

Short Form Reason

Status:	Publish on Web
Date Published:	
Application Name:	Iman People #2
Application (NNTT) No:	QC97/55
Application (Fed Crt) No:	QG6162/98
State:	QLD
Region:	Queensland
Date Application Made:	30/10/97
Date Registration Text	28/07/99
Decision made:	
Decision:	Not Accepted
Decision Type:	Abbreviated Decision

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Information Relevant to 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:

- The working file and registration test file for claim QC97/55;
- Other tenure information acquired by the Tribunal in relation to the area covered by this application;
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims; and
- The National Native Title Register.

Note: Information and materials provided in the context of mediation have not been considered in making this decision due to the without prejudice nature of those conferences and the public interest in maintaining the inherently confidential nature of the mediation process.

Reasons for Decision

Background:

1. On 1 October 1998, the Tribunal forwarded a letter to the applicants (care of their legal representative, Gurang Land Council Aboriginal Corporation (“Gurang”)) advising that any information to be considered by the Registrar for the purposes of registration should be provided by no later than 1 January 1999.
2. On 26 October 1998, the Tribunal forwarded a letter to Gurang advising that the Tribunal had been notified as to the issue of a s.29 notice over an area forming part of the application (being the area of Mining Lease 50074) (“the notice”) and that, as a consequence of the issue of the notice, the Tribunal would apply the registration test to the application from 30 December 1998.
3. On 19 November 1998, the Tribunal forwarded a letter to Gurang giving its preliminary assessment as to how it considered the application and other information held by the Tribunal may affect the implementation of the registration test provisions and advising that the registration test would be applied from “30 December 1999”.
4. On 20 November 1998, the Tribunal forwarded a facsimile to Gurang referring to the typographical error in relation to the registration test date in the letter of November 1998 and clarifying that the date for application of the registration test was 30 December 1998.

5. On 16 December 1998, Gurang wrote to the Tribunal in relation to the issue of the application of the registration test to the subject application ("the Gurang letter") Relevantly, the Gurang letter states:

"As you know, a Notice has been issued under ss26 and 29 of the Native Title Act 1993 ("Act") over the proposed Kogan Creek coal mine. The area the subject of the proposed mine falls within the native title claim QC97/55.

Our clients have chosen to respond to the Notice by:

- amending QC97/55 to delete the claimable areas within the proposed mine site; and*
- lodging a new native title determination over the claimable areas within the site of the proposed mine.*

We understand that the Tribunal intends to apply the registration test to QC97/55 on 30 December 1998.

Our clients recognise that QC97/55 needs substantial amendment in order to meet the registration test requirements. The purpose of amending the current claim is to ensure the registration test is not applied to QC97/55 as a result of the s.29 notice; our clients intend then to amend the current claim in early 1999, so that it may meet the registration test requirements.

Our clients will finalise their new claim in January 1999."

6. The Gurang letter requested an extension of 6-12 months on the application of the registration test to the subject application on the basis that:

- * the applicants needed to amend the application in response to the notice, finalise a fresh application for a native title determination in respect of the proposed mine site and amend the subject application in order to meet the registration criteria: and
 - Gurang had identified certain difficulties in relation to the subject application, including difficulties in communicating with the native title claim group, additional anthropological research required and the requirement to obtain legal advices as to the implications of the notice, the requirements of the registration test and other matters.
- Reference was also made by Gurang to its work prioritisation generally.

7. On 25 January 1999, Gurang filed an amended application in the Queensland Registry of the Federal Court ("the amended application"). In essence, the effect of the amended application was to exclude from the area the subject of the application the land and waters the subject of the notice.

8. On 23 February 1999, the Tribunal forwarded a letter to Gurang advising that an extension of time in relation to the application of the registration test had been granted to the end of April 1999 and that the Tribunal would commence to apply the registration test on 1 May 1999.

9. On 23 June 1999, the Tribunal forwarded a letter to Gurang advising that if the applicants failed to provide any additional information and/or amend the application by 8 July 1999, the Delegate would proceed to consider the application under the Tribunal's abbreviated procedure for the registration test on and from 9 July 1999.

10. As at the date of this my decision, the Tribunal has not received a further amended application or any further correspondence and/or material from or on behalf of the applicants.

Decision:

11. The application has not been amended in relation to the registration test, nor has additional information been provided, nor things done, in order that it might satisfy the provisions of the Act relating to registration. **It is clear that the application fails to meet a number of the procedural requirements pursuant to the registration test provisions of the Act.** Accordingly, I do not accept the application for registration. The procedural deficiencies in the application are addressed below.

12. Section 190C of the Act forms the basis for the abbreviated decision procedure. Pursuant to s.190C(2) of the Act the delegate must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by ss.61 and 62 of the Act.

13. The applicants have not complied with s.190C(2) of the Act in that the amended application does not contain a map showing the boundaries of the area covered by the application as required pursuant to s.62(2)(b) of the Act. In this regard, the boundary map contained at Attachment 2 to the original application lodged 30 October 1997 ("the original application") does not, of itself, evidence sufficient co-ordinate points, or other geospatial means by which it is possible to identify with certainty the boundaries of the area covered by the application.

14. In addition, the applicants have not complied with s.190C(2) of the Act as the amended application does not contain information, by way of physical description or otherwise, that enables the boundaries of the area covered by the application, and any areas within those boundaries that are not covered by the application, to be identified.

15. In this regard, Schedule B of the amended application (which, with the exception of the exclusion of the area the subject of the notice, Lot 4 on FTY 475 and an area of Cooranga Creek as specified below, substantially mirrors the description of the claim area in the original application filed 30 October 1997) states as follows:

"The area covered by the application, which includes land, waters, air, resources, flora and fauna is located in central and south west Queensland.

It involves parts of the local government areas of the Banana, Bauhimia, Bendemere, Booringa, Bungil, Chinchilla, Duaringa, Emerald, Murilla, Roma, Tara, Taroom, Wambo and Warroo Shire Councils.

The boundaries of the area covered by the application extend from the junction of the Maranoa River and Lake Kajarabie; north and north-west along the Maranoa River to its source in the Carnarvon Range; north-west along the ridge of the Carnarvon Range to the source of Meteor Creek; north-east along Meteor Creek to its junction with Planet Creek; south-east and north along Planet Creek to its source in the Shotover Range; north and east along the Shotover Range to its junction with the Dawson Range; south-east along the Dawson Range to a point due east of the junction of Mimosa Creek and the Dawson River; overland from this point to the junction of the Dawson River and Mimosa Creek; the junction of the Dawson River and Banana Creek, south east along the Dawson River to the junction of the Dawson River and Castle Creek then along Castle Creek to its source in the Auburn and Dawes Ranges, to its junction with the Auburn Range; south along the Auburn Range to its junction with the Great Dividing Range; south-east along the Great Dividing Range to the source of Myall Creek; south-west and west along Myall Creek to its junction with the Condamine River; west-south-west overland to Yellow Cap Peak [stet]; south-west overland to the junction of the Maranoa River and Lake Kajarabie.

The area covered by the application does not include:

- the proposed Dawson River Dam site;*
- the proposed Dawson River Dam Inundation area;*
- the Nathan Gorge;*
- National Park;*
- the Precipice National Park;*
- parcels of privately held freehold land;*
- the land and waters covered by Mining Lease Application 50074;*
- Lot 4 FTY 475; and*
- That part of Cooranga Creek between the western boundary of Lot 1 RP 179285 and the western boundary of Lot 31 L34118."*

16. It is my view that this description as provided in Schedule B of the amended application does not contain sufficient detail in order that both the external and internal boundaries of the area covered by the application may be identified with certainty. Section 190C(2) has, therefore, not been complied with.

17. Further, the applicants have failed to comply with 190C(2) of the Act in that the applicants' affidavits supporting the amended application do not contain details as to the basis on which the respective applicants are authorised to make the application and to deal with matters arising in relation to it as required pursuant to s.62(1)(a)(v) of the Act.

18. In this regard, the applicants have not provided evidence that the application has been certified by a representative Aboriginal /Torres Strait Islander body that could certify the application as required pursuant to s.190C(4)(a) of the Act.

19. To meet the requirements of the alternative provision, s.190C(4)(b), the applicants must have (pursuant to s.190C(5)) supplied a statement to the effect that the requirements set out in s.190C(4)(b) have been met, and also set out the grounds on which the Delegate should consider that it has been met.

20. The applicants have respectively sworn the following affidavits in support of the amended application (“the supporting affidavits”):

- affidavits of *applicants A,B,C,D,E and F* (names deleted) sworn 20 January 1999;
- affidavit of *applicant G* (name deleted) sworn 21 January 1999; and
- affidavit of *applicant H* (name deleted) sworn 22 January 1999.

21. Relevantly paragraph 5 of each of the supporting affidavits states:

“The basis on which I am authorised as mentioned in paragraph 4 is as follows

(a) according to Iman traditional laws and customs, it is a decision for the elders of the group as to who may be authorised to speak and act for, and on behalf, of the native title claim group;

(b) On 16-17 January 1999, the Gurang Land Council (Aboriginal Corporation) held a meeting with the members of the native title claim group, in Rockhampton.

(c) On 17 January 1999, the meeting made the following resolution:

“The meeting today, 17 January 1999, of the Iman people at Dreamtime Cultural Centre, Rockhampton, agree that under Iman traditional laws and customs, there is a process of decision making that must be complied with in relation to authorising the withdrawal or making of a native title claim; we require our Elders to be consulted and to authorise any decision to amend a claim or lodge a further claim.

We agree that the Elders are here today, and have the authority to make decisions for each of the family groups represented on the claim. The Elders have been consulted, and consent to:

1. amend our application for determination of native title QC97/55 by withdrawing that part of the claim over the Mining Lease Application 50074, the Braemar State Forest Lot 4 FTY 475, and that part of Cooranga Creek between the western boundary of Lot 1 RP179285 and the western boundary of Lot 31 L34118; and

2. lodge a fresh claim on behalf of the biological descendants of our apical ancestors, namely Nellie Dun Maggie Dun, Lizzie Palmtree, Maggie Palmtree Eliza Shields, John Serico and Arwa Mary Davis (aka Hawaii) (but not including Fergus Waterton or his descendants) on the land and waters to be withdrawn from our claim QC97/55 described above, but not including any land or waters which are or have been the subject of an estate or interest listed in Schedule 1 to the Native title Act 1993. The following people are authorised to make the claim and deal with matters arising in relation to it...”

22. Accordingly, on the face of the supporting affidavits, the applicants have failed to provide evidence that each is respectively a member of the native title claim group and evidence as to the basis on which each is respectively authorised to make the application and to deal with matters arising in relation to it.

23. I note that the final paragraph of Schedule R of the amended application, in reference to the 17 January 1999 meeting, states: “*Later at that meeting, the Elders noted the persons who had originally appeared as the applicants on QC97/55, and authorised them to lodge the application to amend QC97/55.*” Given that this paragraph makes no reference to the authorisation of the applicants “to deal with all matters arising in relation to” the application, and that the Tribunal does not have before it any information or documentation by way of clarification as to the actual scope of the authorisation I am not satisfied that the condition in subsection 190C(4) is met.

24. Given the failure by the applicants to comply with s.190C(2) and s.190C(4), I have not considered it necessary to apply the test in respect to the merits requirements contained in s190B of the Act.