

National Native Title Tribunal
REASONS FOR DECISION COVER SHEET
REGISTRATION TEST

DELEGATE:	Sue Kee
-----------	---------

APPLICATION NAME	Gumbaynggirr
------------------	--------------

NAME(S) OF APPLICANT(S)	: Stanley Marshall, Eileen Marshall, Phoebe Mumbler, Jessica Williams
-------------------------	--

NNTT NO	:NC96/41
FEDERAL COURT NO	:NG6054/98
DATE APPLICATION MADE	:16 December 1996

REGION	New South Wales
--------	-----------------

The delegate has considered the application against each of the conditions contained in s190B and 190C of the *Native Title Act* 1993.

DECISION

The application **IS ACCEPTED** for registration pursuant to s190A of the *Native Title Act* 1993.

.....

Sue Kee

Delegate of the Registrar

..... 1999

Date of Decision

Brief History of the application

This application for a determination of native title was lodged with the Sydney Registry of the National Native Title Tribunal on 16 December 1996.

The application was, in accordance with the Tribunal's procedures operating at the time, entered onto the Tribunal's Register of Native Title Claims.

The application was later transferred to the Federal Court upon the commencement of amendments to the *Native Title Act 1993*. It was issued with Federal Court application number NG6054/98.

On 10 May 1999 the Applicants filed a Notice of Motion in the Federal Court seeking to amend the application. On 3 June 1999 by consent the Court ordered that that Applicants have leave to file and serve an amended application within 7 days. An amended application was filed in the Federal Court on 7 June 1999.

Leave to further amend the application was granted by the Court on 15 September 1999 and this version is *current application*.

Information considered in making the decision

In determining this application I have considered and reviewed all of the information and documents from the following files, databases and other sources:

- ◆ NC96/41 (NG6054/98) Working and Registration Files;
- ◆ The National Native Title Tribunal Geospatial Database;
- ◆ The Register of Native Title Claims;
- ◆ The Native Title Register;
- ◆ The submission of the Director General of the Department for Land and Water Conservation dated 24 September 1999, on behalf of the NSW Minister for Land and Water Conservation;
- ◆ The amended application filed on 15 September 1999 and affidavits in support sworn 10 August and 11 August 1999;
- ◆ Supplementary submission of 12 October 1999 by NSW Aboriginal Land Council.
- ◆ Additional information provided in confidence to the Registrar by the Applicant namely:
 - ◆ Preliminary Report by (name deleted) and affidavit sworn 6 September 1999.

A. Procedural Conditions

190C2	<p>Information, etc, required by section 61 and section 62:</p> <p><i>The Registrar 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.</i></p>
Details required in section 61	
61(3)	<i>Name and address for service of applicant(s)</i>
Reasons relating to this sub-condition	Application passes the condition
The application identifies the name and the address for service of each Applicant.	
61(4)	<i>Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons</i>
Reasons relating to this sub-condition	Application passes the condition
The application does not name the persons in the native title claim group. A description is provided at Schedule A. The application describes the native title claim group as descendants of fourteen named individuals. The description of the native title claim group is sufficient for it to be ascertained whether any particular person is one of those persons. I have reached this view for the reasons contained in my decision at s.190B(3).	
61(5)	<i>Application is in the prescribed form¹, lodged in the Federal Court, contain prescribed information², and accompanied by prescribed documents and fee</i>
Reasons relating to this sub-condition	Application passes the condition
<p>The application is in the form prescribed by Regulation 5(1)(a) Native Title (Federal Court) Regulations 1998. As required under section 61(5)(b), the amended application was filed in the Federal Court. The application meets the requirements of section 61(5)(c) and contains all information as prescribed in section 62. I refer to my reasons below in relation to s.62.</p> <p>As required by section 61(5)(d) the application is accompanied by the prescribed documents, being:</p> <ul style="list-style-type: none"> • affidavits, as prescribed by s. 62(1)(a), and • a map, as prescribed by s. 62(1)(b). I refer to my reasons for decision below in relation to s.62(1)(a) and (b). <p>I note that section 190C(2) only requires me to consider details, other information, and documents required by section 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court. For the reasons outlined above, it is my view that the requirements of s.61(5) are met.</p>	

¹ Note that in relation to pre 30.09.98 applications, the application does not need to be in the prescribed form as required by the amended *Act*. Note also that pre 30.09.98 applications are deemed to have been filed in the Federal Court.

² Note also that “prescribed information” is that which is required by s62 as set out in the text of this reasons document under “Details required in section 62(1)”.

Details required in section 62(1)

62(1)(a)	<i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i>
Reasons relating to this sub-condition	Application passes the condition
<p>Affidavits have been received from all four Applicants. Competent witnesses have witnessed these affidavits. They are identical in content and I am satisfied that they address the matters required by s. 62(1)(a)(i) - (v) at paragraphs (1) to (5) of the affidavits respectively. Paragraphs (5) of the affidavits refer to a decision which was taken at a Gumbaynggirr Nation meeting on 2-3 February 1997 at Yarrawarra, Corindi Beach as being the statement of the basis of the Applicants' authorisation and consequently the requirements of s62(1)(a)(v) is satisfied. I am satisfied that the statement, read in conjunction with Attachment R, being a certification by the NSW Aboriginal Land Council, complies with the requirements of s.62(1)(a)(v). I am satisfied that the application complies with the requirements of this subsection. See also the reasons set out in my decision at s.190C(4)(a).</p>	

62(1)(c)	<i>Details of any traditional physical connection (information not mandatory)</i>
Comment on details provided	Application passes the condition
<p>The Applicants have provided details of traditional physical connection at Schedule M, Attachment G.</p>	

Details required in section 62(2) by section 62(1)(b)

62(2)(a)(i)	<i>Information identifying the boundaries of the area covered</i>
Reasons relating to this sub-condition	Application passes the condition
<p>At Schedule B, the Applicants have provided information identifying the external boundary of the claimed area. I am satisfied that the application complies with the requirements of this subsection. See also the reasons set out in my decision at s190B(2).</p>	

62(2)(a)(ii)	<i>Information identifying any areas within those boundaries which are not covered</i>
Reasons relating to this sub-condition	Application passes the condition
<p>At Schedule B, the Applicants have provided information identifying the internal boundaries of the claimed area. I am satisfied that the application complies with the requirements of this subsection. See also the reasons set out in my decision at 190B2.</p>	

62(2)(b)	<i>A map showing the external boundaries of the area covered by the application</i>
Reasons relating to this sub-condition	Application passes the condition
<p>The Applicants have provided a map at Schedule C, Attachment C. The Applicants state that the map provided does identify the outside boundary [of the area covered by the application] and has hatching over the internal area to clarify that external boundary</p> <p>I am satisfied that the application complies with the requirements of this subsection. See also the reasons set out in my decision at s.190B2.</p>	


62(2)(c)	<i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i>
Reasons relating to this sub-condition	Application passes the condition
<p>The requirements of s62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that under this condition I need only be informed of searches that the Applicants are aware of in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect Applicants to have knowledge of, and obtain details about all searches carried out by any person or body. At Attachment D are provided searches that the Applicants are aware of that have been carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the Application.</p> <p>I am satisfied that the application complies with the requirements of this subsection. See also the reasons set out in my decision at s.190B2.</p>	

62(2)(d)	<i>Description of native title rights and interests claimed</i>
Reasons relating to this sub-condition	Application passes the condition
<p>Each native title rights and interest claimed by the Applicants is described at Schedule E. There are fifteen particular native title rights and interests claimed. In accordance with section 62(2)(d), the rights and interests claimed do not merely consist of a statement to the effect that the native title rights and interests that may exist or that have not been extinguished at common law. The description is a list of individually identifiable rights and interests. I am satisfied that the application complies with the requirements of this subsection. I have outlined these rights and interests claimed in my reasons for decision in relation to s.190B4.</p>	

62(2)(e)(i)	<i>Factual basis – claim group has, and their predecessors had, and association with the area</i>
Reasons relating to this sub-condition	Application passes the condition
<p>Schedule F sets out the factual basis for the assertion that the claim group in the application have, and their predecessors had, an association with the area. A general description of the factual basis for this assertion is also provided in the application at Schedules F and G and in the confidential report (name deleted).</p> <p>Attachment G include affidavits of (names deleted), Stanley Marshall and (name deleted) that provide further information that themselves and their predecessors had an association with the area. I am satisfied that the application complies with the requirements of this subsection. For an assessment of the sufficiency of the factual basis provided by the Applicants in the application and in other material provided to the Tribunal, refer to my reasons in relation to s.190B(5)(a).</p>	

62(2)(e)(ii)	<i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i>
Reasons relating to this sub-condition	Application passes the condition
<p>Schedule F sets out the factual basis for the assertion that traditional laws and customs exist that give rise to the claimed native title. A general description of the factual basis for this assertion is also provided in the application at Schedules F and G and in the confidential report of (name deleted). At Schedule G, affidavits of (names deleted), Stanley Marshall and (name deleted) provide further information that there exist traditional laws and custom that give rise to the claimed native title.</p> <p>I am satisfied that the application complies with the requirements of this subsection. For an assessment of the sufficiency of the factual basis provided by the applicants in the application and in other material provided to the Tribunal, refer to my reasons in relation to s. 190B(5)(b).</p>	
62(2)(e)(iii)	<i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i>
Reasons relating to this sub-condition	Application passes the condition
<p>Schedule F sets out the factual basis for the assertion that the native title claim group has continued to hold the native title in accordance with traditional laws and customs. A factual basis for this assertion is provided in the application at Schedule G and in (name deleted) report. At Schedule G, affidavits of (names deleted), Stanley Marshall and (name deleted) provide further information that the native title claim group has continued to hold the native title in accordance with traditional laws and customs.</p> <p>I am satisfied that the application complies with the requirements of this subsection. For an assessment of the sufficiency of the factual basis provided by the applicants in the application and in other material provided to the Tribunal, refer to my reasons in relation to s. 190B(5)(c).</p>	
62(2)(f)	<i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i>
Reasons relating to this sub-condition	Application passes the condition
<p>At Schedule G the application provides general details of activities that the native title claim group carries out in relation to the area claimed.</p> <p>I am satisfied that the application complies with the requirements of this subsection.</p>	
62(2)(g)	<i>Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)</i>
Reasons relating to this sub-condition	Application passes the condition
<p>The application states that there are no other applications that have been made in relation to the whole or part of any area covered by this application.</p> <p>I am satisfied that the application complies with requirements of this subsection.</p>	
62(2)(h)	<i>Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of</i>
Reasons relating to this sub-condition	Application passes the condition
<p>The application states that as far as the Applicants are aware no notices have been given under</p>	

s.29 of the NTA (or under any corresponding provision of a law of the State of NSW) that relate to the whole or part of any area subject to this application.
I am satisfied that the application complies with requirements of this subsection.



Reasons for the Decision

For the reasons identified above the amended application contains all details and other information, and is accompanied by the affidavits and other documents, required by s.61 & s.62. I am satisfied that the application meets the requirements of s.190C(2).

190C3	<p><i>Common claimants in overlapping claims:</i></p> <p><i>The Registrar 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:</i></p> <p>(a) <i>the previous application covered the whole or part of the area covered by the current application; and</i></p> <p>(b) <i>an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and</i></p> <p>(c) <i>the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i></p>
--------------	---

Reasons for the Decision

I am satisfied that there are no overlapping claims with common claimants.
I am satisfied that the application meets the requirements of this subsection. Refer to my reasons at s62(2)g.

190C4(a) and 190C4(b)	<p><i>Certification and authorisation:</i></p> <p><i>The Registrar must be satisfied that either of the following is the case:</i></p> <p>(a) <i>the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></p> <p>(b) <i>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.</i></p>
--------------------------------------	--

Reasons for the Decision

The application has been certified by the NSW Aboriginal Land Council, a gazetted native title representative body for the area of the application. The certificate is provided at attachment R of the application. I note that the certificate is dated 7 May 1999 and has been signed by (name deleted), Deputy Director for the NSW Aboriginal Land Council, who would have the proper authority to sign such a document.

Affidavits have been received from all four Applicants. Competent witnesses have witnessed these affidavits. They are identical in content. Paragraphs (5) of the affidavits refer to a decision which was taken at a Gumbaynggirr Nation meeting on 2-3 February 1997 at Yarrawarra, Corindi Beach as being the statement of the basis of the Applicants' authorisation.

Attachment R, being certification from the NSW Aboriginal Land Council, confirms this decision constituted "authorisation" by all persons in the native title claim group, within the meaning of subsection 251B(b) of the Act. I have assessed the certificate against the requirements of s202(7) of the Act and consider it complies with those requirements.

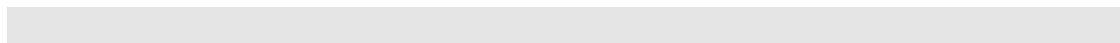
The State's submission of 24 September 1999 contends that there are a number of groups which have lodged claims in this general area, and describe themselves as Gumbayngirr (or variant spellings of that name). At least one of those groups also appears to fall within the "biological descendant" category used in this claim. It must also be noted that at the date of the meeting in February 1997, the description of the persons claimed to hold native title was formulated in a different way from its current formulation. Accordingly, it is possible that all persons who should have been present to authorise the application, given its current formulation, were not.

I note that in response to the State's contentions the NSW Aboriginal Land Council's supplementary submission states

the meeting which was held on February 1997 was a Gumbayngirr Nation meeting which means that it was representative of the wider Gumbayngirr Language Group and included all the members of the various Gumbayngirr claims. NSW Aboriginal Land Council is satisfied that there were sufficient representatives from the claim group to authorise the claim to be lodged by the applicants and accordingly certified the claim.

I am satisfied that the supplementary submission clarifies the contention of the State and the statement and am of the view that Attachment R complies with the requirements of certification as required by s.190C(4).

I am satisfied that the application meets the requirements of this subsection.



190C5	<p><i>Evidence of authorisation:</i></p> <p><i>If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:</i></p> <p><i>(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and</i></p> <p><i>(b) briefly sets out the grounds on which the Registrar should consider that it has been met.</i></p>
--------------	--

Reasons for the Decision

For the reasons set out at 190C(4) above, I note that I am not required to consider the application against this condition.

B. Merits Conditions

190B2	<p>Description of the areas claimed:</p> <p>The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 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.</p>
--------------	---

Reasons for the Decision

Map and External Boundaries

Map

The Applicants have provided a map at Schedule C, Attachment C of the application. The State's submission of 24 September 1999 contends that the map is deficient as it includes within the boundary of the claimed area land now specifically excluded from the application. However, I note that this contention is clarified by the New South Wales Aboriginal Land Council's supplementary submission of 12 October 1999 whereby it is explained that the map provided identifies the outside boundary and has hatching over the internal area to clarify the external boundary.

The map has a scale and clearly marked grid references, being a base map produced by the Central Mapping Authority of NSW 1:25 000 topographic map 9436-1-S. These maps form part of a public record system upon which members of the community might reasonably rely to deal with land use issues. I am satisfied that the map provides a sufficient means by which it is possible to identify the location of the areas claimed on the surface of the earth.

I am satisfied that the map submitted with the application meet the requirements of s.62 (2)(b) as the external boundaries of the areas covered by the application can be identified.

Written description

In addition to the provision of a map defining the external boundaries of the claim the Applicants at Schedule B, paragraphs (a)-(c) have provided a general description of the external boundary by reference to:

- unique reference numbers that identify land parcels clearly according to the NSW State Government's land tenure record system (which are available on the public record and are sufficient to identify the location of the areas claimed on the surface of the earth);
- together with an island bounded by grid reference points

The State in its submission contends that the description "all land east of the Warrell (or Gurravembi) Creek known as Forster Beach" will not be sufficiently clear unless the boundary information concerning cited Reserves, or some other information provided by the applicants, make it sufficiently clear:

- a) from which point the land abutting the Creek is measured, and
- b) what part, if any, of the intertidal zone is claimed."

The NSW Aboriginal Land Council in its submission in response to this contention states The description is sufficiently clear. [The NSW Aboriginal Land Council then goes on to clarify the details of their description in Schedule B(c) with reference to reserve no 13646] Reserve 13646 is the only reserve which abuts the sea coast and we refer to the description of the area covered by the reserve in Government Gazette 11.4.1891 Folio 2683. The description states that the reserve covers an

area ... 'within five chains above the high water mark on the sea coast...' Therefore the description does make it clear from which point the land abutting the creek is measured".

I am satisfied that the physical description of the external boundaries meets the requirements of s.62(a)(i).

Internal Boundaries

The internal boundaries are described in the application at Schedule B after paragraph (c). These boundaries are described by way of a formula that excludes:

- ◆ a variety of tenure classes from the claim area as defined in s. 23B of the Act, which defines previous exclusive possession acts;
- ◆ previous non-exclusive possession act areas as defined in section 23F of the Act, save where the Act as defined in s.23G(1)(a) and s.23G(1)(b)(ii) allows such a claim to be part of a native title determination application;
- ◆ to the extent of their inconsistency with the native title rights and interests claimed:
 - ◆ Category B Past Acts, as defined by s.230 of the Act;
 - ◆ Category B Intermediate Period acts as defined by s.232C of the Act;
- ◆ to the extent of their inconsistency with the native title rights and interests claimed and subject to the operation of the non-extinguishment principle, as defined by s.238 of the Act,
 - ◆ Category C Past Acts, as defined by s.231 of the Act;
 - ◆ Category C Intermediate Period Acts, as defined by s.232D of the Act;
 - ◆ Category D Past Acts, as defined by s.232 of the Act;
 - ◆ Category D Intermediate Period acts as defined by s.232E of the Act;
- ◆ the area the subject of special lease 1953/15 Kempsey for grazing and agriculture granted pursuant to the *Crown Lands Consolidation Act 1913* (NSW);
- ◆ the area the subject of Scotts Head Sewerage Treatment Works in 1985 gazetted on 28/6/1985 and established pursuant to *Public Works Act 1912* (NSW).

In forming a view as to whether the formula description of areas excluded are consistent with the general rubric of 'reasonable certainty' required by this subsection as articulated by French J in *Strickland v Native Title Registrar* (W6018 of 1999) FCA1530 (Unreported) at paragraph 50, I note that the questions raised by these class exclusions can not be resolved without substantial inquiry to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not.

I am mindful of the administrative character of the registration test and following the reasoning of French J in *Strickland* I consider that the description provides a reasonable level of certainty: the exclusion clauses contained in Schedules B and clarifications of the scope of native title rights or interests claimed as set out in Schedule E of the application effectively exclude those parts of the claim area which were subject to the scheduled tenures. In respect of the saving provisions of s.23G(1)(a), s.23G(1)(b)(ii) and s.238, I consider that the description provided allows it to be shown objectively, upon the provision of particulars, whether Applicants may have benefit of these provisions and that this is all that is required by this section.

The searches that the Applicants are aware of that have been carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application are attached at Attachment D. It is not clear on the face of the information provided in Attachment D as to the form or purpose of the search which has been conducted and the reliability of the results provided therein.

The only other authority available to date on what may satisfy the requirements of s. 62 (2)(a) (i) and (ii) of the *Native Title Act 1993* is *Daniels v The State of Western Australia* (WAG6017 of 1996) FCA686 (Unreported). At paragraph 32, Nicholson J says in relation to information identifying the area covered by the application and areas within its boundaries not covered by the application:

"These requirements are to be applied to the state of knowledge of an applicant as it could be expected to be at the time the application or amendment is made. Consequently a class or formula approach could satisfy the requirements of the paragraphs where it was the appropriate specification of detail in those circumstances. For example, at the time of an initial application when the applicants had no tenure information it may be satisfactory compliance with the statutory requirement... Whether this would be so on a later application or amendment would depend..."

In *Strickland* French J says of his Honour Justice Nicholson's approach in *Daniels*:
"in the context of the registration test, the kind of judgment which his Honour was contemplating might be undertaken by the Court is undertaken administratively by the Registrar. It is necessarily evaluative in character within the general parameters laid down by the statutory provisions that the Registrar must apply".

I have considered the inherent uncertainty in the reliability of the tenure searches and without full inquiry into the validity of the grants and full details of all historical tenure. Following the judicial guidance as to the administrative function before me I have formed the view that it is not reasonable to expect that the task of taking the tenure searches into account in their current form is something which could be expected to be done by the Applicants when framing their application.

Conclusion

In *Strickland* his Honour says at para 55,
"the Act is to construed in a way that renders it workable in the advancement of its main objectives as set out in s.3, which include providing for the recognition and protection of native title. The requirements of the registration test are stringent. It is not necessary to elevate them to be impossible".

I am satisfied that the information and map provided by the Applicants, read in conjunction with the exclusions specified by the Applicants, are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular areas of land or waters within the external boundaries of the claim area.

I am satisfied that the information and maps submitted with the application meet the requirements of s.62 in that the external and internal boundaries of each of the areas the subject of the claim can be identified.

I am satisfied that the application meets the requirements of this subsection.

190B3	<p>Identification of the native title claim group:</p> <p>The Registrar must be satisfied that:</p> <p>(a) <i>The persons in the native title claim group are named in the application; or</i></p> <p>(b) <i>The persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</i></p>
--------------	---

Reasons for the Decision

To meet this condition of the registration test the description of the group must be sufficiently clear so that it can be ascertained whether any particular person is a member of the native title claim group.

An exhaustive list of names of the persons in the native title claim group has not been provided and so the requirements of s.190B(3)(a) are not met. In the alternative, according to s.190B(3)(b), the application must otherwise describe the persons in the native title claim group sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

The application at Schedule A **describes** the claim group as descendants of the following named individuals:

1. Maggie Buchanan;
2. Frank Whaddy and Vina Duncan;
3. Elsie Taylor and Jack Flanders;
4. Topsy Taylor and Sam Dotti;
5. Henry Duckett and Emily Walker;
6. David Ballengarry and Florence Randall;
7. Wabro Kelly;
8. Ben Bennelong and Dollie 'Tickie' Kelly

A person may be reckoned as a member of the native title claim group as a biological descendant of the above named individuals. The information provided is sufficient for it to be ascertained using criteria which can be objectively verified whether any particular person is a descendant of one of those named persons. I note that the State in its submission of 24 September 1999 is of the view "the description of the native title claim group by means of reference to biological descent from named persons appears on its face to comply with the Act" Consequently, I consider the information is sufficient to identify whether a person is a member of the native title claim group or not. I note that Schedule A does not provide for the inclusion of persons outside the descent group.

I am satisfied that the application meets the requirements of this subsection.

190B4

Identification of claimed native title

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

Reasons for the Decision

Schedule E of application lists fifteen specific native title rights and interests claimed by the applicants. These are:

1. A right to own the area;
2. A right to possess the area;
3. A right to occupy the area;
4. A right to be present on the area;
5. A right to use and enjoy the area;
6. A right to travel through the area;
7. A right to live on the area;
8. A right to camp on the area;
9. A right to speak for the area;
10. A right to hunt animals on the area;
11. A right to gather plants and minerals on the area;
12. A right manage animals, plants and minerals on the area;
13. A right to make decisions about the way that the area may be used by non-native title holders;
14. A right to carry out traditional ceremonies and activities on the area;
15. A right to free access to the area for the purpose of satisfying the rights identified in the preceding sub-paragraphs.

These fifteen native title rights and interests are all subject to the rights validly granted by the crown pursuant to statute to others to possess, occupy, use or enjoy the land or waters. This is expressed as follows:

- a. The rights and interests of those lawfully exercising rights and interests which have been validly created or vested in them by the State of New South Wales.
- b. Subject to the rights and interests of those lawfully exercising rights and interests which have been validly created or vested in them by the Commonwealth of Australia.

Further and the in the alternative to the above paragraph and subject to the paragraph below:

- a. If:
 - i. The area covered by the application or a part of the area covered by the application is or was the subject of a "Previous Non Exclusive Act" as defined by Section 23F of the Act;
 - ii. The Previous Non Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs above, then,

The native title rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to the rights and interests granted under the Previous Non Exclusive Possession Act (as provided by Section 23G(1)(a) of the Act

b. If:

- iii. The area covered by the application or a part of the area covered by the application is or was the subject of a “Previous Non Exclusive Act” as defined by Section 23F of the Act;
- iv. The Previous Non Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above but did not extinguish them, then,

The rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to any suspension of them during the currency of the Previous Non Exclusive Act (as provided by Section 23G(1)(b)(ii) of the Act;

c. If:

- i. The area covered by the application or a part of the area covered by the application is or was the subject of a “Category B past act” as defined by Section 230 of the Native Title Act or a Category B Intermediate Period Act” as defined by Section 232C of the Native Title Act; and,
- ii. The Category B Past Act or Category B Intermediate Period Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above and;
- iii. The Category B Past Act or Category B Intermediate Period Act was not a Previous Non Exclusive Possession Act; then,

Those rights and interests referred to in paragraphs 1 and/or 2 which are not inconsistent with the rights and interests granted under the Category B past Act or the Category B Intermediate Period Act are claimed;

d. If:

- 1. The area covered by the application of a part of the area covered by the application is or was the subject of:
 - (i) A “Category C Past Act” as defined by Section 231 of the Native Title Act; or
 - (ii) a “Category C intermediate Period Act” as defined by 232D of the Native Title Act; or,
 - (iii) a “Category D Past Act” as defined by Section 232 of the Native Title Act; or,
 - (iv) a “Category D Intermediate Period Act” as defined by Section 232E of the Native Title Act; and,
- 2. The Category C Past Act, Category C Intermediate Period Act, Category D past Act and/or Category D Intermediate period Act referred to in the preceding sub-paragraph was not a Previous Non-Exclusive Possession Act then,

Subject to the operation of the “non-extinguishment principle” as defined by section 238 of the Native Title Act, those rights and interests claimed under paragraphs 1 and/or 2 are claimed.

- 3. Native Title rights and interests not claimed in respect of any area to which Section 23B of the Native Title Act 1993 (Cth) applies.
- 4. Native title rights and interests are not claimed in respect of:
 - a. Any land excluded from the area within the boundaries of the area covered by the application by Schedule B;
 - b. Any minerals, petroleum or gas which are wholly owned by the Crown.

At Schedule E (b) The application excludes any area subject to a previous exclusive possession act defined under s.23F and s.23G of the Native Title Act 1993 and /or the common law allows

the land to be part of a Native Title Determination application.

The State in its submission 24 September 1999, has contended that a greater level of specificity concerning claimed rights should be provided. This contention was considered in another matter where this test condition was being considered by French J in *Strickland* at para 28:

“The common law of native title and the Act which provides for its recognition and protection can not be applied to distort traditional law and custom or the rights and interests which arise under such law and custom into convenient laundry lists of common analogues”.

The State in its submission contends that “the reference at 2(i) (and supporting evidence) should clarify what is meant by ‘non-native title holders’ (see *Mary Yarmirr and Ors v Northern Territory of Australia and Ors*)”

In response, the NSW Aboriginal Land Council in its submission of 12 October 1999 clarifies that “The reference to non-native title holders refers to both other Aboriginal groups and to non-Aboriginal groups. In *Mary Yarmirr and Ors v Northern Territory of Australia and Ors* it was held that in order to claim a right of possession, occupation, use and enjoyment exclusive of non-Aboriginal people, this needs to be supported by evidence. In the report by (name deleted) he states that:

As a people the Gumbaynggirr have never surrendered their lands as is evident in more recent years by the various strategies pursued to retain and/or regain ownership or possession of those lands under Australian law whenever and in whatever form that opportunity arose. It is clear to me that the Gumbaynggirr people have continued to claim a right of ownership and a right to exclude others. They have done this in a variety of ways, which demonstrates an organised, unified and determined response to the protection the lands they claim as their own.”

This evidence constitutes a prima facie case that the Gumbaynggirr people did assert their native title rights and interests to the exclusion of non-Aboriginal people’.

Having regard to his Honour’s judicial guidance I am of the view that the requirements of s190(4)B only requires that in this administrative function I be satisfied that the rights and interests claimed are sufficiently described to allow them to be readily identified. Where the rights and interests claimed are set out individually and clearly, as they are in this application, it is sufficient to meet the requirements.

In accordance with the requirements of s.62(2)(d) the rights and interests claimed are not merely a statement to the effect they are all those rights and interests that may exist or that have not been extinguished at law. Each of the native title rights and interests claimed is readily identifiable.

In addition I note that the Applicants have sought to limit, by way of formula, the claimed native title rights and interests. The effect of this limitation is that the claimed rights and interests are not inconsistent with the validly granted rights and interests of others with respect to the claim area.

I am satisfied that the application meets the requirements of this subsection.

190B5	<p>Sufficient factual basis:</p> <p><i>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:</i></p> <ul style="list-style-type: none"><i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i><i>(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 interests;</i><i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i>
--------------	--

Reasons for the Decision

The affidavits provide evidence of the deponent's connection to the wider Gumbaynggirr traditional country – of which the land and waters the subject of this application form a part. I am inclined to take a broad view which sees the conditions satisfied by demonstration of traditional connection with a larger Gumbaynggirr country. In reaching this conclusion I have taken into account that this application is one of the applications for determination of native title which have been filed by the Gumbaynggirr in respect of a larger Gumbaynggirr country, and the additional confidential information provided in (name deleted) report.

On this basis I have accepted the statements in the affidavits as pertaining to land and waters the subject of this application. References (in this part of my reasons and at 190B(6) and 190B(7)) to the “claimed area” should be read in this context.

Section 190B(5) requires that I be satisfied that there is sufficient factual basis to support three specific assertions:

190B(5)(a) - that the native title claim group have, and the predecessors of those persons had, an association with the area.

To be satisfied under this criterion, it must be evident that the association with the area is and was communal, that is, shared by a number of members of the native title claim group.

The State in its submission of 24 September 1999 contend that the Applicants have not provided evidence in support of the assertions that the claimants are the descendants of those persons who occupied the claim area the time of European settlement.

The NSW Aboriginal Land Council in its supplementary submission say that the Crown has not had access to the report of (name deleted) which has been provided to the Tribunal to support the factual basis for the claim. The assertions in Schedule F are supported by the evidence in the anthropological report which confirms that the native title group and their predecessors had an association with the area...the independent anthropological evidence of (name deleted) alone provides sufficient evidence to establish a prima facie case of the claimed rights and interests. However, in this case it is also suggested by the affidavit evidence of the applicant and other members of the native title claim group. This criterion only requires that it must be evident that the native title claim group have, and the predecessors of those persons, had an association with the area.

One of the deponents states:

I am a descendant of Fred Buchanan. He was my grandfather. He was born at Cow Creek at Valla (which is in Gumbaynggirr country) and raised his children there. My father (name deleted) was born in Nelson Street, Nambucca and lived in Nambucca his whole life. My mother (name deleted) was also born in Nambucca near Warrell Creek. I was born on Stuart's Island which is located within the Nambucca River area. The Gumbaynggirr people's traditional country includes Nambucca which includes the land which is the subject of this Application and I have lived here my whole life in Gumbaynggirr country.

I am satisfied that there is a factual basis to support the assertion that the native title claim group have and the predecessors of those persons, had an association with the area.

I am satisfied that the application meets the requirements of this subsection.

190B(5)(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 interests.

This subsection requires me to be satisfied that: traditional laws and customs exist; that those laws and customs are respectively acknowledged and observed by the native title claim group, and that those laws and customs give rise to the claim to native title rights and interests.

The State in its submission of 24 September 1999 contend that:

while there is material elsewhere in the application referring to activities which took place in the past, there is insufficient evidence to show unbroken maintenance into the present of a number of activities referred to. Where activities are asserted to continue to take place in the present, it is not necessarily made clear in the application that those activities are undertaken, as the Act requires, in the course of continued exercise of traditional laws and customs.

The NSW Aboriginal Land Council in its supplementary submission say:

the Crown has not had access to the report of (name deleted) which has been provided to the Tribunal to support the factual basis for the claim. The assertions in Schedule F are supported by the evidence in the anthropological report which confirms that the native title group and their predecessors had an association with the area, that there are traditional laws and customs giving rise to the native title rights and interests...that the independent anthropological evidence of (name deleted) alone provides sufficient evidence to establish a prima facie case of the claimed rights and interests. However, in this case it is also suggested by the affidavit evidence of the applicant and other members of the native title claim group.

This criterion only requires that the factual basis on which it is asserted that the native title rights and interests claimed exists is sufficient to support the assertion. In particular that there exists 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 interests.

One of the deponents, for example, states:

I am the oldest Gumbaynggirr Elder from the Nambucca River valley area so anybody (even white people) must ask me if they want to go to a sacred site, especially Bora ground (where we used to have corroborrees) or up Warrell Creek near Bidy's Farm on Gumma.... My authority as an Elder comes from the knowledge and teachings I received from my father, uncle and grandfather. My grandparents, uncles and aunts told me about this country. They taught me how to hunt, prepare wildlife, cook, fish, clean animals.

On the basis of the information provided in the affidavits and additional confidential information, I find that there exist traditional laws and customs observed by the native title claim group that give rise to the claim to native title rights and interests. A broad range of continuing culture is described in the affidavits and the evidence in the additional information in (name deleted) report. The source of this culture is claimed to be Gumbaynggirr law and custom.

I am satisfied there exists a factual basis for the traditional laws and customs of the native title claim group that gives rise to the claimed native title rights and interests.

I am satisfied that the application meets the requirements of this subsection.

190B(5)(c) - that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

The State in its submission of 24 September 1999 contend that:

where activities are asserted to continue to take place in the present, it is not necessarily made clear in the application that those activities are undertaken, as the Act requires, in the course of continued exercise of traditional laws and customs.

The NSW Aboriginal Land Council in its supplementary submission say:
the Crown has not had access to the report of (name deleted) which has been provided to the Tribunal to support the factual basis for the claim. The assertions in Schedule F are supported by the evidence in the anthropological report which confirms that the native title group and their predecessors had an association with the area, that there are traditional laws and customs giving rise to the native title rights and interests and that the native title group has continued to hold their native title in accordance with those rights and interests...that the independent anthropological evidence of (name deleted) alone provides sufficient evidence to establish a prima facie case of the claimed rights and interests. However, in this case it is also suggested by the affidavit evidence of the applicant and other members of the native title claim group.

The affidavits of the four members of the native title claim group referred to above provide evidence of a continuing system of rules and beliefs adhered to by members of the native title claim group. They specify many of the rights and responsibilities of members of that group and processes by which those rights and responsibilities are recognised and exercised.

There is evidence that members of the claim group continue to hold native title rights and interests in accordance with traditional laws and customs. The evidence I have reviewed shows that the native title claim group continue to pass on custodianship of the land and waters, and how to use the natural resources of the land and waters claimed, speak and teach Gumbaynggirr language, undertake protection of the claim area through contemporary means, pass on knowledge about sites and avoidance law, teach dreaming stories and painting.

One of the deponents, for example, states:

The Elders always told me that this is my country. We would sit around a fire and the Elders would talk and teach us about the land and fishing...rules....

I am teaching my descendants to maintain the law in relation to people and country as taught to be by my Elders

I am satisfied that there is a factual basis which supports the assertion that the native title claim group have continued to hold native title in accordance with traditional laws and customs.

I am satisfied that the application meets the requirements of this subsection.

190B6	<i>Prima facie case:</i> <i>The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.</i>
--------------	---

Reasons for the Decision

Under s.190B(6) I must consider that, prima facie, at least some of the native title rights and interests claimed can be established.

“Native Title Rights and Interests” are defined at s.233 of the Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- a. the rights and interests to be linked to traditional laws and customs;
- b. those claiming rights and interests to have a connection with the relevant land and waters;
and
- c. those rights and interests to be recognised under the common law of Australia.

The definition is closely aligned with all the issues I have already considered under s190B5. I will draw on the conclusions I made under that section in my consideration of s190B6.

Under s.190B(6) I must consider that, prima facie, at least some of the rights and interests claimed can be established. The term “prima facie” was considered in *North Ganalanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ, who noted:

“The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase “prima facie” is: “At first sight; on the face of it; as it appears at first sight without investigation.” [citing Oxford English Dictionary (2nd ed) 1989].”

I have adopted the ordinary meaning referred to by their Honours in considering this application. In deciding which native title rights and interests claimed can prima facie be established, I have relied upon information contained in the application and the following:

- ◆ the affidavits of (name deleted), Stanley Marshall, (name deleted), (name deleted);
- ◆ Supplementary submission of 12 October 1999 by NSW Aboriginal Land Council.
- ◆ Additional information provided in confidence to the Registrar by the Applicant namely:
 - ◆ Preliminary Report by (name deleted) and affidavit sworn 6 September 1999;

The State in its submission of 24 September 1999 contend that none of the native title rights and interests claimed by the Applicants can be established on a *prima facie* basis in the absence of independent factual material to support the preliminary point of descent and connection. I have considered this contention in my statement of reasons in relation to 190B5(a). I am only required to be satisfied that it is evident that the native title claim group have and the predecessors of those persons had an association with the area. I am satisfied that there is a factual basis to support the assertion that the native title claim group have and the predecessors of those persons had an association with the area.

Evidence of the applicants assertion of this right is contained in the affidavits referred to in

1. The right to occupy the area

Evidence is contained in the following affidavits:

- (name deleted): paras 2 - 5
- Stanley Marshall: paras 3 – 13
- (name deleted): paras 3, 4 & 6
- (name deleted): paras 2, 5, 9 - 12

2. The right to own the area

Evidence is contained in the following affidavit.

Stanley Marshall: Paras 5 & 6

3. The right to be present on the area

Evidence is contained in the following affidavits:

- (name deleted): paras 2 - 5
- Stanley Marshall: paras 3 – 13
- (name deleted): paras 3, 4 & 6
- (name deleted): paras 2, 5, 9 - 12

4. The right to use and enjoy the area

Evidence is contained in the following affidavits:

- (name deleted): paras 2 - 5
- Stanley Marshall: paras 3 – 13

(name deleted): paras 3, 4 & 6
(name deleted): paras 2, 5, 9 - 12

5. The right to travel through the area

Evidence is contained in the following affidavits:

(name deleted): paras 2 - 5
Stanley Marshall: paras 3 – 13
(name deleted): paras 3, 4 & 6
(name deleted): paras 2, 5, 9 - 12

6. The right to live on the area

Evidence is contained in the following affidavits:

(name deleted): paras 2 - 5
Stanley Marshall: paras 3 – 13
(name deleted): paras 3, 4 & 6
(name deleted): paras 2, 5, 9 - 12

7. The right to camp on the area

Evidence is contained in the following affidavits:

(name deleted): paras 2 - 5
Stanley Marshall: paras 3 – 13
(name deleted): paras 3, 4 & 6
(name deleted): paras 2, 5, 9 - 12

8. The right to speak for the area

Evidence is contained in the following affidavits:

(name deleted): paras 5, 9, 10, 12
(name deleted): paras 4, 5, 8, 9, 10
Stanley Marshall: paras 5, 6, 12, 13, 14, 15, 18
(name deleted): paras 3, 4, 5, 6, 7, 8, 10

9. The right to hunt animals on the area

Evidence is contained in the following affidavits:

Stanley Marshall: paras 7, 8, 9, 18

10. The right to manage animals, plants and minerals on the area

The State in its submission contents there is no evidence given in the application concerning traditional laws and customs with respect to the management of minerals, plants and animals. The NSW Aboriginal Land Council did not address this particular point in their supplementary submission.

There is insufficient information in the material provided by the Applicants for me to satisfied that this right on a prima facie basis can be established.

11. The right to make decisions about the way that the area may be used by non-native title holders

Evidence is contained in the following affidavit:

Stanley Marshall: paras 5, 18

12. The right to carry out traditional ceremonies and activities on the area

Evidence is contained in the following affidavits:

Stanley Marshall: paras 5, 13, 15

(name deleted): paras 4, 5, 6

13. The right to access the area

Evidence is contained in the following affidavits:

Stanley Marshall: paras 3, 4, 17

(name deleted): paras 3, 10

(name deleted): paras 3, 5

(name deleted): paras 11, 12

14. The right to possess the area

Evidence is contained in the following affidavits:

Stanley Marshall: paras 3, 4, 5, 6, 13, 18

15. The right to free access to the area for the purpose of satisfying the rights identified in the preceding sub-paragraphs

Evidence is contained in the following affidavit:

Stanley Marshall 1-19.

In addition the affidavit evidence referred to above also enables me to be satisfied on a *prima facie* basis, that this right can be established.

I am satisfied that the application meets the requirements of this subsection.

190B7	<p><i>Traditional physical connection:</i></p> <p><i>The Registrar must be satisfied that at least one member of the native title claim group:</i></p> <p><i>(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i></p> <p><i>(b) previously had and would reasonably have been expected currently to 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 land or waters) by:</i></p> <p><i>(i) the Crown in any capacity; or</i></p> <p><i>(ii) a statutory authority of the Crown in any capacity; or</i></p> <p><i>(iii) Any holder of a lease over any of the land or waters, or any person acting on behalf of such holder of a lease.</i></p>
--------------	--

Reasons for the Decision

Under s190B(7)(a) I must be satisfied that at least one member of the native title claim group currently has or previously had a traditional physical connection with any part of the land or

waters covered by the application.

Schedule M of the application refers to the affidavits provided at Attachment G to support Applicants assertion that members of the native title claim group have a traditional physical connection to the land and waters covered by the application.

I must only be satisfied that one member of the claim group has or previously had a traditional physical connection with any part of the land claimed.

In one affidavit the deponent states:

I am a descendant of Fred Buchanan. He was my grandfather. He was born at Cow Creek at Valla (which is in Gumbaynggirr country) and raised his children there. My father (name deleted) was born in Nelson Street, Nambucca and lived in Nambucca his whole life. My mother (name deleted) was also born in Nambucca near Warrell Creek. I was born on Stuart's Island which is located within the Nambucca River area. The Gumbaynggirr people's traditional country includes Nambucca which includes the land which is the subject of this Application and I have lived here my whole life in Gumbaynggirr country.

I take the evidence in the affidavits as evidence that the deponent, being a member of the native title claim group, has maintained a traditional physical connection with the area known as Gumbaynggirr country.

As referred to in my reasons for 190B(5) I am inclined to take a broad view of the application of s.190B(7) which sees the condition satisfied by demonstration of traditional physical connection with a larger Gumbaynggirr country. In reaching this conclusion I have taken into account that this application is one of the applications for determination of native title which have been filed by the Gumbaynggirr in respect of a larger Gumbaynggirr country, and the additional confidential information provided in (name deleted) report.

Based on the affidavits before me, I am satisfied that one member of the native title claim group currently has and previously had a traditional physical connection with a part of the claim area. I am satisfied that the application meets the requirements of this subsection.

190B8	<p><i>No failure to comply with s61A:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of s61A (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.</i></p>
--------------	--

Reasons for the Decision

For the reasons that follow I have formed the conclusion that there has been compliance with s61A and that the provisions of this section are met.

s61A(1) – Native Title Determination

A search of the Native Title Register has revealed that there is no approved determination of native title in relation to the area claimed in this application

S61A(2) – Previous Exclusive Possession Acts

Schedule B of the amended application confirms that the application does not include any lands subject to a previous exclusive possession act as defined under s.23B of the *Native Title Act* save where the Act allows those lands to be part of a native title determination application. I am not aware of any such allowance under the *Native Title Act*, where current or former private freehold can be included in the claim area, and consequently find that the statement excludes all private freehold from the claim area.

For acts attributable to the Commonwealth that may be previous exclusive possession acts I would need to consider whether the act falls within the definition of a previous exclusive possession act under s.23B of the *Native Title Act*.

If the act is attributable to the State of NSW and may be a previous exclusive possession act then I need to refer to the NSW Government's *Native Title (New South Wales) Act 1998 No88*. However, when defining what a previous exclusive possession act is (attributable to the State) the Act refers to the Commonwealth's definitions under s.23B of the *Native Title Act*. Consequently, for the purposes of s.61A(2), I must consider whether there are any areas in the claim area that contain previous exclusive possession acts as defined by s.23B of the *Native Title Act*, whether those acts are attributable to the State or Commonwealth.

Where there has been extinguishment of native title on areas of land the subject of a previous exclusive possession acts as defined by s.23B, I find those areas to have been excluded from the claim area.

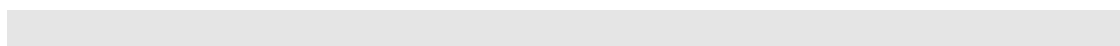
The Application has disclosed this by way of the definitional formula referred to in my reasons at s.190B(2) together with the specific exclusions of the areas the subject of special lease 1953/15 Kempsey for grazing and agriculture granted pursuant to the *Crown Lands Consolidation Act 1913* (NSW) and the area the subject of Scotts Head Sewerage Treatment Works in 1985 gazetted on 28/6/1985 and established pursuant to *Public Works Act 1912* (NSW).

I am satisfied that the applicants have excluded any areas of land from the claim area where there has been a previous exclusive possession act as defined by the *Native Title Act* and the *Native Title (New South Wales) Act 1998*.

S61A(3) – Previous Non-Exclusive Possession Acts

Schedule B confirms that the application does not include a claim for exclusive possession over previous non-exclusive possession act areas as defined under s.23F of the Act, save where the Act as defined in s.23G(1)(a) and s.23G(1)(b)(ii) allows such a claim to be part of a native title determination application.

I am satisfied that the application meets the requirements of this subsection.

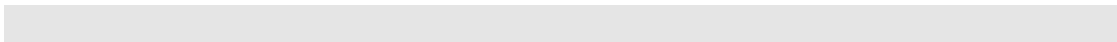


190B9 (a)	<i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i>
	<i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i> (a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Common-

wealth, a State or Territory wholly owns the minerals, petroleum or gas;

Reasons for the Decision

Schedule Q of the application states there is no claim to ownership of minerals, petroleum or gas wholly owned by the Crown.
I am satisfied that the application meets the requirements of this subsection.



190B9 (b)	<i>Exclusive possession of an offshore place:</i>
	<i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i> (b) <i>to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;</i>

Reasons for the Decision

The area claimed does not include any offshore area.
I am satisfied that the application meets the requirements of this subsection.

190B9 (c)	<i>Other extinguishment:</i>
	<i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i> (c) <i>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 subsection 47(2), 47A(2) or 47B(2)).</i>

Reasons for the Decision

The application and accompanying documents do not disclose, nor am I otherwise aware, that the application contravenes the criteria set out in s.190B(9)(c).

There may be areas within the boundary of the application, where on certain portions of land native title rights and interests have otherwise been extinguished. It appears that even if areas of the type prohibited by this section (s190B(9)(c)) are located within the external boundary of the area of the amended application, such areas have been excluded from the claim area by virtue of Schedule B of the application. Refer also to my reasons at s.190B(8).

I am satisfied that the application meets the requirements of this subsection.

End of Document



Decision of Delegate

1. The application IS accepted for registration pursuant to s190A of the *Native Title Act* 1993

If the claim is not accepted for registration, written notice of the decision and the reasons for the decision, are to be provided to the applicant and to the Federal Court, in accordance with s190D of the *Native Title Act*.

2. The Registrar is to give notice of the decision, as required by s66(3) of the *Native Title Act*, whether or not the claim has been accepted for registration.

Sue Kee
DELEGATE

DATE