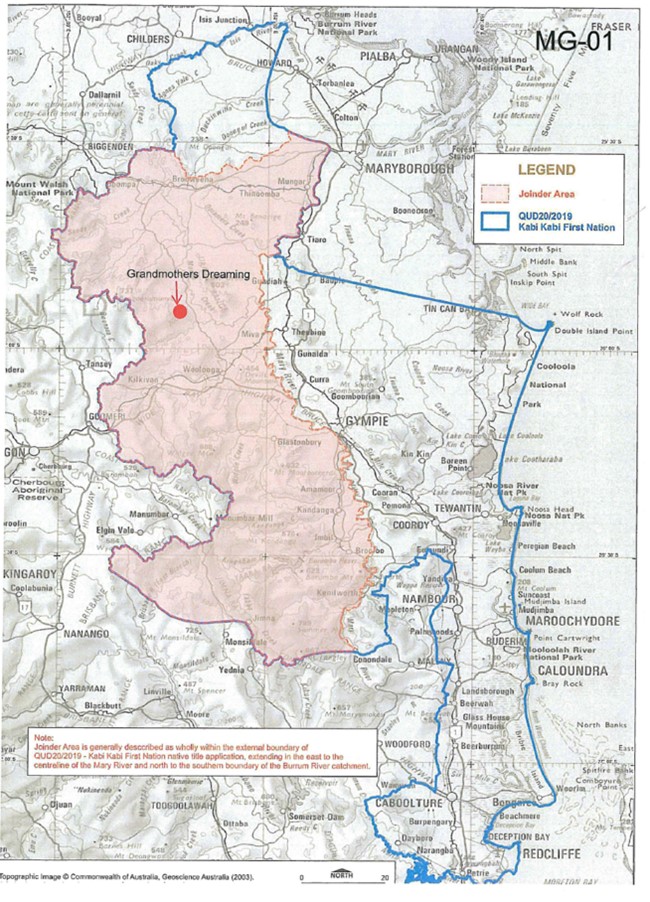
1. The joinder application filed by Gregory Kitson on 11 October 2023 be dismissed.

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

REASONS FOR JUDGMENT

Collier J:

1. Before the Court is an interlocutory application (**Kitson Joinder Application)** filed by Mr Gregory Kitson (**joinder applicant**) on 11 October 2023 to be joined as a respondent to the Native Title Claim QUD 20 of 2019 *Michael Douglas & Ors on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland & Ors* (**Kabi Kabi Claim**)*.* The joinder applicant is a Wakka Wakka person, and contends that Wakka Wakka country covers a large part of the Kabi Kabi Claim area as seen in the map (**disputed area**):



1. The joinder applicant specifically seeks as follows:
2. I be joined as a party to the proceedings.
3. The Kabi Kabi Claim to be amended as explained in the affidavit.

(as in original)

1. The interlocutory application was opposed by the Native Title Applicant to the Kabi Kabi Claim (**Kabi Kabi Applicant**) and the State of Queensland.

# Background

1. The Kabi Kabi Claim concerns land and waters in south-east Queensland. It has been on foot since 2013. The parties have been in substantive negotiations since July 2016.
2. A previous iteration of the Kabi Kabi Claim (being QUD280 of 2013) was authorised on 3 November 2012 at a meeting held in Gympie, after which the present Native Title determination application was filed on 31 May 2013.
3. On 29 November 2018, QUD 280 of 2013 and QUD 908 of 2016 (**Undambi Claim**) were combined by order of Registrar Grant to create the Kabi Kabi Claim, now before the court as QUD 20 of 2019.
4. The most recent iteration of the Kabi Kabi Claim was filed on 6 September 2023, being the Sixth Further Amended Native Title Determination Application Claimant Application.
5. The evidence of the joinder applicant was that he was a member of the Wakka Wakka People. Several Native Title determinations have been made in favour of the Wakka Wakka People, including *Bell on behalf of Wakka Wakka People #3 v State of Queensland (No 2)* [2022] FCA 370 (**Wakka Wakka #3**).
6. Contiguous to the eastern boundary of the Kabi Kabi Claim area is the determination area the subject of the Wakka Wakka #3 determination. There have been numerous amendments to the Kabi Kabi Claim area, including in relation to the Undambi area, however, the eastern boundary has remained unchanged since the filing of the claim in 2013. No iteration of the claim that led to the Wakka Wakka #3 determination ever included any part of the disputed area.
7. The traditional ownership of the Kilkivan area has been subject to some dialogue between the Kabi Kabi Applicant and the Wakka Wakka People, including mediations which occurred on 3 and 4 May 2014, and 18 October 2014.
8. The Kitson Joinder Application was the second joinder application to the Kabi Kabi Claim to be filed since the beginning of 2023. On 14 June 2023, in *Douglas on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland* [2023] FCA 615, I ordered that Mr Luke Barrowcliffe and Ms Katherine Barrowcliffe be joined as parties to the Kabi Kabi Claim, to the extent to which they asserted interests in the northern section of the claim area.
9. The Kabi Kabi Claim area was partitioned into three parts (Parts A, B and C) by orders dated 8 August 2023. Part A comprises that portion of the claim area not covered by the Undambi Claim or the Barrowcliffe disputed area. Part B comprises land subject to the Undambi Claim. Part C comprises the area subject to the Barrowcliffe joinder decision.
10. Before the Kitson Joinder Application was filed, Part A to the Kabi Kabi Claim was proposed to proceed to a consent determination in October or November 2023, and was well progressed. A comprehensive indigenous land use agreement (**ILUA**) had also been negotiated, and the terms of an agreement under s 87A of the *Native Title Act 1993* (Cth)   
    (**Native Title Act**) had been reached.
11. The Kitson Joinder Application came before the Court on 20 November 2023.

# Relevant Evidence

1. The joinder applicant relied on the following affidavits:
2. Affidavit of Mr Gregory Kitson filed on 11 October 2023;
3. Affidavit of Mr Gregory Kitson filed on 6 November 2023.
4. The Kabi Kabi Applicant relied on the following affidavits:
5. Affidavit of Mr Michael Bond filed on 27 October 2023;
6. Affidavit of Ms Patricia Bond filed on 27 October 2023;
7. Affidavit of Mr Norman Bond filed on 27 October 2023;
8. Affidavit of Mr Fred Cobbo filed on 27 October 2023;
9. Affidavit of Ms Michele Walters filed on 27 October 2023;
10. Affidavit of Mr Michael Allbrook filed on 9 November 2023.

## Evidence of the joinder applicant

### Affidavit filed 11 October 2023

1. In his affidavit filed 11 October 2023, Mr Kitson affirmed in summary as follows.
2. He has Native Title rights and interests as a Wakka Wakka person, in areas in and around Kilkivan and to the eastern boundary extent of Wakka Wakka country to the Mary River. In particular, he deposed:

5. In a southerly direction, the eastern boundary of Wakka Wakka Country follows the Mary River to its headwaters near the north-west of the Conondale Range. From the southern point of the eastern boundary, Wakka Wakka Country goes west toward below Jimna and in south-westerly direction to Toogoolawah and the west to Cooyar and the Bunya Mountains.

6. In a northerly direction, the eastern boundary of Wakka Wakka Country follows the Mary River toward Maryborough to just past Mungar and near Oakhurst. From this point of the eastern boundary, Wakka Wakka Country goes in a westerly direction toward Broweena and Biggenden and north west to the Burnett River, which is also a river boundary of Wakka Wakka Country that I know.

7. Given the above description of the Eastern Boundary extent of Wakka Wakka Country, this includes the Kilkivan Area in Wakka Wakka Country proper. The Kilkivan Area is referred to in this affidavit as a reference point to an area of Wakka Wakka Country that I know my bloodline ancestors were living at, and continuing their customs, lores, culture and familial practices from pre-colonial Wakka Wakka society. The Kilkivan Area includes Goomeri, Boonara, Mudlo, Mudlo State Forest, Cinnabar, Cinnabar State Forest, Blacksnake, Oakview, Oakview National Park, Wrattens National Park, Kinbombi (including Kimbombi Falls) and to the Mary River (**Kilkivan Area**).

8. The Eastern Boundary is referred to in this affidavit as a reference point to include areas west of the Mary River as an area of Wakka Wakka Country that I know my bloodline ancestors, and Wakka Wakka Country itself, were continuing their customs, lores, knowledge, language and dialects, culture and practices pre-colonial Wakka Wakka society, and that Wakka Wakka Country itself is still very much defined (**Eastern Boundary**).

9. Nearly all the Kilkivan Area and the areas west of the Eastern Boundary of Wakka Wakka Country is currently overlapped by the Kabi Kabi Claim. However, some areas such as Mudlo State Forest, Cinnabar State Forest, Oakview National Park and Wrattens National Park are areas where I am a determined common law native title holder as a Wakka Wakka person over parts of those areas. That is, parts of those areas fall within Part A of the Wakka Wakka People #3 QUD276/2019 native title determination area (**Wakka Wakka #3 Area**), and other parts abut the Wakka Wakka #3 Area and fall within the Kabi Kabi Claim.

10. If there is a determination of native title in favour of the Kabi Kabi People over the Kilkivan Area and the areas west from the Eastern Boundary of Wakka Wakka Country then I believe that my ability to exercise my native title rights and interests as a Wakka Wakka person in and around these areas will not be possible.

11. I believe the Kabi Kabi Claim should be amended so that it no longer covers the Kilkivan Area or the areas west of the Eastern Boundary of Wakka Wakka Country. But I do not want to delay or in any other way prejudice a native title determination being made over the rest of the Kabi Kabi Claim.

1. Mr Kitson gave detailed evidence concerning interests he contended would be affected by a determination in the Kabi Kabi proceedings. At paras 12-14 he described his apical ancestors, how he identified as a Wakka Wakka person, and how he was a common law Native Title holder with respect to the land and waters of the Wakka Wakka #3 area. He continued:

15. I was taught by my Bligh family elders, aunty Margaret Hamilton (nee Bligh), uncle Michael Bligh (uncle Mickey), aunty Esther Ralph (nee Bligh), uncle Richard Bligh, and my aunty Jennifer Thompson (nee Bligh) that granny Aggie and her family were southern Wakka Wakka people and that their grandfather, Herbert 'Jockey' Bligh, taught them this about our specific southern Wakka Wakka identity and areas of Wakka Wakka Country, including the Kilkivan Area and the Eastern Boundary.

16. The eldest child of Stockman Bligh and Aggie Bligh's children, Herbert 'Jockey' Bligh (my great grandfather (grandfather Jockey)) was born in the Kilkivan Area in circa 1886 to 1888. I was taught by my Bligh family Elders that grandfather Jockey was born to the north of Kilkivan, in the Kilkivan Area, and that granny Aggie gave birth to grandfather Jockey in a traditional Wakka Wakka cultural way at a birthing area. I have been taught by my aunty Margaret, uncle Mickey, aunty Esther, my mother Lynette Kitson (nee Bligh) and aunty Jenny that grandfather Jockey was living on his traditional Country, with his mother Aggie and younger siblings, whom are grandfather Martin Bligh and granny Doreen Bligh, prior to and at the time that they were forcibly removed by Queensland authorities to the Barambah settlement (now Cherbourg and part of the Wakka Wakka #3 Area) in 1901.

1. At paras 17-35 Mr Kitson gave evidence concerning his family history, including the teachings of his grandfather Les about the family’s Wakka Wakka identity, culture and country. Mr Kitson deposed that he was told by family member Elizabeth Hindson that she was taught that the Bligh family originated from the Kilkivan area and the southern Wakka Wakka country. Mr Kitson then deposed:

36. My mother was taught about Wakka Wakka Country, being Wakka Wakka and living as Wakka Wakka through her father, uncles, aunts, older brothers and sisters. She has taught me all her knowledge during my life. In my earlier years, up until I was about 13, my mother was primarily responsible for teaching me Wakka Wakka culture in my upbringing and education about who I am, where I am from, where my Country is and why this is important. That is, my mother took on her deeply rooted cultural role to nurture and educate me in a way that connects my bloodline rights to Wakka Wakka Country. My mother taught me about understanding of relationships with Wakka Wakka Country and observance of deeply rooted cultural protocols, lore and values, including what may happen to me if I mess up. She taught me about obligations and responsibilities to Wakka Wakka Country that guide our family, such as being an honour fighter.

37. My mother taught me that Wakka Wakka women have roles that are more central to instilling the lore and values to live in a way that is harmonious with the world around us. That this understanding of Country and embodying the relationships Wakka Wakka people have with Wakka Wakka Country will ensure life principles guide my behaviour when residing on another Aboriginal groups Country. My mother taught me that the Kilkivan area, the Kingaroy area, north Esk and the Bunya Mountains are Wakka Wakka Country. I was also taught this by my older cousin, Sharon Purcell, whom is my cousin but culturally an older sister to me and is the eldest of my generation in the Bligh family belonging to grandfather Jockey. She is also a knowledge holder through her mother and the connection through to our ancestors.

38. I was taught about the Kilkivan Area and areas west of the Mary River by my Wakka Wakka Elders who were taught by our ancestors (described earlier). On Wakka Wakka Country, the Mary River was made by Kabool the carpet python and the mountain ranges made by the Rainbow Serpent. The two snakes did a dance together, like a weaving or twirling, and after the dance they made the rivers and the mountains. This is a Wakka Wakka creation story of these places and made this way so that the Aboriginal people know where they are and where they belong according to the rivers and mountains. The Mary River is the eastern boundary of Wakka Wakka Country and because of this has cultural and spiritual meaning for Wakka Wakka people, particularly my family, and our obligations relating to custodianship, lore, custodianship and knowledge.

1. At paras 39-41 Mr Kitson gave evidence concerning legends of the creation of rivers in Wakka Wakka country including the Mary and Burnett Rivers, and Bora Rings along those rivers (in particular the Mary River). At para 42 Mr Kitson deposed that ceremonies could be done between the Wakka Wakka and visiting groups, such as contests of skill with weapons and commerce or trade. At paras 43-44 Mr Kitson gave evidence concerning traditions such as announcements to spirits when travelling to and from Wakka Wakka country and through bush and scrub throughout Wakka Wakka country, and duties if long neck turtle or lung fish were caught. He continued:

45. I and my brother and male cousins have been taught by Bligh family Elders that we cannot eat a Koala as it is a Wakka Wakka totem, same as the Quoll. I have been taught how to hunt, catch and prepare porcupine, goanna, scrub wallaby, birds, scrub turkey, eel, fish and cray fish. That I can hunt, catch, prepare and consume these animals throughout the Kilkivan Area and in the numerous creeks and scrub and mountains area west of the Eastern Boundary, as this is Wakka Wakka Country. That I have bloodline rights to do so. I have been taught how to shape Nulla Nulla for hunting. I was taught to not remove items from Wakka Wakka Country that I do not need to take with me and if I did so without permission I can become sick, unwell and that a spirit Juunjardi might visit me and haunt me.

46. There is a Wakka Wakka burial site near the Kilkivan, that it was a cave used for placing deceased Wakka Wakka peoples and should not be disturbed, but respected and that any maintenance should not include disturbing any bones and not to take any materials from that area uncles I wish to become sick and spiritually unwell. That our old people are resting in this specific area and because of disturbance, there is a Wakka Wakka spirit appearing at a camp ground rest area at Fat Hen Creek.

47. Some of my Elders were shown a map of the Kabi Kabi claim area and the proposed blue line boundary between Wakka and Kabi that was made by QSNTS and the NNTT … My Elders were very concerned and confused about the creation of this line. I told the Elders that line was done by white people because they say it is the water catchment areas between the Mary and Burnett regions. My Elders taught me that the line on the map is not Wakka Wakka lore or culture, that it is incorrect. Uncle Mickey stated, "*how on earth could a line drawn by a white man about a thing called a catchment boundary been known by a Wakka Wakka person in such detail as is made on this map at the time when white people rocked up*". Aunty Jenny stated, "*this is a travesty, a lie and typical of white people and their re-ordering of Aboriginal land, more destruction of Wakka Wakka Country coming our way by the looks of it'*.

48. Wakka Wakka traditional law and custom must mean that I identify only as Wakka Wakka to inherit traditional rights to Wakka Wakka Country through my bloodline descent and from a male who has bloodline rights in Wakka Wakka Country through their descent from a Wakka Wakka bloodline ancestor. Our Bligh family has Wakka Wakka custodianship of the Kilkivan Area and areas west from Eastern Boundary and that I can speak for this Country. I and my kin who identify same as me can participate in decision making about these parts of Wakka Wakka Country because of bloodline rights to these areas and that my bloodline is not mixed with the neighbouring groups.

49. My bloodline makes it safe for me to make decisions about Wakka Wakka Country because lore exists to restrict mixed identity with direct neighbours from making decisions about Wakka Wakka Country. This lore was designed to protect Wakka Wakka Country, keep our bloodline connections to Wakka Wakka Country to those of creation, and prevent threats by way of a corrupt identity. I am exercising these obligations to look after and protect Wakka Wakka Country. There is no such thing as shared Country by way of connecting to creation.

1. Mr Kitson further deposed:

51. I have learned that Bligh family Elders and Law family Elders who have authority to reinforce the lore and make decisions have asserted for a decade in the native title process and again on 14 September 2023, that the boundary proposed by QSNTS to demarcate Wakka Wakka Country and Kabi Kabi Country is not the same boundary of creation or that they have been taught by ancestors, that has maintained itself and exists despite the assault of colonisation. That his proposal threatens our family connections to Wakka Wakka Country.

1. Mr Kitson referred to his traditional rights and interests over the Kilkivan area in the following terms:

52. The traditional rights and interests that I claim to hold over the Kilkivan Area as a place that under Wakka Wakka lore belongs in my family custodian ship and the area that is west of the Mary River, is my bloodline connection to Wakka Wakka Country, and that myself and other Wakka Wakka people would then hold the same rights and interests that have been determined to hold over the Wakka Wakka #3 Area, as follows:

"3. The determination area is the land and waters described to the extent those areas are within the External Boundary and not otherwise excluded. To the extent of any inconsistency between the written description and the map produced, the written description prevails.

4. Native title exists in the Determination Area.

5. The native title is held by the Wakka Wakka People described in Schedule 1 (the Native Title Holders).

6. Subject to orders 8, 9 and 10 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 4 are:

(a) other than in relation to Water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others; and

(b) in relation to Water, the non-exclusive rights to:

(i) hunt, fish and gather from the Water of the area;

(ii) take the Natural Resources of the Water in the area; and

(iii) take the Water of the area,

for personal, domestic and non-commercial communal purposes.

7. Subject to orders 8, 9 and 1 O below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 4 are the non-exclusive rights to:

(a) access, be present on, move about on and travel over the area;

(b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;

(c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;

(d) take Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;

(e) take the Water of the area for personal, domestic and non-commercial communal purposes;

(f) conduct ceremonies on the area;

(g) bury Native Title Holders within the area;

(h) maintain places of importance and areas of significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm;

(i) teach on the area the physical and spiritual attributes of the area;

(j) hold meetings on the area;

(k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation; and

(l) be accompanied onto the area by certain persons who, though not Native Title Holders, are:

(i) spouses of Native Title Holders; or

(ii) persons required or permitted under the traditional laws acknowledged and traditional customs observed by the Native Title Holders for the performance of, assistance with, or participation in rituals or ceremonies.

8. The native title rights and interests are subject to and exercisable in accordance with:

(a) the Laws of the State and the Commonwealth; and

(b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders.

9. The native title rights and interests referred to in orders 6(b) and 7 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

10. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

11. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 2.

12. The relationship between the native title rights and interests described in orders 6 and 7 and the other interests described in Schedule 2 (the Other Interests) is that:

(a) the Other Interests continue to have effect, and the rights conferred by or held under the Other Interests may be exercised notwithstanding the existence of the native title rights and interests;

(b) to the extent the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency for so long as the Other Interests exist; and

(c) the Other Interests and any activity that is required or permitted by or under, and done in accordance with, the Other Interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests."

53. For example and in reference to the above description of rights and interests at 23, the rights to manage sites of Wakka Wakka cultural heritage (including sacred sites), visit men's areas, hunt, collect, take and consume traditional Wakka Wakka food sources, visit areas of cultural and historical significance, conduct meetings and family specific activities and numerous other Wakka Wakka culturally informed activities and manage the areas through the legal system that would permit Wakka Wakka people to exercise lore and remove conflicts of interest as they arise.

(as in original)

1. In relation to whether Mr Kitson ought to be joined as a respondent to the proceedings in the interests of justice, he deposed, in summary:

* At a meeting on 14 September 2023 Uncle Mickey identified the Kilkivan area as belonging to the Bligh Family or Wakka Wakka country, and that the Mary River was the boundary between Kabi Kabi country and Wakka Wakka country. This position was supported by other Wakka Wakka People such as George Kina, Frank Button, Terry Wilmott and Alison Murray (at paras 54-56).
* At the meeting between Wakka Wakka People on 14 September 2023 a map was produced where the boundary of the Mary River was indicated (at para 57).
* Historically claims had been made concerning the boundaries of Wakka Wakka country and the inclusion of Kilkian (at para 58-69).
* In March 2014 the Wakka Wakka #5 applicant met with members of the Kabi Kabi Claim group to discuss interests in the Kilkivan area (at para 63).

1. Mr Kitson continued:

70. If there is a determination of native title in favour of the Kabi Kabi People over any part of the Kilkivan Area and the area's west of the Mary River, then I and southern Wakka Wakka peoples will have our traditional rights and contemporary rights, as Wakka Wakka peoples, removed from those areas. To me and my family, this would be a major miscarriage of justice and yet another barrier for southern Wakka Wakka people to practice their cultural obligations to southern Wakka Wakka Country and participate in the modern world as fully secured traditional custodians of their clearly identifiable Country through legislated rights and interests.

71. I fear that I and other southern Wakka Wakka peoples would no longer be able to look after and protect the important Wakka Wakka cultural sites listed earlier, the culturally informed practices and the entirety of caring for Wakka Wakka Country, due to a major part being incorrectly sliced off by a process that was not culturally informed by Wakka Wakka peoples. That is, the ignorance to the full suite of knowledge available and the incorrect use of a non-culturally informed boundary to resolve a native title determination.

72. Again, this hinders my ability to practice a duty of care and obligation under my traditional law and custom to look after and protect Wakka Wakka Country. If there is a consent determination for the Kabi Kabi that includes the Kilkivan Area and areas west of the Mary River Eastern Boundary, this will result in me and other members of my family, other Wakka Wakka peoples and Wakka Wakka Country itself:

* becoming sick and spiritually unwell
* an inability to observe Wakka Wakka lore that is linked to those parts of Wakka Wakka Country
* restricted access to these parts of Wakka Wakka Country
* becoming further entangled in non-Wakka Wakka culture, protocols and practices being inflicted on to Wakka Wakka Country by outsiders
* non traditional owner management of these parts of Wakka Wakka Country
* bearing witness to government creation of a group of people who say they are Wakka-Kabi so that they can claim land, when such as group does not exist and never existed prior to colonisation
* bearing witness to the ignorance of Wakka Wakka creation stories
* bear witness to an exercise of foreign conceptualisation of traditional Wakka Wakka Country boundaries that is causing much fear and confusion
* bearing witness to non-Wakka Wakka migrants into Wakka Wakka Country exerting rights over Country that does not belong to them
* bearing witness to the perpetuation of Wakka Wakka people, culture, Country and heritage being usurped through entanglement that was born from government protections legislation
* if a determination is made in this regard, it will be worse for Wakka Wakka people as it is my understanding that a determination in favour of the Kabi Kabi People would be permanent, and will make it impossible for me, or any other Wakka Wakka People to exercise our traditional rights over any Kabi Kabi determined areas within the Kilkivan Area and west of the Mary River in the future.

1. In relation to the prospect of a Wakka Wakka Native Title determination application being made, Mr Kitson deposed:

80. From around March 2023, I commenced prepared material which could be used to support a F&A Application which could form the basis for a Wakka Wakka native title claimant application over Our Country. To do so, I:

(a) spoke to other members of the Bligh family belonging to Jockey Bligh, as well as members of the Law family, about Wakka Wakka Peoples' assertions to Our Country; and

(b) attempted to locate as many historical records as I could.

1. Mr Kitson annexed extensive material to his affidavit, including:

* The decision of 19 November 2021 by the National Native Title Tribunal to accept the claim in the amended Wakka Wakka #3 application.
* The decision of 6 September 2019 by the National Native Title Tribunal to accept the claim in the amended Wakka Wakka #4 application.
* A Wakka Wakka claim group newsletter from 2013.
* A caring for country plan.
* An affidavit of Margrett Gilson dated 7 October 2023.

1. I note that in Ms Gilson’s affidavit she referred to her interlocutory application seeking joinder as a respondent to the Kabi Kabi Claim because of her claimed rights and interests in and around Kilkivan.
2. No interlocutory application of Ms Gilson is currently before the Court.

### Affidavit filed 6 November 2023

1. In this affidavit Mr Kitson deposed, in summary:

* He was taught a great deal about Wakka Wakka culture by his countryman Mr Frank Button, including that the Kabi Kabi boundary was wrong.
* The alleged depiction of the boundary of Wakka Wakka country by his aunt Beryl Gambill mistakenly plotted the line.
* Western scientific hydrological modelling was used to inappropriately inform Aboriginal traditional owner group boundaries.
* It was completely irrational that Queensland South Native Title Services (**QSNTS**) ignored two significant historical waves of migrations of non-Wakka Wakka Aboriginal people to Wakka Wakka country, grounded in British settler colonialism. QSNTS wrongly stated that this was not significant.
* He was not declaring that he was acting on behalf of all Wakka Wakka People.

1. A further affidavit of Ms Margrett Gilson affirmed on 6 November 2023 was annexed to Mr Kitson’s affidavit.

## Evidence of the Kabi Kabi Applicant

1. Mr Michael Bond affirmed in his affidavit on 27 October 2023, in summary:

* He was a Wakka Wakka person through his father’s side and was a member of the applicant for Wakka Wakka #2 and Wakka Wakka #3 (**Wakka Wakka Claims**). He was also a Kabi Kabi person through his mother’s side.
* He had been involved in the Wakka Wakka Claims since the beginning of those claims. There were many meetings among Wakka Wakka People discussing boundaries. The boundary of Wakka Wakka country and Kabi Kabi country has remained pretty much unchanged since the claims were first filed in the late 90s.
* He was taught that Wakka Wakka country did not extend as far as the Mary River. He was taught by his father (a Wakka Wakka man) that the Mary River was the country of his mother (a Kabi Kabi woman).
* The elders and Wakka Wakka Native Title applicant always said that the boundary was Kilkivan.
* The Wakka Wakka People have always had legal representation and access to that legal representation.
* The joinder applicant had not followed cultural protocol and had not asked the elders. Mr Bond first met or heard about the joinder applicant at the Wakka Wakka annual general meeting in 2022 when he was not picked to be the director for his family for the Wakka Wakka PBC.

1. Ms Patricia Bond affirmed in her affidavit on 27 October 2023, in summary:

* She was a Wakka Wakka woman through her mother. She grew up in Cherbourg around Wakka Wakka elders who taught her about her Wakka Wakka heritage and culture. She was an applicant for the Wakka Wakka Claims.
* Beryl Gambrill and Florence Bell were both Wakka Wakka applicants at different stages of the Wakka Wakka Claims. The Wakka Wakka Applicant was always legally represented, and Florence Bell had regular contact with QSNTS.
* Boundaries were always discussed with the whole Wakka Wakka group at community meetings. She had not heard Wakka Wakka People talking about the boundaries of their country going to the Mary River in any authorisation meetings, and never heard Beryl Gambrill mention the Mary River.
* She did not know the joinder applicant except as Florence Bell’s cousin, and had not met him before the Wakka Wakka annual general meeting in 2022.
* The first time she heard about the joinder applicant’s claim that Wakka Wakka country extended to the Mary River was a few days before the Kitson Joinder Application was lodged.
* The joinder applicant had not met with other Wakka Wakka People, nor did he give any information at any authorisation meetings.

1. Mr Norman Bond affirmed in his affidavit on 26 October 2023, in summary:

* He was of both Kabi Kabi and Wakka Wakka descent. He was a member of the Kabi Kabi Applicant in the Kabi Kabi Claim.
* Many Kabi Kabi elders had passed away in the last few years who were connected to Gympie and the Mary Valley, and who would have been able to speak for Kabi Kabi country in the disputed area.
* The Kabi Kabi Applicant had been negotiating an ILUA which could have benefits for the Kabi Kabi People, some of which were already being planned.
* He did not know the joinder applicant.
* The creation of the Mary River by Wongai was a Kabi Kabi dreaming story. It was a well-known story among Aboriginal people that the carpet snake created the rivers.
* He attended a meeting with the joinder applicant and a number of other Wakka Wakka People on 14 September 2023. At that meeting the joinder applicant said he was the representative of the Wakka Wakka People, and no-one from the Wakka Wakka side who attended the meeting objected.
* It could not be true that the joinder applicant was a representative of the Wakka Wakka People because Mr Bond was also Wakka Wakka and was not formally told about it.

1. Mr Fred Cobbo affirmed in his affidavit on 27 September 2023, in summary:

* He was a descendant of both the Wakka Wakka and Kabi Kabi Peoples.
* He was the current director of the Wakka Wakka Native Title Aboriginal Corporation RNTBC ICN:8903 (**Wakka Wakka RNTBC**) which held Native Title for Wakka Wakka. He was the family representative for the family of Kitty and Mick Buck.
* He had been informed that those Wakka Wakka People who asserted interests outside of the Wakka Wakka determination area came from the family line that he represented in the Wakka Wakka RNTBC. As the family representative he was not consulted about the Kitson Joinder Application and did not support it.
* He understood that the Wakka Wakka boundary finished at Kinbombi.
* He attended the 2013 meeting between the Wakka Wakka and Kabi Kabi peoples as a representative of Kabi Kabi interests and there was no outcome.
* The joinder applicant was not at the meeting in 2014. Mr Cobbo only met the joinder applicant at the annual general meeting in October 2022.

1. Ms Michele Walters affirmed in her affidavit on 27 October 2023, in summary:

* She was an anthropologist in the employ of QSNTS and had been working on the Kabi Kabi Claim since June 2023.
* She caused a Geospatial and Systems Support Officer at QSNTS to prepare a map of the places referred to by the joinder applicant in his affidavit dated 10 October 2023.
* As part of her role with QSNTS she created a genealogical chart and Family Historian Narrative Report for the joinder applicant, using the information in his affidavit and publicly available information.
* The joinder applicant identified as a Wakka Wakka person through Agie Bligh. Agie Bligh was listed as an apical ancestor for the Wakka Wakka #3 and Wakka Wakka #4 determinations. Agie Bligh is a female apical ancestor. However, the joinder applicant identified “only as Wakka Wakka to inherit traditional rights to Wakka Wakka country through my bloodline descent from a male who has bloodline rights in Wakka Wakka country through their descent from a Wakka Wakka bloodline ancestor.”

1. Mr Michael Allbrook affirmed in his affidavit on 27 October 2023, in summary:

* He was one of three Acting Principal Lawyers employed by QSNTS and had been a solicitor on the record for the Kabi Kabi Claim since 6 January 2023.
* Mr Allbrook detailed the background of the Kabi Kabi Claim, noting that:
  + On or about 3 November 2012 QSNTS received a request under s 203BB of the Native Title Act to assist the Kabi Kabi Applicant in a Native Title application.
  + QSNTS officers had prepared and prosecuted the Kabi Kabi Claim since 2012 and collected evidence from Kabi Kabi People since 2013.
  + Considerable resources had been expended in negotiating with the parties towards a consent determination.
  + Various tranches of evidence were provided to the State of Queensland in preparing and prosecuting the Kabi Kabi Claim.
* QSNTS maintained information barriers to ensure potential conflicts between claim groups could be managed. Mr Allbrook did not have access to Wakka Wakka Claim files and Mr Ricardo Martinez did not have access to the Kabi Kabi Claim files.
* Mr Allbrook summarised the history of Native Title claims by the Wakka Wakka People, to his knowledge, including noting that there had been eight previous iterations of Wakka Wakka Native Title Claims, the first of which was filed in December 1997:
  + Three Native Title claim applications brought by the Wakka Wakka People had resulted in approved determinations of Native Title, comprising the Wakka Wakka #3 and Wakka Wakka #4 determinations.
  + The eastern boundary of the Wakka Wakka Claims was contiguous to the western boundary of the Kabi Kabi Claim filed in 2013.
  + The Wakka Wakka #3 Claim and its previous iterations never included any part of the disputed area.
* Mr Allbrook summarised the history of the Native Title claims by the Kabi Kabi People, including noting that there had been multiple previous iterations of Kabi Kabi Native Title Claims, the first of which was filed in June 1998. He further deposed:

27. Based on my review of the documents filed in the Court, each of the times the Kabi Kabi Claim was notified … the western boundary of the claim has remained the same.

28. The first tranche of connection evidence was provided to the State of Queensland in 2013. On 20 July 2016, the State of Queensland confirmed it was prepared to enter substantive negotiations for a consent determination. Some amendments to the Kabi Kabi Claim… were undertaken as a result of the negotiations with the State.

29. The Kabi Kabi Claim has been in active case management since around 2016 and has otherwise been progressing in accordance with a timetable for progressing matters towards consent determination since 29 September 2017.

…

35. The only steps which remain in relation to the implementation of the timetable … relate to the execution of the 87A agreement and Tenure Resolution ILUA, filing of submissions and setting a date for the consent determination hearing.

…

38. On 17 March 2023, I caused to be issued a public notice for an authorisation meeting and information sessions for the section 87A agreement and Tenure Resolution ILUA. This notice was published on 22 March 2023 in the *Koori Mail*. In accordance with the timetable, an information session and authorisation meeting was held in Caloundra over three days on 14-16 April 2023 (**First Authorisation Meeting**) …

39. At the First Authorisation Meeting the Kabi Kabi People authorised the section 87A agreement with the State of Queensland and the other respondent parties, authorised the making of an Indigenous Land Use Agreement with the State of Queensland to resolve tenure issues … and nominated Kabi Kabi Peoples Aboriginal Corporation (ICN: 8996) to be the prescribed body corporate upon a determination of native title being made. Significant work was done to establish a PBC between 2018-2022 and QSNTS facilitated a series of workshops relating to the rule book of this corporation on:

(a) 3 September 2022 in Petrie;

(b) 17 September 2022 in Kilkivan; and

(c) 18 September 2022 in Nambour.

These workshops had a budget of $12,500.00 and the cost of the First Authorisation Meeting was $24,863.32.

40. At the start of June 2023, the Applicant had completed the substantive steps required under the Federal Court Timetable, including authorising the section 87A agreement, Tenure Resolution ILUA and nominating the PBC and the Kabi Kabi claim was expected to be set down for a consent determination in July 2023.

41. On 14 June 2023, the Federal Court of Australia made orders to join Mr Luke Barrowcliffe and Ms Nai Nai Bird to the Kabi Kabi claim as indigenous respondents to an area identified by Mr Barrowcliffe in his affidavit and referred to in this affidavit as the "**Disputed Area**" This was recorded in *Douglas on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v' State of Queensland* [2023] FCA 615.

* Mr Allbrook gave a detailed account of the history of the Tenure Resolution ILUA from the start of negotiation in June 2019 to the time of the affidavit noting that:
  + The State had indicated that its consent to a determination of Native Title for the Kabi Kabi People was conditional upon the registration of the Tenure Resolution ILUA.
  + A final version of the Tenure Resolution ILUA which reflected the in-principle agreement of the Kabi Kabi Applicant and the State of Queensland was reached on 7 October 2022.
* At paras 52 – 55, Mr Allbrook provided a summary of the steps taken to amend the ILUA after the joinder of Mr and Ms Barrowcliffe. He further deposed:

56. On 26 October 2023, I asked Mr Jeff Harris to provide an assessment of what land would be removed from the Tenure Resolution ILUA if Mr Kitson's joinder application was to be successful. Based on the map contained in Mr Kitson's affidavit …, Mr Harris confirmed to me that this would exclude 279 parcels of land from the Tenure Resolution ILUA and also confirmed to me that:

(a) the Barrowcliffe joinder area comprised 12% of the claim area scheduled for consent determination; and

(b) the proposed Kitson joinder area comprises 49% of the claim area scheduled for consent determination.

* Mr Allbrook summarised the funding expended by QSNTS in prosecuting and preparing the Kabi Kabi Claim in paras 57 - 59.
* Mr Allbrook detailed the engagement with the Wakka Wakka People in relation to the Kabi Kabi Claim including that:
  + There were mediation sessions between members of the Wakka Wakka and Kabi Kabi Peoples held in May and October of 2014 in Kilkivan.
  + In July 2016 the Wakka Wakka People, by their solicitor Mr Tim Wishart, sent correspondence to the Kabi Kabi solicitor requesting that the mediation process be re-enlivened.
  + To his knowledge, there were no further representations to QSNTS attempting to re-enliven mediation in the period from 2016 to 2023.
  + To his knowledge, there were no further attempts to meet about Kilkivan until early March 2023.
* Mr Allbrook further deposed:

66. On 02 June 2023, Mr Tim Wishart (acting Chief Executive Officer of QSNTS) indicated to me that Mr Greg Kitson on behalf of some other Wakka Wakka people, had made a request for assistance to be joined to the Kabi Kabi claim and he asked me to provide information to him about the research that Kabi Kabi people had to the town of Kilkivan so that he could make an assessment about the application. I provided this information to Mr Wishart on a confidential basis.

…

77. On 14 September 2023, the meeting between Kabi Kabi and Wakka Wakka people occurred at Brisbane International Virginia, facilitated by Ms Susan Philips to discuss the assertions in relation to Kilkivan…

78. It is my understanding that during the morning of 14 September 2023, the Wakka Wakka people spent their time discussing and preparing a map of their asserted area of interest…

…

81. On 22 September 2023, a case management hearing was convened by Registrar Grant to timetable the Kabi Kabi claim towards a consent determination and set a date for the on-country determination of native title. Mr Kitson wrote to the Court to ask to appear at that hearing. Contrary to Mr Kitson's assertions in his affidavit at paragraph [86], the Applicant did not oppose his request to be heard at the case management hearing. At the hearing, Mr Kitson informed those present that he intended to file an interlocutory application to be joined to the Kabi Kabi claim and he expected his request for funding assistance for an interlocutory application would be approved to allow this, but that he would file his application without funding by 06 October 2023.

82. No application was filed on 06 October 2023 and the State wrote to Mr Kitson on an open basis to indicate that it intended to proceed with the steps towards a consent determination of native title recognising the native title rights and interests of the Kabi Kabi people if an application was not filed by 12 October 2023…

83. On 12 October 2023, an interlocutory application was filed by Mr Kitson and a copy was provided to the parties by a zip file. Upon reviewing the application and affidavit, it became apparent to me that Mr Kitson must have had some assistance in preparing it. I sent Mr Martinez an email to ask if he was involved in the preparation of the documents. Mr Martinez informed me that Mr Ewan Raeside, a solicitor who works under his supervision, prepared a draft of the affidavit for Mr Kitson on 14 September 2023 but not the interlocutory application…

84. I have reviewed the files maintained by QSNTS in relation to the Kabi Kabi native title claim and I can find no record or any dealings that the Kabi Kabi Applicant, or QSNTS as their legal representative, have had with Mr Kitson in relation to the interests that he now asserts in the Kabi Kabi claim area before June 2023.

# Summary of Submissions

1. The Kabi Kabi Applicant, joinder applicant and the State of Queensland filed written submissions and made oral submissions at the hearing. The joinder applicant was self-represented.

## Submissions of the joinder applicant

1. In summary, the joinder applicant submitted as follows:

* The joinder applicant’s Native Title rights and interests as a Wakka Wakka person, as detailed in his affidavits, extended to the Mary River and into the Kilkivan area. These rights and interests would be affected in a demonstrable way by a determination of Native Title for the Kabi Kabi People if the disputed area was not excised from the Kabi Kabi Claim.
* If there was a determination for the Kabi Kabi People that included the Kilkivan area and areas west of the Mary river, the joinder applicant and other members of their family, other members of the Wakka Wakka People, and the Wakka Wakka country itself, would experience results including but not limited to: becoming sick and spiritually unwell, having an inability to observe Wakka Wakka lore that is linked to those parts of Wakka Wakka country, and becoming further entangled in non-Wakka Wakka culture, protocols and practices being inflicted on to Wakka Wakka country by outsiders.
* The joinder applicant was prejudiced by:
  + QSNTS having prejudicial support for the progression of the Kabi Kabi Claim.
  + QSNTS potentially had no intention to assist the Wakka Wakka People in securing the Kilkivan area for the specific family that belong to that part of Wakka Wakka country.
  + The 15 week wait from his original request for assistance from QSNTS on 1 June 2023 which resulted in the placation of the joinder applicant and other members of the Wakka Wakka People who participated in the mediation between the Wakka Wakka People and the Kabi Kabi People on 14 September 2023 and by the rejection of further request for assistance on 22 September 2023.
  + The use of a boundary underpinned by hydrological modelling and the failure to give a clear explanation why that boundary was used instead of a consultation being undertaken.
  + Native Title processes which supported the monopolisation of participation by single members of large families and restricted access to other knowledge holders who were not provided with more rigorous processes of inclusion and equity.
  + A lack of rigorous research which applied conceptual frameworks, methodologies and methods for research which were designed to protect Aboriginal peoples from being exploited by research and academia.
  + A lack of legal representation that would normally have been provided by a Native Title services body like QSNTS. The joinder applicant had other commitments to balance alongside preparing his material and application.
* There was a conflict of interest and breach of procedural fairness in the Wakka Wakka claims history on the part of QSNTS.
* The joinder applicant did not wish to delay a determination of Native Title being made over the Kabi Kabi People’s country, however, the Kabi Kabi Claim should be amended to remove any land and waters that covered the Kilkivan area and areas west of the eastern boundary, or the Court should excise the identified area from the Kabi Kabi Claim.
* Individuals from other Wakka Wakka families provided affidavits and statements in support of the joinder applicant to defend their individual rights and interests. The joinder applicant and these other individuals had been forced to work together through a single interlocutory application due to limited income, limited capacity, age related challenges, limited understanding of the Native Title system and limited time.
* The joinder applicant was not acting for the entire Wakka Wakka group, as evidenced by the affidavits of Michael Bond, Patricia Bond and Fred Cobbo.
* The existence of negotiations for an ILUA by the State and the Kabi Kabi Applicant should not be considered in deciding the Kitson Joinder Application. Nor should the costs associated with the Kabi Kabi Claim determine the rights and interests of the joinder applicant.
* He had brought the Kitson Joinder Application because he had Native Title rights and interests in an area of land identified as being in the Kabi Kabi Claim, and his worry was that those rights and interests were going to be taken away from him, his family and other families who actually belonged to the disputed area.
* He located a series of documents which told him that it was not just him or his family or the other families who identified the disputed area as Wakka Wakka country, and that these areas had been identified for years, however that was ignored by QSNTS while the Kabi Kabi Claim was advanced.
* The failed mediations indicated that that method of trying to reach a resolution was not useful.
* Insufficient evidence was collected in the first place. Those consulted constituted a narrow group of people who may not have understood that there were other people who were Wakka Wakka People who also had their own experiences and their own cultural knowledge that tied them to places to which they belonged, which was Wakka Wakka country.
* He was trying to protect his country from other people claiming it and having his Native Title rights and interests taken away and removed.
* It was unclear in the Kabi Kabi Claim how the Western boundary of the claim area was produced. The boundary line identified in the Kabi Kabi Claim appeared to be the watershed line between the Burnett and the Mary Rivers. The watershed line was the result of scientific mapping in the 1970s. It was not a culturally informed line.
* The claim boundary did not follow the boundaries as the joinder applicant and his family understood it. According to the creation story of Kabul, that area acted as an easement, and that there were bora rings located along that river in different areas that were used for specific business between the Wakka Wakka People and the Kabi Kabi People, and anybody else. The watershed line could not actually be used as a boundary, because the Aboriginal people would not have plotted it on a map.
* There were disciplines other than anthropology which could provide information on how particular people ended up in particular areas. Aboriginal people were moved on from the areas due to colonisation.
* The consultation with the Wakka Wakka People had been monopolised by two people who did not consult with the rest of the family group. QSNTS failed to canvass more voices inside the family group.
* Wakka Wakka People were historically removed from the Kilkivan area. Members of the joinder applicant’s family, including Maggie Smith (Amy Bligh) were on the list of removals. No Kabi Kabi People were on the list.
* The map on which the boundary was drawn by Beryl Gambrill was limited so could not be taken to include the whole area that is Wakka Wakka country.
* The elders from the family, including Mickey Bligh, Uncle Frank Button, and cousin George Bligh had not seen the map drawn by Beryl Gambrill, nor seen her, because she is deceased, but they still drew almost the exact same polygon. So, they also knew where the boundary was, referable to the Mary River, and also taking in other areas of country that were west of that eastern boundary.
* The Wakka Wakka People were not sophisticated in respect of litigation.
* Mr Kitson was taught by elders under Wakka Wakka law that if one had a dual relationship or heritage to a neighbouring group it was almost impossible to be involved in anything to do with the distribution of resources, of boundaries, of anything where there was an obvious opportunity for conflict of interest. Those people who claimed to be Wakka Wakka and Kabi Kabi should not be entitled to comment.
* The western boundary of the Kabi Kabi Claim came from hydrological science. Aboriginal people understood where water flowed, but the amount of clearing and destruction of Wakka Wakka country from the timber industry, pastoral use and other types of different land uses in that area since colonisation would mean that there would be some change in where water flows. The one thing that had not changed the boundary was the Mary River.
* QSNTS had a conflict of interest, in that the chief executive officer of QSNTS was the representative solicitor for the Wakka Wakka Native Title Claim and also the Kabi Kabi solicitor.
* The fact that there have been multiple joinder applications indicated that there was something wrong with the original claim.
* The joinder applicant was acting for his own interests in the land, but he had included the evidence of other people to cut down on the amount of time that was needed for the Court to understand that there was a whole group of people whose interests had been missed.
* Although excising the disputed area from the Kabi Kabi Claim could trigger another Native Title claims process, the intention of the application was not for that Native Title to be determined in this application. The application sought removal of the identified area of land because its removal was supported by the evidence provided by the joinder applicant.
* The historical documents clearly showed that there was a pattern of identification, that more work was required, and that the joinder applicant, his family and others would be prejudiced if the Kitson Joinder Application were unsuccessful.

## Submissions of the State of Queensland

1. In summary, the State of Queensland opposed the Kitson Joinder Application, for reasons including:

* The interests asserted by Mr Kitson were properly characterised as a promulgation of communal Native Title on behalf of the Wakka Wakka People.
* The joinder applicant’s evident purpose in being joined was to act as a representative for the Wakka Wakka People in pursuing the recognition of Native Title over the disputed area.
* The Kitson Joinder Application was made too late.

## Submissions of the Kabi Kabi Applicant

1. The Kabi Kabi Applicant also opposed the Kitson Joinder Application, in summary for the following reasons:

* There had been substantial delay in the joinder applicant making any application to be joined, noting that the Kabi Kabi Claim was originally filed on 31 May 2013. The delay was a significant factor that imposed significant burden on the joinder applicant to demonstrate that the interests of justice favoured joinder.
* The joinder applicant had not provided any coherent explanation for the delay nor any real explanation in his submissions beyond stating that Wakka Wakka Native Title holders had inferred that QSNTS would act to secure the Kilkivan area after the Wakka Wakka People #3 determination. This was not a satisfactory explanation.
* The joinder applicant and the Wakka Wakka Native Title holders, of which he is part, were a large and sophisticated group who had had the benefit of legal representation. There was no reason to believe that the joinder applicant was so disorganised or unfamiliar with the Native Title process to have a diminished capacity to protect his asserted interests.
* There was no evidence of progress towards a claim over the disputed area by the Wakka Wakka People.
* These circumstances can be distinguished from the joinder application filed by Mr and Ms Barrowcliffe, as they had a coherent explanation for the delay and a long history of personally seeking to protect their asserted interest in the claim area both prior to and after the filing of the Kabi Kabi Claim. The joinder applicant in the Kitson Joinder Application only personally agitated his asserted interests for the first time in 2023.
* The joinder applicant had not demonstrated that he held an interest that would be affected by a determination in favour of the Kabi Kabi People.
* The mediations of 2014 took place many years ago, the joinder applicant was not a party to those mediations, and the subject of those mediations was the Kilkivan area which is on the periphery of the application area. The joinder applicant asserted an interest in 49 per cent of the claim area. There was no evidence that prior to 2023 the joinder applicant or anyone else had taken substantive steps to protect an interest that was anything like the interests he sought to agitate. Even so, if there were issues in relation to the mediation process, they could have been addressed earlier.
* Regardless whether the prospective applicant could satisfy the Court that he had an interest that may be affected by a determination in these proceedings, his application should be dismissed solely on the basis of the extreme delay and prejudice it would cause to the Kabi Kabi Applicant.
* The joinder applicant’s purpose in seeking to be joined was to represent others who had not themselves sought to be joined.
* The evidence of Mr Kitson in respect of his claims to 49 per cent of the determination area was general in nature and was of almost no probative value.
* A significant part of the evidence of Mr Kitson in his affidavit of 6 November 2023 included detailed reference to representations made by Mr Button. The other affidavit on which he relied was that of Ms Gilson. Neither Mr Button nor Ms Gilson are members of the joinder applicant’s family. It was not evidence of the joinder applicant’s personal association or his family’s association to the disputed area. It was evidence of other descent lines or families’ connection to the land in question. Such evidence said little, if anything, about the joinder applicant’s personal interests.
* No iteration of the claim that led to the Wakka Wakka #3 determination ever included any part of the area now in dispute.

# Consideration

1. Principles of joinder to a Native Title claim pursuant to s 84(5) of the Native Title Act are well settled. Section 84(5) provides:

*Joining parties*

(5) The Federal Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings and it is in the interests of justice to do so.

1. An applicant to a joinder application has the onus of satisfying the Court of each of the elements of s 84(5): *Forrest on behalf of the Kakarra Part A Native Title Claim Group v State of Western Australia* [2023] FCA 529 at [14]; *Harrington-Smith on behalf of the Darlot Native Title Claim Group v State of Western Australia* [2022] FCA 114 at [32]; *Vea Vea on behalf of the Wadja People v State of Queensland* [2020] FCA 405 at [16]; *Hoolihan on behalf of the Gugu Badhun People #3 and State Minister for the State of Queensland (No 2)* [2023] FCA 1589 at [26].
2. Principles guiding the exercise of the Court’s discretion in s 84(5) were recently explained by O’Bryan J in *Dimer on behalf of the Marlinyu Ghoorlie Claim Group v State of Western Australia* [2023] FCA 930 at [41] as including:

* The interests asserted by an applicant for joinder need not be proprietary, legal or equitable in nature; must rise above an interest that an ordinary member of the public might hold; must be genuine; must reflect an affect upon the person’s interests beyond a mere emotional, conscientious or intellectual interest; and must not lack substance.
* A person who claims to hold Native Title rights and interests in relation to the land or waters the subject of the proceeding may have sufficient interests to justify joinder. It is not necessary for that person to have lodged a claimant application for the determination of Native Title under the Native Title Act.
* A person who claims Native Title rights and interests in relation to the land or waters the subject of the proceeding may be joined as a respondent party to defensively assert their Native Title rights and interests in order to protect them from erosion, dilution or discount.
* The Court is not required to embark on an assessment of contested questions of fact, or to determine on a final basis whether the applicant has an interest that may be affected by a determination of Native Title. However, the evidence must rise beyond mere assertion, have some probative quality and be capable of establishing facts from which a finding of a requisite interest could be made.
* The Court’s power pursuant to s 84(5) of the Native Title Act is discretionary and requires proper consideration of the individual circumstances of each case.
* In assessing where the interests of justice lie, it is necessary to consider the objects and purposes of the Native Title Act, as well as the overarching purpose of civil practice and procedure as expressed in ss 37M and 37N of the *Federal Court of Australia Act 1976* (Cth).
* A satisfactory explanation for any delay connected with their application and the prejudice that may be caused to existing parties to the proceeding if they are joined as a party must be provided by a joinder applicant.

1. Further, and as explained by Reeves J in *Isaacs on behalf of the Turrbal People v State of Queensland (No 2)* [2011] FCA 942:

18. … various decisions of this Court … establish that where a person is seeking to be joined as a respondent to native title proceedings on the basis that he or she claims to hold native title rights and interests in an area of land or waters that may be affected by a determination in those proceedings, that person may only do so if he or she wishes to pursue a personal claim or interest in defensively asserting those native title rights and interests or, in other words, to protect them from erosion, dilution or discount: see *Munn v State of Queensland* [2002] FCA 486 (“*Munn*”) at [8], *Davis-Hurst (on behalf of the traditional owners of Saltwater) v Minister for Land and Water Conservation (NSW)* (2003) 198 ALR 315; [2003] FCA 541 at [27] per Branson J, *Kokatha Native Title Claim v South Australia* (2005) 143 FCR 544; [2005] FCA 836 at [24] per Mansfield J, *Worimi Local Aboriginal Land Council v Minister for Lands for New South Wales* (2007) 164 FCR 181; [2007] FCA 1357 at [16]–[17] per Bennett J and *Bonner on behalf of the Jagera People #2 v State of Queensland* [2011] FCA 321 (“*Bonner*”) at [18].

19. However, if that person wishes to obtain a positive determination of native title on behalf of his or her people, clan or group, then the Act prescribes that the only method by which that can be achieved is an application under s 13(1), complying with the requirements of s 61 et seq of the Act. Among other things, this means that a person cannot be joined as a respondent party if his or her purpose in being so joined is to act as a representative to assert native title rights on behalf of other people: *Munn* at [9]; *Moses v Western Australia* (2007) 160 FCR 148; [2007] FCAFC 78 at [18]; *The Commonwealth of Australia v Clifton* (2007) 164 FCR 355; [2007] FCAFC 190 at [48], [52], [53], [57], [58] and [61] and *Bonner* at [19].

1. More recently the observations of Reeves J were reiterated by Rangiah J in *Blucher on behalf of the Gaangalu Nation People v State of Queensland* [2018] FCA 1369 at [21], where his Honour said:

… for the purposes of an application for joinder under s 84(5) of the NTA:

…

(2) A member of another native title group cannot be joined as a respondent for the purpose of acting as a representative to assert native title rights on behalf of the other group. That is because the combined effect of ss 13, 61, 213 and 225 is that an application for a determination of native title can only be made by a duly authorised applicant using the procedures in Pt 3 of the NTA.

(3) A member of another native title group may be joined as a respondent for the purpose of “defensively asserting” native title rights and interests. Such a person is only permitted to pursue a personal claim to such rights and interests: that is, to protect them from erosion, dilution or discount.

1. In my view the Kitson Joinder Application ought be dismissed because:

* I am not satisfied that the joinder applicant has demonstrated that he has personal interests warranting joinder under s 84(5) of the Native Title Act.
* I am further satisfied that the interests claimed by the joinder applicant are in the nature of supporting a representative claim on behalf of the Wakka Wakka People.
* In light of the delay in the commencement of the Kitson Joinder Application and the absence of adequate explanation for that delay, the interests of justice favour its dismissal.

## Personal interest

1. A person claiming to hold Native Title rights and interests in an area of land and waters affected by a Native Title determination application has a sufficient interest to be joined as a party to those proceedings under s 84(5): *Isaacs on behalf of the Turrbal People v State of Queensland* (No 2) [2011] FCA 942 at [5]. Further, a member of another Native Title group may seek to be joined as a respondent for the purpose of “defensively asserting” Native Title rights and interests, however such a person is only permitted to pursue a personal claim to such rights and interests : *Blackburn v Wagonga Local Aboriginal Land Council* [2021] FCAFC 210 at [54]; *Blucher on behalf of the Gaangalu Nation People* [2018] FCA 1369 at [21].
2. As I explain below, the personal interests asserted by Mr Kitson as warranting his joinder were almost totally framed in terms of interests of the ***Wakka Wakka People*** as a whole, which he claims in the disputed area. Mr Kitson referred, in a number of instances, to what he stated to be the Bligh family’s Wakka Wakka custodianship of the Kilkivan area for which he has responsibility as a member of that family. He affirmed as such in his affidavit filed 11 October 2023, in the following terms:

48. Wakka Wakka traditional law and custom must mean that I identify only as Wakka Wakka to inherit traditional rights to Wakka Wakka Country through my bloodline descent and from a male who has bloodline rights in Wakka Wakka Country through their descent from a Wakka Wakka bloodline ancestor. **Our Bligh family has Wakka Wakka custodianship of the Kilkivan Area and areas west from Eastern Boundary and that I can speak for this Country**. I and my kin who identify same as me can participate in decision making about these parts of Wakka Wakka Country because of bloodline rights to these areas and that my bloodline is not mixed with the neighbouring groups.

…

52. **The traditional rights and interests that I claim to hold over the Kilkivan Area as a place that under Wakka Wakka lore belongs in my family custodian ship and the area that is west of the Mary River, is my bloodline connection to Wakka Wakka Country**, and that myself and other Wakka Wakka people would then hold the same rights and interests that have been determined to hold over the Wakka Wakka #3 Area, as follows …

(emphasis added)

1. However, as the Kabi Kabi Applicant submitted, in circumstances where a joinder applicant claims a personal interest in a tract of land as wide as claimed by Mr Kitson, one would expect detailed evidence of association to a wide array of sites. This was not the case in the Kitson Joinder Application. Rather, Mr Kitson simply made bare assertions of family custodianship over the Kilkivan area including Woolooga, Thinooba, Brooweena, Glastgonbury, Amamoora, Kandanga and Imbil, not specifically linked with particular sites, and with no substantive evidentiary basis. His assertions rather were referable to the asserted communal Native Title interest of the Wakka Wakka People in the disputed area.
2. I further note as an example of the level of generality of Mr Kitson’s claim for joinder, his reliance in his evidence on the creation story of the rivers in the disputed area. While Mr Kitson gave evidence of teachings concerning the creation of the Mary River by Kabool (or Kabul) the carpet python and the mountain ranges made by the Rainbow Serpent, elder Mr Norman Bond gave evidence that the creation of the Mary River by the carpet snake was a Kabi Kabi dreaming story, and was a well-known story among Aboriginal people.
3. Such assertions do not support a finding of a personal interest for Mr Kitson in the disputed area, to warrant joinder to the proceedings.
4. In this respect the personal interests claimed by Mr Kitson can starkly be contrasted with those of Mr Barrowcliffe and Ms Barrowcliffe, who substantiated claimed individual and personal interests in custodial and protective functions in the area the subject of their joinder application.

## Representative Claim

1. Further, to the extent that Mr Kitson claimed personal interests, it is very clear that the interests he claimed were in a representative capacity on behalf of the Wakka Wakka People. That this is so, is abundantly apparent from both affidavits he filed in the proceedings. So, for example:

* In Mr Kitson’s first affidavit filed 11 October 2023, I note:
  + Para 4, where he stated that he had Native Title rights and interests “as I am Wakka Wakka”, in the area he described.
  + Paras 5-9, where he described what he contended to be the proper boundaries of Wakka Wakka country as including the Kilkivan area.
  + Paras 12-46 where he gave detailed cultural, historical and anthropological evidence referable to traditional Wakka Wakka People in general.
  + Para 47 where he referred to beliefs of his Wakka Wakka elders, and what they considered to be Wakka Wakka country.
  + Para 49 where he referred to his ability to “make decisions about Wakka Wakka Country” because of his bloodline.
  + Para 50 where he referred to evidence of another Wakka Wakka person, Ms Margaret Gilson, who was from a different Wakka Wakka family.
  + Paras 52-53 where he asserted, in essence, the Native Title rights of the Wakka Wakka People to the area around Kilkivan.
  + Paras 54-69 where he made assertions relating to the boundary between Kabi Kabi country and Wakka Wakka country, the history of interactions in respect of the development of Native Title claims by each group, and the views of Wakka Wakka elders.
  + Paras 70-71 where he asserted that a determination of Native Title in favour of the Kabi Kabi People over any part of the Kilkivan area and the area west of the Mary River would prejudice him “and southern Wakka Wakka peoples” in respect of “our traditional rights and contemporary rights”, and would constitute “a major miscarriage of justice and yet another barrier for southern Wakka Wakka people to practice their cultural obligations to southern Wakka Wakka Country and participate in the modern world as fully secured traditional custodians of their clearly identifiable country through legislated rights and interests”. Mr Kitson reiterated this claim even more strongly in para 72 where he asserted that a consent determination in favour of the Kabi Kabi People in the disputed area would “result in me and other members of my family, other Wakka Wakka peoples and Wakka Wakka Country itself … becoming sick and spiritually unwell…”
* In Mr Kitson’s second affidavit filed 6 November 2023, I note:
  + Paras 4-28 where he gave detailed evidence concerning the teachings in respect of general Wakka Wakka culture by one of his elders, Mr Frank Button.
  + Paras 29-31 where he gave evidence concerning his Aunty Beryl Gambill and what she considered to be the boundaries of Wakka Wakka country.
  + Paras 33-39 where he critically addressed the use of “Western scientific hydrological modelling” to “inappropriately inform Aboriginal traditional owner group boundaries for a native title outcome”.
  + Paras 40-44 where he criticised QSNTS for ignoring “two significant historical waves of migrations of non-Wakka Wakka Aboriginal peoples in to Wakka Wakka Country”.

1. The Kabi Kabi Applicant submitted that it was clear from the way Mr Kitson presented his case that he sought to represent the interests of other persons. The evidence and submissions of Mr Kitson validate this contention. So, for example:

* At para 80 of his affidavit, Mr Kitson noted that from around March 2023 he commenced preparing material to form the basis for a Wakka Wakka Native Title claimant application “over Our Country”.
* Mr Kitson relied on evidence of Ms Gilson and annexed her affidavit to his own, however it was not in dispute that Ms Gilson is descended from a different Wakka Wakka apical ancestor to Mr Kitson. Mr Kitson had appeared to collaborate with Ms Gilson in advancing a case for joinder, notwithstanding that Ms Gilson may have different interests in respect of the disputed area and is not a joinder applicant herself. The only possible relevance of Ms Gilson’s views to the joinder applicant’s case is the extent to which Mr Kitson sought to represent the Wakka Wakka People as a whole.
* Mr Kitson referred to rights and interests held by, for example, the Law family (para 80).

1. In his second outline of submissions, filed on 14 November 2023, Mr Kitson, in no uncertain terms, submitted that his joinder application was on behalf of other individuals and other families, as well as on his own behalf. He submitted as follows:

2. Individuals from other families who are defending their native title rights and interests in the same areas offered their support to the Prospective Respondent and submitted affidavits and statements through the Prospective Respondent’s Interlocutory Application. Each person defending their individual rights and interests is a Wakka Wakka person. Specifically, from family groups with proper cultural authority and qualifiable native title rights and interests in the identified tracts of Wakka Wakka Country to which they belong.

3. The Prospective Respondent and other individuals with native title rights and interests have been forced into the situation to work together through a single Interlocutory Application for reasons of limited income, limited capacity, age related challenges, limited understanding of the native title system and limited time. All of which culminates in a general fear of the native title system and its actors. The Prospective Respondent and other individuals have never acted as an applicant for the Wakka Wakka with respect to Native Title.

1. To the extent that Mr Kitson referred to his family’s claimed custodianship of areas around Kilkivan, such claims appear to be entirely incidental and subordinate to his much broader claims concerning the alleged identification of the relevant area as Wakka Wakka country.
2. As was pointed out by Rangiah J in *Blucher*, s 68 of the Native Title Act provides that there can only be one determination of Native Title for an area. To the extent that Mr Kitson seeks joinder to the Kabi Kabi proceedings, his joinder application can only realistically be categorised as an unauthorised application by him for recognition of the Wakka Wakka People’s Native Title in the disputed area. As Reeves J explained in *Isaacs*, the law is clear that if a person:

19. … wishes to obtain a positive determination of native title on behalf of his or her people, clan or group, then the Act prescribes that the only method by which that can be achieved is an application under s 13(1), complying with the requirements of s 61 et seq of the Act. Among other things, this means that a person cannot be joined as a respondent party if his or her purpose in being so joined is to act as a representative to assert native title rights on behalf of other people: *Munn* at [9]; *Moses v Western Australia* (2007) 160 FCR 148; [2007] FCAFC 78 at [18]; *The Commonwealth of Australia v Clifton* (2007) 164 FCR 355; [2007] FCAFC 190 at [48], [52], [53], [57], [58] and [61] and *Bonner* at [19].

## Interests of justice

1. As I noted earlier in this judgment, the joinder applicant submitted his joinder was warranted in the interests of justice because a consent determination for the Kabi Kabi People including Kilkivan and areas west of the Mary River would result in Mr Kitson, his family, other Wakka Wakka People and Wakka Wakka country itself:

* becoming sick and spiritually unwell
* an inability to observe Wakka Wakka lore that is linked to those parts of Wakka Wakka Country
* restricted access to these parts of Wakka Wakka Country
* becoming further entangled in non-Wakka Wakka culture, protocols and practices being inflicted on to Wakka Wakka Country by outsiders
* non traditional owner management of these parts of Wakka Wakka Country
* bearing witness to government creation of a group of people who say they are Wakka-Kabi so that they can claim land, when such as group does not exist and never existed prior to colonisation
* bearing witness to the ignorance of Wakka Wakka creation stories
* bear witness to an exercise of foreign conceptualisation of traditional Wakka Wakka Country boundaries that is causing much fear and confusion
* bearing witness to non-Wakka Wakka migrants into Wakka Wakka Country exerting rights over Country that does not belong to them
* bearing witness to the perpetuation of Wakka Wakka people, culture, Country and heritage being usurped through entanglement that was born from government protections legislation
* if a determination is made in this regard, it will be worse for Wakka Wakka people as it is my understanding that a determination in favour of the Kabi Kabi People would be permanent, and will make it impossible for me, or any other Wakka Wakka People to exercise our traditional rights over any Kabi Kabi determined areas within the Kilkivan Area and west of the Mary River in the future.

1. While Mr Kitson may have been sincere in respect of these assertions, the interests of justice require assessment of the position and rights of all parties. In the present circumstances:

* The undisputed evidence before the Court is that the original Kabi Kabi Claim was filed on 31 May 2013, there have been substantive negotiations towards a consent determination since 2016, and significant amounts of public money have been spent by the Kabi Kabi Applicant and the State in progressing the claim (affidavit of Michael Allbrook filed 9 November 2023).
* Mr Kitson has not provided any explanation of substance for his delay in filing the Kitson Joinder Application. That he may have had other commitments affecting his ability to pursue a joinder application is not persuasive, where the Kabi Kabi Claim has been on foot for over a decade. Similar considerations of unexplained delay apply in respect of Mr Kitson’s complaint (as set out at para 13 of Mr Kitson’s written submissions filed on 6 November 2023) of a 15 week wait to hear from QSNTS in responding to his request for legal assistance, where that request was apparently not made until 1 June 2023.
* The Wakka Wakka People have an extensive history of approved Native Title determinations: in particular *Bell on behalf of the Wakka Wakka People #3 v State of Queensland (No 2)* [2022] FCA 370, *Bell on behalf of the Wakka Wakka People #4 v State of Queensland (No 2)* [2022] FCA 371, and *Bell on behalf of the Wakka Wakka People #4 v State of Queensland (No 3)* [2023] FCA 1114. I infer that the Wakka Wakka People have a sophisticated level of understanding and a history of organisation in seeking to have their Native Title rights recognised. I also consider it reasonable to infer that the Wakka Wakka People have settled views in respect of the boundaries of their country, reflected in their Native Title determinations to date.
* Mr Allbrook gave evidence of engagement between members of the Kabi Kabi People and the Wakka Wakka People in Kilkivan in 2014 (affidavit of Michael Allbrook paras 60-61). Mr Allbrook further deposed that he was unaware of any further representations which may have been made by any Wakka Wakka People to QSNTS between 2016 and 2023 to re-enliven any mediations involving the Kilkivan area. I consider this evidence credible, and accept it. The inference can be drawn that the boundaries of the Kabi Kabi Claim referable to Kilkivan have been undisputed during that time. Such an inference is further supported by evidence of Mr Fred Cobbo in his affidavit filed 27 October 2023 at para 7.
* It is uncontroversial that the proceedings in respect of the Kabi Kabi Claim are at an advanced stage. I accept the submission of the Kabi Kabi Applicant that the prejudice it would suffer should Mr Kitson be joined as a respondent, would be substantial.

1. I am satisfied that it would not be in the interests of justice within the meaning of s 84(5) of the Native Title Act to allow Mr Kitson to be joined to the proceedings.

# CONCLUSION

1. The appropriate order is that the Kitson Joinder Application filed 11 October 2023 be dismissed.

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| --- |
| I certify that the preceding sixty-two (62) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Collier. |

Associate:

Dated: 18 April 2024

SCHEDULE OF PARTIES

|  |  |
| --- | --- |
|  | QUD 20 of 2019 |
| Applicants |  |
| Second Applicant | KABI KABI FIRST NATION TRADITIONAL OWNERS NATIVE TITLE CLAIM GROUP |
| Third Applicant | MELISSA BOND |
| Fourth Applicant | NORMAN BOND |
| Fifth Applicant | CECILIA COMBO |
| Sixth Applicant | HELENA GULASH |
| Seventh Applicant | KERRY JONES |
| Eighth Applicant | BRIAN WARNER |
| Respondents |  |
| Fourth Respondent | FRASER COAST REGIONAL COUNCIL |
| Fifth Respondent | GYMPIE REGIONAL COUNCIL |
| Sixth Respondent | MORETON BAY REGIONAL COUNCIL |
| Seventh Respondent | NOOSA SHIRE COUNCIL |
| Eighth Respondent | SOMERSET REGIONAL COUNCIL |
| Ninth Respondent | SUNSHINE COAST REGIONAL COUNCIL |
| Tenth Respondent | AMPLITEL PTY LTD |
| Eleventh Respondent | AUSTRALIAN GAS NETWORKS (QLD) LIMITED |
| Twelfth Respondent | KATHERINE BARROWCLIFFE |
| Thirteenth Respondent | LUKE BARROWCLIFFE |
| Fourteenth Respondent | ENERGEX LIMITED ABN 40 078 849 055 |
| Fifteenth Respondent | ERGON ENERGY CORPORATION LIMITED ACN 087 646 062 |
| Sixteenth Respondent | CATHERINE ANNE HARRIS |
| Seventeenth Respondent | QUEENSLAND BULK WATER SUPPLY AUTHORITY TRADING AS SEQWATER |
| Eighteenth Respondent | TELSTRA CORPORATION LIMITED ACN 33 051 775 556 |
| Nineteenth Respondent | UNITYWATER |