

National Native Title Tribunal

REGISTRATION TEST  
REASONS FOR DECISION

DELEGATE	Malcolm O'Dell		
DATE	6 August 1999		
Application Name	Southern Noongar		
Name of Applicant	Allan Bolton, Glen Colbung, Dallas Coyne, Rita Dempster, Aden Eades, Cedric Roberts, Joyce Winsley		
Region	South West WA	NNTT No	Federal Crt No
Date Application Made	WAG-6134/98	WC96/109	18/11/96

## Brief History of the application

This application was lodged with the National Native Title Tribunal on 18 November 1996

The application was amended by order of the Federal Court on 27 May 1999.

I note that after the most recent amendment, this application, with the exception of the addition of certain people to the claim group and to the additional exclusion of certain areas, is largely identical to WC98/70 – Wagyl Kaip, which passed the Registration Test on 23 April 1999.

All references to the ‘amended application’ in the present decision, unless otherwise stated, refer to the application as most recently amended.

All legislative references are to the Native Title Act unless otherwise specified.

## Information considered when making the Decision

Under Table A schedule 5 of the Native Title Act [see specifically Part 4 – 11(8)], in determining this application, where applicable I have considered and reviewed all of the information and documents from the following files, databases and other sources:

- The Working Files, Registration Test Files, Legal Services Files and Federal Court Application and Amendment Files for this claim WC96/109 – Southern Noongar and for overlapping claims WC98/70 – Wagyl Kaip and WC96/105 – Womber.
- Tenure information in relation to the area covered by this application
- The National Native Title Tribunal Geospatial Database
- The Register of Native Title Claims
- The Native Title Register
- Determination of Representative ATSI Bodies: their gazetted boundaries
- Submissions from the Western Australian State Government

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 such conferences.

## A. Procedural Conditions

<b>190C2</b>	<b>Information, etc, required by section 61 and section 62:</b> <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>
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### Details required in section 61

<b>61(3)</b>	<b>Name and address for service of applicant</b>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> <li>1. Name of the applicant given at page 1 of the amended application.</li> <li>2. Address for service of the applicant given at Part B of the amended application.</li> <li>3. This satisfies the requirements of s.61(3).</li> </ol>	

<b>61(4)</b>	<b>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</b>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> <li>1. For the reasons given at s190B(3) the application satisfies this condition.</li> </ol>	

<b>61(5)</b>	<b>Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee</b>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> <li>1. The application is in the form prescribed by Regulation 5(1)(a) Native Title (Federal Court) Regulations 1998.</li> <li>2. As required under section 61(5)(b), the amended application was filed in the Federal Court.</li> <li>3. The application meets the requirements of section 61(5)(c) and contains all information as prescribed in section 62. See reasons for decision in relation to those sections.</li> <li>4. As required by section 61(5)(d) the application is accompanied by: <ul style="list-style-type: none"> <li>• Seven affidavits (one for each applicant) as prescribed by section 62(1)(a) (see reasons for decision in relation to that section)</li> <li>• A map as prescribed by sections 62(1)(b) (see reasons for decision in relation to section 62(2)(b))</li> </ul> </li> <li>5. The original application was fee exempt.</li> <li>6. For the reasons outlined above, the requirements of s.61(5) are met.</li> </ol>	

**Details required in section 62(1)**

<b>62(1)(a)</b>	<b><i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i></b>
Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> <li>1. The seven applicants have provided affidavits in the prescribed form and addressing the matters required by s62(1)(a)(i) – s62(1)(a)(v).</li> <li>2. The requirements of s.62(1)(a) are met.</li> </ol>	

<b>62(1)(c)</b>	<b><i>Details of physical connection (information not mandatory)</i></b>
Comment on details provided	
<ol style="list-style-type: none"> <li>1. No specific details provided.</li> </ol>	

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

<b>62(2)(a)(i)</b>	<b><i>Information identifying the boundaries of the area covered</i></b>
Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> <li>1. A technical description, sufficient for the area covered by the application to be identified, is provided at Schedule B, Attachment B of the amended application.</li> <li>2. For the reasons given at s.190B(2), this description satisfies s.62(2)(a)(i).</li> </ol>	

<b>62(2)(a)(ii)</b>	<b><i>Information identifying any areas within those boundaries which are not covered</i></b>
Reasons relating to this sub-condition	Application passes the condition
<p>Information identifying the 'internal boundaries' of the application is given at Schedule B, Attachment B, 'Internal boundaries', of the amended application in the following terms:</p> <ol style="list-style-type: none"> <li>1. The applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the Native Title Act 1993, as amended, or the Titles Validation Act 1994, as amended, at the time of the Registrar's consideration: <ul style="list-style-type: none"> <li>(a) Category A past acts, as defined in NTA section 229;</li> <li>(b) Category A intermediate period acts as defined in NTA section 232B.</li> </ul> </li> <li>2. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23E in relation to the act as at the time of the Registrar's consideration.</li> <li>3. The applicants exclude from the claim any areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to: <ul style="list-style-type: none"> <li>(a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or</li> </ul> </li> </ol>	

- (b) actual use made by the holder of a tenure other than native which is permanently inconsistent with the continued existence of native title,

AND, to avoid any uncertainty, the applicants exclude from the claim:

- (c) an unqualified grant of an estate in fee simple; or
- (d) a lease which is currently in force, in respect of an area not exceeding 5,000 square metres, upon which a dwelling house, residence, building or work is constructed, and which comprises:
- i) a Lease of a Worker's Dwelling under the Worker's Homes Act 1911-1928; or
  - ii) a 999 year Lease under the Land Act 1898; or
  - iii) a Lease of a Town Lot or Suburban Lot pursuant to section 117 of the Land Act 1933 (WA); or
  - iv) a Special Lease under section 117 of the Land Act 1933 (WA); or
- (e) a Conditional Purchase Lease currently in force in the Agricultural Areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887 which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed; or
- (f) a Conditional Purchase Lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed; or
- (g) a Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954; or
- (h) a permanent public work; or
- (i) an existing public road or street used by the public.

4. Paragraphs (1), (2) and (3) above are subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include areas that are occupied by one or more of the native title claim group and may be listed in Schedule L at a later date.

5 The applicants exclude from the claim area the following parcels of land:

DME No.	Area (sq km)
E7002008	198.57
E7002009	198.58
E7002010	198.60
E7002012	197.71
E7002013	175.24
E7002014	198.16
E7002090	198.58
E7002099	183.00
E7002100	168.86
E7002101	197.13
E7002102	197.29
E7002103	197.38
E7002111	198.22

E7002120	198.32
E7002121	198.03
M7000997	000.08
<p><b>1. DOLA Ref:</b> 955704  <b>Land Description Area:</b> Part Roe location 2114, being portion of Reserve 23128 “recreation and conservation of Flora” and shown as Hyden lot 179 on Land Administration Plan 19526 Volume 3065 Folio 904.  <b>Hectares / sq metres:</b> 4.0707 hectares</p>	
<p><b>2. DOLA Ref:</b> 955397  <b>Land Description Area:</b> Pemberton Lot 265, being Reserve 41800, “Park” Volume 3036 Folio 388  <b>Hectares / sq metres:</b> 4.0469 hectares</p>	
<p><b>3. DOLA Ref:</b> 972661  <b>Land Description Area:</b> Newdegate Lot 173, being unallocated Crown Land Volume 3030 Folio 39.  <b>Hectares / sq metres:</b> 2105 Sq metres</p>	
<p><b>4. DOLA Ref:</b> 972661  <b>Land Description Area:</b> Newdegate Lot 208, being unallocated Crown Land Volume 3112 Folio 109.  <b>Hectares / sq metres:</b> 15.5257 hectares</p>	
<p>2. For the reasons given at s.190B(2) the application passes this condition.</p>	

<b>62(2)(b)</b>	<b><i>A map showing the external boundaries of the area covered by the application</i></b>
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Reasons relating to this sub-condition	Application passes the condition
<p>1. The amended application at Schedule C, Attachment C, Annexure A, includes a map showing the external boundaries of the area covered by the application.</p> <p>2. For the reasons given at s.190B(2), the application passes this condition.</p>	

<b>62(2)(c)</b>	<b><i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i></b>
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Reasons relating to this sub-condition	Application passes the condition
<p>1. In Schedule D, the application states that the applicants are not aware of any searches.</p> <p>2. The applicants have, however, supplied further information of searches by the State and Commonwealth Governments which meet the requirements of this condition.</p> <p>3. The application passes this condition.</p>	

62(2)(d)	<b>Description of native title rights and interests claimed</b>
Reasons relating to this sub-condition	Application passes the condition
<p>1. The amended application at Schedule E contains a description of the native title rights and interests claimed in respect of the area claimed.</p> <p>2. The native title rights and interests are described as follows:</p> <p style="padding-left: 40px;">The Qualifications</p> <p style="padding-left: 40px;">The applicants claim in relation to the claim area, including land and waters, the native title rights and interests set out below (“The Rights and Interests”) subject to the following qualifications.</p> <p>i. To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.</p> <p>ii. To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.</p> <p>iii. The applicants do not make a claim to native title rights and interests which confer possession, occupation use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23I in relation to the act.</p> <p>iv. Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.</p> <p>v. The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.</p> <p style="padding-left: 40px;">The Rights and Interests</p> <p style="padding-left: 40px;">Subject to the above qualifications, the rights and interests claimed in relation to the claim area, including land and waters, are:</p> <p>(a) rights and interests to exclusively possess, occupy, use and enjoy the area;</p> <p>(b) the right to make decisions about the use and enjoyment of the area;</p> <p>(c) the right of access to the area;</p> <p>(d) the right to control the access of others to the area;</p> <p>(e) the right to use and enjoy resources of the area;</p> <p>(f) the right to control the use and enjoyment of others of resources of the area;</p> <p>(g) the right to maintain and protect places of importance under traditional laws, customs and practices in the area;</p>	

(h)	the right to maintain, protect and prevent the misuse of cultural knowledge of the common law native title holders associated with the area;
(i)	the right to rear and teach children in their country;
(j)	the right to live on and erect residences and other infrastructure on the land;
(k)	the right to trade in resources of the area;
(l)	the right to receive a portion of any resources taken by others from the area; and
(m)	the right to manage, conserve and look after the land, waters and resources, including locating and cleaning water sources and drinking water on the land.
3. This description satisfies s.62(2)(d)	

<b>62(2)(e)(i)</b>	<b><i>Factual basis – claim group has, and their predecessors had, an association with the area</i></b>
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Reasons relating to this sub-condition	Application passes the condition
1. A general description of the factual basis for the assertion that the claim group has, and their predecessors had, an association with the area is given at Schedule F, of the amended application.	
2. This description satisfies s.62(2)(e)(i)	

<b>62(2)(e)(ii)</b>	<b><i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i></b>
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Reasons relating to this sub-condition	Application passes the condition
1. A general description of the factual basis for the assertion that traditional laws and customs exist that give rise to the claimed native title is given at Schedule F of the amended application.	
2. This description satisfies s.62(2)(e)(ii)	

<b>62(2)(e)(iii)</b>	<b><i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i></b>
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Reasons relating to this sub-condition	Application passes the condition
1. A general description of the factual basis for the assertion that the claim group has continued to hold native title in accordance with traditional laws and customs is given at Schedule F of the amended application.	
2. This description satisfies s.62(2)(e)(iii)	

<b>62(2)(f)</b>	<b><i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i></b>
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Reasons relating to this sub-condition	Application passes the condition
1. Details of activities currently carried out by the claimant group in relation to the area claimed are included at Schedule G of the amended application.	
2. These details satisfy s.62(2)(f).	



62(2)(g)	<b>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)</b>
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Reasons relating to this sub-condition	Application passes the condition
1. Schedule H and attachment H of the amended application contains the NNTT name and number of <b>all</b> other applications to the High Court, Federal Court or a recognised State/Territory body, in relation to the whole or a part of the area covered by the application. 2. The details supplied are sufficient to comply with s.62(2)(g).	

<b>62(2)(h)</b>	<b><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></b>
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Reasons relating to this sub-condition	Application passes the condition
1. The amended application at Schedule I and attachment I lists all s29s issued over any part of the application area since 17/1/1997	
2. The application passes this condition.	

## Reasons for the Decision

1. 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 ss.61&62.
2. I am satisfied that the application meets the requirements of this condition.

<b>190C3</b>	<p><b><i>Common claimants in overlapping claims:</i></b></p> <p><b><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></b></p> <p><b><i>(a) the previous application covered the whole or part of the area covered by the current application; and</i></b></p> <p><b><i>(b) 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></b></p> <p><b><i>(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i></b></p>
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### **Reasons for the Decision**

1. A check of the Register of Native Title Claims was conducted on 6 August 1999.
2. This check revealed that two overlapping native title applications are on the Register of Native Title Claims, or have not been removed from the Register of Native Title Claims as a result of consideration pursuant to s190A.
3. These applications are WC96/105 - Womber and WC98/70 – Wagyl Kaip.
4. There are persons included in the native title claim group for the current application who are members of the native title claim group for WC98/70 – Wagyl Kaip. The WC98/70 application was lodged on 29 September 1998 and passed the registration test on 23 April 1999. Since it is not a previous application the conditions of s.190C3 do not apply.
5. Members of the claim group WC96/105 – Womber have been excluded from this application, and in any event, WC96/105 was removed from the Register of native Title Claims as a result of consideration under s.190A.
6. I am satisfied that the requirements of s.190C3 are met.

<p><b>190C4(a)</b></p> <p style="text-align: center;"><b>and</b></p> <p><b>190C4(b)</b></p>	<p><b><i>Certification and authorisation:</i></b></p> <p><b><i>The Registrar must be satisfied that either of the following is the case:</i></b></p> <p>(a) <b><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></b></p> <p>(b) <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></b></p>
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## Reasons for the Decision

<p>1.</p> <p>2.</p> <p>3.</p> <p><u>Certification by the Noongar Land Council</u></p> <p>4.</p> <p><u>Compliance with s.202(7)</u></p> <p>1.</p> <p>2.</p> <p>3.</p> <p><u>Conclusion</u></p> <p>4.</p> <p>This certification satisfies the requirements of s.190C(4)(a) of the Act.</p>	<p>At Attachment R of the amended application the applicants have provided a certificate issued by a Native Title Representative Body pursuant to s.202(4)(d).</p> <p>An inspection of the Native Title Representative Body gazetted boundaries establishes that the claim area is wholly within the Noongar Land Council gazetted area.</p> <p>Section 190C(4)(a) requires certification by each representative Aboriginal/Torres Strait Islander body that could certify the application. Section 190C(6) qualifies this requirement, stating that certification is not required by all representative bodies if the application has been certified by a body whose area includes all of the area of land or waters to which the application relates. As indicated above, the Noongar Land Council is such a body.</p> <p>There appears to be no legally required format for certification of a claimant application other than it must be in writing (s.202(4)(d)) and that it must contain the information required under s.202(7).</p> <p>Section 202(7) of the Act sets out the statements to be included in certification of an application for determination of native title in the following terms:</p> <p>A certification of an application for a determination of native title by a representative body must:</p> <p>(a) Include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a) and (b) have been met; and</p> <p>(b) Briefly set out the body's reasons for being of that opinion; and</p> <p>(c) Where applicable, briefly set out what the representative body has done to meet the requirements of subsection (c)</p> <p>The certificate provided by the applicant is signed by [name deleted], Native Title Manager, Noongar Land Council and dated 3 May 1999.</p> <p>In my view the certificate provided by the applicant complies with s.202(7).</p> <p>As a result of the above considerations, I am satisfied that the application has been certified by the Noongar Land Council pursuant to s.202(4)(d) and in accordance with s.207(7).</p>
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**190C5**

***Evidence of authorisation:***

***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:***

- (a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and***
- (b) briefly sets out the grounds on which the Registrar should consider that it has been met.***

**Reasons for the Decision**

1. This requirement is not applicable. See reasons for 190C4.

## B. Merits Conditions

<b>190B2</b>	<p><b>Description of the areas claimed:</b></p> <p><b><i>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.</i></b></p>
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### Reasons for the Decision

<p><u>Map and External Boundary Description</u></p> <ol style="list-style-type: none"> <li>1. A map is supplied at Attachment C of the amended application.</li> <li>2. The map supplied shows the external boundaries of the areas claimed.</li> <li>3. The map displays co-ordinates to enable the position of sites or localities within the claim to be identified. In addition, it shows a scale allowing distances and areas to be ascertained. It identifies pastoral leases, State forest, un-allocated Crown Land, Freehold roads and water, Reserves and other tenure. A locality diagram, which indicates generally the position of the claim within Western Australia, forms part of the map provided. All the line work on the map is finely drawn and easy to follow.</li> <li>4. The map meets the requirements of s62 (2)(b) as the boundaries of the areas covered by the application can be identified.</li> <li>5. Additional information (a technical description) identifying the external boundary of the claim is supplied at Attachment B of the amended application.</li> <li>6. The Tribunal's Geo-spatial Unit has plotted this information and concludes that this description is internally consistent, fully encloses the claim area and does not discernibly contradict the map accompanying the application.</li> </ol> <p><u>Internal Boundary Description</u></p> <ol style="list-style-type: none"> <li>7 Areas excluded from the application are described at Schedule B(b) of the amended application.</li> <li>8 These exclusions form the areas within the (external) boundary which are not covered by the application, that is, the internal boundary description:             <ol style="list-style-type: none"> <li>1. The applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the <i>Native Title Act 1993</i>, as amended, or the <i>Titles Validation Act 1994</i>, as amended, at the time of the Registrar's consideration:                 <ol style="list-style-type: none"> <li>(a) Category A past acts, as defined in <i>NTA</i> section 229;</li> <li>(b) Category A intermediate period acts as defined in <i>NTA</i> section 232B.</li> </ol> </li> <li>1. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the <i>NTA</i>, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23E in relation to the act as at the time of the Registrar's consideration.</li> <li>2. The applicants exclude from the claim any areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:</li> </ol> </li> </ol>
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(a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or

(b) actual use made by the holder of a tenure other than native which is permanently inconsistent with the continued existence of native title,

**AND**, to avoid any uncertainty, the applicants exclude from the claim:

(c) an unqualified grant of an estate in fee simple; or

(d) a lease which is currently in force, in respect of an area not exceeding 5,000 square metres, upon which a dwelling house, residence, building or work is constructed, and which comprises:

i) a Lease of a Worker's Dwelling under the Worker's Homes Act 1911-1928; or

ii) a 999 year Lease under the Land Act 1898; or

iii) a Lease of a Town Lot or Suburban Lot pursuant to section 117 of the Land Act 1933 (WA); or

iv) a Special Lease under section 117 of the Land Act 1933 (WA); or

(e) a Conditional Purchase Lease currently in force in the Agricultural Areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887 which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed; or

(f) a Conditional Purchase Lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed; or

(g) a Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954; or

(h) a permanent public work; or

(i) an existing public road or street used by the public.

i) Paragraphs (1), (2) and (3) above are subject to such of the provisions of sections 47, 47A and 47B of the *NTA* as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include areas that are occupied by one or more of the native title claim group and may be listed in Schedule L at a later date.

5 The applicants exclude from the claim area the following parcels of land:

<b>DME No.</b>	<b>Area (sq km)</b>
E7002008	198.57
E7002009	198.58
E7002010	198.60
E7002012	197.71
E7002013	175.24
E7002014	198.16
E7002090	198.58
E7002099	183.00
E7002100	168.86

E7002101	197.13
E7002102	197.29
E7002103	197.38
E7002111	198.22
E7002120	198.32
E7002121	198.03
M7000997	000.08

**1. DOLA Ref:** 955704

**Land Description Area:** Part Roe location 2114, being portion of Reserve 23128 "recreation and conservation of Flora" and shown as Hyden lot 179 on Land Administration Plan 19526 Volume 3065 Folio 904.

**Hectares / sq metres:** 4.0707 hectares

**2. DOLA Ref:** 955397

**Land Description Area:** Pemberton Lot 265, being Reserve 41800, "Park" Volume 3036 Folio 388

**Hectares / sq metres:** 4.0469 hectares

**3. DOLA Ref:** 972661

**Land Description Area:** Newdegate Lot 173, being unallocated Crown Land Volume 3030 Folio 39.

**Hectares / sq metres:** 2105 Sq metres

**4. DOLA Ref:** 972661

**Land Description Area:** Newdegate Lot 208, being unallocated Crown Land Volume 3112 Folio 109.

**Hectares / sq metres:** 15.5257 hectares

Findings

9. The description of areas excluded from the claim area at paragraphs 1, and 3(a), refer to land where an act of a State or Commonwealth government has created an interest. The excluded areas of land can be readily identified through searches of relevant Government registers and are therefore described with reasonable certainty.
10. Other exclusions are included in Paragraph 5 'Internal Boundaries', and refer to parcels of land identified by DME exploration numbers and DOLA reference numbers.
11. The description of areas excluded from the claim at paragraph 2 refers to areas in relation to which a previous exclusive possession act, as defined in s.23B of the NTA 1993, was done in relation to the area, and either the act was an act attributable to the Commonwealth, or the act was an act attributable to the State of Western Australia and a law of that State has made provision for that act as described in s.23E NTA. Exclusive possession acts attributable to the Commonwealth can be readily identified through searches of the relevant register and are therefore described with reasonable certainty. Exclusive possession acts attributable to the State of Western Australia under legislation of the type described in s.23 are likewise readily identified by reference to that legislation and thereafter searches of the relevant registers.
12. Paragraph 3(b) of the Internal boundary description, excludes areas of land where actual use by the holder of a tenure is permanently inconsistent with continued existence of native title. Paragraph 3 (c)-(i), gives further information on specific areas of land excluded from the claim which may fall into this category. The description in paragraph 3(b) read together with Paragraphs (c)-(i), is sufficient for me to be satisfied that the areas excluded from the application, are identified with reasonable certainty.
13. The applicant seeks the protection of s.47, 47A and 47B by stating at paragraph 4 of 'Internal Boundaries, that any areas excluded from the claim area are subject to these



legislative provisions. Details of what, if any, areas are subject to this legislative protection are not provided. The description at paragraph 4 allows it to be shown objectively, upon the provision of such particulars, whether applicant may have the benefit of these provisions.

Conclusion

14. For the reasons given above, I am satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) is sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

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

<p>1. The native title claim group is described at Schedule A in the following terms:</p> <p>The claimants comprise those Aboriginal people who are:</p> <ol style="list-style-type: none"><li>1. the biological descendants of the unions between:-<ul style="list-style-type: none"><li>• Billy Colbung + Clara Brockman + Nina Bayla Brockman;</li><li>• Helen Williams + Bill Woods;</li><li>• Sarah Yettung James + Jack Woods;</li><li>• Sammy 'Jimmy' Miller + Polly, from Gnowangerup;</li><li>• Alice Davidson + Alice Williams + Henry Woods;</li><li>• Charles or Peter Eades + Lucy Coyne;</li><li>• William Hayward + Minnie Knapp;</li><li>• Emily Coyne + William 'Peg' Farmer;</li><li>• Fred Coyne + Margaret Davidson;</li><li>• Johnny Penny + Margaret 'Maggie' Piggott (Starlight);</li><li>• Charles Williams + Ellen Nelly Foot;</li><li>• Elijah Quartermaine + Mary 'Wartum';</li><li>• Ah-Lee + Mary Bateman;</li><li>• Peerup Roberts + Monkey + Emily (Mudah) D'Abb;</li><li>• Edward Smith + Sarah Punch;</li><li>• Ernie or George Moir or Muir + Aboriginal woman named Karlbyirt;</li><li>• Eddie 'Womber' Williams + Lily 'Tjorian' Burchell;</li><li>• George 'Bordriditch' Riley + Elizabeth Smith;</li></ul></li><li>1. those persons adopted by the individuals named in 1. above and those persons adopted by the biological descendants of the unions between the individuals named in 1. above;</li><li>2. those persons that are the biological descendants of the adopted persons included in 2. above.</li></ol> <p>Adoption occurs in the following manner: if a man dies and his brother or cousin marries the widow, any of the widow's children are adopted as the children of the new husband.</p> <p>Specifically excluded from being claimants are the persons listed in attachments A(1) and A(2).</p> <p>[Attachment A (1) and A (2) deleted for privacy purposes]</p> <p>Findings</p> <ol style="list-style-type: none"><li>2 I find that the members of the native title claim group are the biological and adoptive descendants of the union of the people listed at '1' above excluding the people listed at Attachments A(1) and A(2).</li><li>3 As Schedule A relies on a description other than naming the persons in the claim group, the application does not satisfy s.190B3(a). Consequently, the applicant must rely on satisfying s.190B3(b).</li></ol>
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1. The description in schedule A is an apical ancestry model with exclusions of certain people listed. In my view this description provides an objectively verifiable mechanism for ascertaining whether any particular person is in the claim group.
2. I am therefore satisfied that the persons in the native title claim group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.
3. The description satisfies the requirements of s.190B(3)(b).

**190B4**

***Identification of the native title rights and interests:  
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

- 1 This condition requires me to be satisfied that the native title rights and interests claimed can be readily identified.
- 2 It is insufficient to merely state that these native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'.
- 3 To meet the requirements of s190B (4), I need only be satisfied that at least one of the rights and interests sought is sufficiently described for it to be readily identified.
- 4 The amended application at Schedule E lists the native title rights and interests claimed as follows:

### ***The Qualifications***

The applicants claim in relation to the claim area, including land and waters, the native title rights and interests set out below ("The Rights and Interests") subject to the following qualifications.

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
- (ii) To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.
- (iii) The applicants do not make a claim to native title rights and interests which confer possession, occupation use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the *NTA*, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23I in relation to the act.
- iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the *NTA* as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.
- v) The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

### ***The Rights and Interests***

Subject to the above qualifications, the rights and interests claimed in relation to the claim area, including land and waters, are:

- (a) rights and interests to exclusively possess, occupy, use and enjoy the area;

- (b) the right to make decisions about the use and enjoyment of the area;
- (c) the right of access to the area;
- (d) the right to control the access of others to the area;
- (e) the right to use and enjoy resources of the area;
- (f) the right to control the use and enjoyment of others of resources of the area;
- (g) the right to maintain and protect places of importance under traditional laws, customs and practices in the area;
- (h) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law native title holders associated with the area;
- (i) the right to rear and teach children in their country;
- (j) the right to live on and erect residences and other infrastructure on the land;
- (k) the right to trade in resources of the area;
- (l) the right to receive a portion of any resources taken by others from the area; and
- (m) the right to manage, conserve and look after the land, waters and resources, including locating and cleaning water sources and drinking water on the land.

- 1 In my view the native title rights and interests described at Attachment E are readily identifiable. I have based this conclusion on the fact that the rights and interests are listed separately and are capable of being associated with activities that are said to be an exercise of those rights and interests.
- 2 In my view, the qualifications listed at items (i) to (v), are clear in their scope and intention, reciting general limitations to the operation of the listed rights and interests, where relevant.
- 3 In addition, the qualification in item (iv), the saving of exclusive possession rights and interests in areas of previous non-exclusive possession acts where the acts are in favour of native title claimants, is capable of qualifying item (iii), and consequently of providing clearly identifiable specific rights and interests.
- 4 The description is more than a statement that native title rights and interests are 'all native title interests that may exist, or that have not been extinguished at law'.
- 5 I am satisfied that the description in schedule E allows the native title rights and interests claimed too be readily identified in compliance with s.190B(4).

<b>190B5</b>	<p><b>Sufficient factual basis:</b>  <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> <p>(a) <i>that the native title claim group have, and the predecessors of those persons had, an association with the area;</i></p> <p>(b) <i>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></p> <p>(c) <i>that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i></p>
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### Reasons for the Decision

<ol style="list-style-type: none"> <li>1. This condition requires me to be satisfied that the factual basis on which it is asserted that there exist native title rights and interests described at schedule F of the amended application, is sufficient to support that assertion.</li> <li>2. In reaching this decision I must be satisfied that the factual basis supports the 3 criteria identified at s.190B5 (a) – (c).</li> <li>3. I note that the members of the native title claim group for the current application are the same as the claim group for WC98/70 - Wagyl Kaip with the addition of the biological or adoptive descendants of the union of Eddie 'Womber' Williams + Lily 'Tjorlian' Burchell, and the union of George 'Bordriditch' Riley + Elizabeth Smith.</li> </ol> <p><b><u>Information supplied by the applicants in support of this condition.</u></b></p> <ol style="list-style-type: none"> <li>2. I have considered information previously supplied for consideration for the Registration Test by the applicants in WC98/70 – Wagyl Kaip.</li> <li>3. Also submitted by the applicants for my consideration are: <ul style="list-style-type: none"> <li>• Affidavit of [name deleted], dated 18 June 1999</li> <li>• Affidavit of [name deleted], dated 18 June 1999</li> <li>• Affidavit of [name deleted], dated 30 July 1999</li> <li>• Affidavit of [name deleted], dated 30 July 1999</li> </ul> </li> </ol> <p><b><u>190B(5)(a) - that the native title claim group have, and the predecessors of those persons had, an association with the area</u></b></p> <ol style="list-style-type: none"> <li>4. This criteria requires me to be satisfied that: <ul style="list-style-type: none"> <li>• the members of the native title claim group currently have an association with the area (under claim) <i>and</i></li> <li>• the predecessors of the members of the native title claim group had an association with the area (under claim)</li> </ul> </li> <li>5. The word 'association' is not defined in the Act. In my view, the nature of the association required to be demonstrated by the applicant is governed by the nature of the native title rights and interests claimed. In this case the applicant claims the rights and interests identified at schedule E of the amended application.</li> <li>6. In addition, as native title rights and interests are defined as being related to land and waters (s.223 of the Act), in my view the information about the association of members of the native title claim group must relate to the area of land and waters where the particular native title rights and interests are claimed. In this case the extent of land and waters claimed is identified at schedule B of the amended application. I must therefore be satisfied that the members of the native title claim group are, and that their predecessors were</li> </ol>
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associated with the particular land and waters claimed.

7. For the reasons given in the decision in WC98/70 – Wagyl Kaip at s.190B(5) I consider that members of the native title claim group for the current application who are also members of the native title claim group for WC98/70 – Wagyl Kaip satisfy this condition.
8. It remains for me to be satisfied that the remaining members of the native title claim group, that is, the biological or adoptive descendants of the union of Eddie ‘Womber’ Williams + Lily ‘Tjorlian’ Burchell, and the union of George ‘Bordriditch’ Riley + Elizabeth Smith also satisfy this condition.
9. Attachment F of the amended application asserts that the native title claim group and their ancestors have, since the assertion of British sovereignty, possessed occupied, used and enjoyed the area subject to this application. The truthfulness of this assertion is deposed in the accompanying affidavit of the applicant.
- 10 The affidavits (cited above) reveal the relationship between the people added to this claim (identified in paragraph 8 above) and the rest of the claim group. It is clear from this information that these people are biologically related to certain other members of the claim group. The affidavits also contain additional information on the association of those people added to the application.
- 11 Consequently, the information supplied by the applicants in WC98/70 – Wagyl Kaip and the affidavits identified above in my view supports the requisite association for the people identified in paragraph 8 above.
- 12 I am satisfied that the information provided is sufficient to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the area where the applicant claims native title rights and interests.
- 13 The application satisfies this sub-condition.

**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.**

- 13 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 native title rights and interest claimed
- 14 For the reasons given in the decision in WC98/70 – Wagyl Kaip at s.190B(5) I consider that members of the native title claim group for the current application who are also members of the native title claim group for WC98/70 – Wagyl Kaip satisfy this condition.
- 15 It remains for me to be satisfied that the remaining members of the native title claim group, that is, the biological or adoptive descendants of the union of Eddie ‘Womber’ Williams + Lily ‘Tjorlian’ Burchell, and the union of George ‘Bordriditch’ Riley + Elizabeth Smith also satisfy this condition.
- 16 For the reasons given at paragraph 10 above I am satisfied the additional members of the claim group are sufficiently related to other members of the claim group and have also provide other information for me to be satisfied that there exists a body of traditional law and custom, which governs the behaviour of members of the native title claim group. I am further satisfied that the existence of these traditional laws and customs gives rise to native title rights and interests over the area claimed.
- 17 I am satisfied that criteria identified in this sub section is met.

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

- 18 For the reasons identified in paragraphs 10 and 16 above, the application complies with this subsection.

**Conclusion for s.190B(5)**

- 18 I am 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.

19 The application satisfies this condition.

**190B6**

***Prima facie case:***

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

## Reasons for the Decision

### Information considered

1. I have considered information previously supplied for consideration for the Registration Test by the applicants in WC98/70 – Wagyl Kaip.
2. Also submitted by the applicants for my consideration are:
  - Affidavit of [name deleted], dated 18 June 1999
  - Affidavit of [name deleted], dated 18 June 1999
  - Affidavit of [name deleted], dated 30 July 1999
  - Affidavit of [name deleted], dated 30 July 1999

### Findings

3. This condition of the Registration Test requires me to be satisfied that at least *some* (one) of the Native Title rights and interests claimed can, *prima facie*, be established.
4. It is necessary however to consider whether a *prima facie* case is established against each of the Native Title rights and interests identified as the right to negotiate only attaches to those identified interests against which a *prima facie* case has been established.
5. Native title rights and interests are defined at s.223 of the Native Title Act. This definition attaches native title rights and interests to land and water and requires that:
  - the rights and interests must be possessed under traditional laws and customs;
  - those people claiming the rights and interests by those laws and customs must have a connection with the relevant land and waters; and
  - those rights and interests to be recognised under the common law of Australia.
6. I have already outlined in my reasons at s.190B(5) that I am satisfied that the members of the native title claim group continue to adhere to traditional laws and customs that support the factual basis for the native title rights and interests claimed.
7. On the evidence provided I am satisfied that the native title rights and interests listed below can, *prima facie* be made out, subject to the following:
  1. To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
  2. To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.
  3. The applicants do not make a claim to native title rights and interests which confer possession, occupation use and enjoyment to the exclusion of all others in respect of



any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the *NTA*, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23I in relation to the act.

4. The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.
  - a. rights and interests to exclusively possess, occupy, use and enjoy the area;
  - b. the right to make decisions about the use and enjoyment of the area;
  - c. the right of access to the area;
  - d. the right to control the access of others to the area;
  - e. the right to use and enjoy resources of the area;
  - f. the right to control the use and enjoyment of others of resources of the area;
  - g. the right to maintain and protect places of importance under traditional laws, customs and practices in the area;
  - h. the right to maintain, protect and prevent misuse of cultural knowledge of the common law native title holders associated with the area
  - i. the right to rear and teach children in their country;
  - j. the right to live on and erect residences and other infrastructure on the land
  - k. the right to trade in resources of the area
  - l. the right to receive a portion of any resources taken by others from the area; and
  - m. the right to manage, conserve and look after the land, waters and resources, including locating and cleaning water sources and drinking water on the land.

Conclusion

7. The application passes this condition.

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

<p><u>Information considered</u></p> <p>1 I have considered information previously supplied for consideration for the Registration Test by the applicants in WC98/70 – Wagyl Kaip.</p> <p>2 Also submitted by the applicants for my consideration are:</p> <ul style="list-style-type: none"><li>• Affidavit of [name deleted], dated 18 June 1999</li><li>• Affidavit of [name deleted], dated 18 June 1999</li><li>• Affidavit of [name deleted], dated 30 July 1999</li><li>• Affidavit of [name deleted], dated 30 July 1999</li></ul> <p><u>Findings</u></p> <p>3 This section requires me to be satisfied that at least one member of the native title claim group currently has a traditional physical connection with any part of the land or waters covered by the application.</p> <p>4 Traditional physical connection is not defined in the <i>Native Title Act</i>. I am interpreting this phrase to mean that physical connection should be in accordance with the particular traditional laws and customs relevant to the claim group.</p> <p>5 For the reasons given in s.190B(5) I am satisfied that there exist traditional laws acknowledged by and customs observed by the claim group over at least part of the claim area.</p> <p>6 I refer also to the Registration Test Decision at 190B7 in WC98/70 – Wagyl Kaip where I was satisfied that [names deleted for privacy] currently have a traditional physical connection with the land or waters covered by that application. I am satisfied that those same people have a traditional physical connection with the land and waters covered by the current application.</p> <p><b>Conclusion</b></p> <p>7 I am satisfied that [names deleted for privacy] are members of the native title claim group, and currently have a traditional physical connection with part of the land or waters covered by the application.</p> <p>8 The application meets the condition of 190B7 (a).</p>
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<b>190B8</b>	<p><b>No failure to comply with s61A:</b></p> <p><b><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></b></p>
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Reasons for the Decision

<p><u>s61A(1) – Native Title Determination</u></p> <p>A search of the Native Title Register conducted on 18 May 1999, has revealed that there is no approved determination of native title in relation to the area claimed in this application</p> <p><u>S61A(2) – Previous Exclusive Possession Acts</u></p> <p>The claim has not been made over tenure to which a previous exclusive possession act, as defined in s23B, applies. [see schedule B]</p> <p><u>S61A(3) – Previous Non-Exclusive Possession Acts</u></p> <p>The applicant are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. [See schedule E (iii)]</p> <p><u>S61A(4) – s47, 47A, 47B</u></p> <p>The applicant have sought to invoke the provisions of s47, 47A or 47B of the Native Title Act.</p> <p><u>Conclusion</u></p> <p>For the reasons identified above the application and accompanying documents do not disclose and is not otherwise apparent that because of Section 61A the application should not have been made.</p> <p>The application passes this condition.</p>
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<b>190B9(a)</b>	<p><b><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><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 Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></b></p>
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#### Reasons for the Decision

<p>1 The amended application qualifies the native title rights identified at Schedule E by making them subject to paragraph (ii) which states:</p> <p style="padding-left: 40px;">To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.</p> <p>2 The application passes this condition.</p>
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<b>190B9(b)</b>	<p><b><i>Exclusive possession of an offshore place:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(b) 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></b></p>
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#### Reasons for the Decision

<p>1 The amended application qualifies the native title rights identified at Schedule E by making them subject to paragraph (ii) which states:</p> <p style="padding-left: 40px;">To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.</p> <p>2 The application passes this condition.</p>
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<b>190B9(c)</b>	<p><b><i>Other extinguishment:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(c) in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).</i></b></p>
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### Reasons for the Decision

1. The application and accompanying documents do not disclose, and it is not otherwise apparent that the native title rights and interests claimed have otherwise been extinguished by any mechanism, including:
  - a break in traditional physical connection;
  - non-existence of an identifiable native title claim group;
  - by the non-existence of a system of traditional laws and customs linking the group to the area
  - an entry on the Register of Indigenous Land Use Agreements.
  - Legislative extinguishment
2. In any event, the amended application at Schedule B(3) excludes all areas in relation to where native title rights and interests have otherwise been extinguished. I am satisfied that because native title rights and interests must relate to land and waters (see definition s.223 of the Native Title Act) the exclusion of particular land and waters is an exclusion of native title rights and interests over those lands and waters.
3. For the above reasons I am satisfied that the application meets this condition.

**End of Document**