

National Native Title Tribunal

REGISTRATION TEST
REASONS FOR DECISION

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TRIBUNAL WEBSITE***

DELEGATE	Malcolm O'Dell		
CASE MANAGER	Tom Scutt		
DATE	15 July 1999		
Application Name	Badimia People		
Names of Applicants	Dorothy Bandy, Gloria Fogarty, Clara George, Ollie George, Percy George, Olive Gibson, Irene Harris, Albert Little, Hazel Little, Richard Little, Frank Walsh (Jnr), Frank Walsh (Snr), Des Thompson, John Ashwin, Des Little, Georgina Lawson, Wilma Lawson and Nancy Wallam		
Region	South West - Murchison	NNTT No	WC 96/98
Date Application Made	4/10/1996	Fed Court No	WAG6123/98

Brief History of the application

This application was lodged with the National Native Title Tribunal on 4 October 1996.

The application was amended by order of the Federal Court on 29 June 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: WC96/98 - Badimia
- The Working Files, Registration Test Files, Legal Services Files and Federal Court Application and Amendment Files for overlapping claims: WC96/83 – Pandawn Descendants; WC96/86 – Widi Marra; WC97/72 – Widi Mob.
- Future Act Unit files potentially relevant to the area of the application as follows: WO97/0351, WO97/0367, WO97/0368, WO97/0532, WO97/0535, WO98/0086, WO98/0114, WO98/0317, WO98/0319, WO98/0320, WO98/0323, WO98/0324, WO98/0325, WO98/0329, WO98/0330, WO98/0331, WO98/0332, WO98/0333, WO98/0367, WO98/0497, WO98/0500, WO98/0501, WO98/0502, WO98/0503, WO98/0504, WO98/0505, WO98/0507, WO98/0508, WO98/0509, WO98/0510, WO98/0511, WO98/0597, WO98/0646, WO98/0745, WO98/0746, WO98/0747, WO98/0773, WO98/0921, WO98/0922, WO98/0923, WO98/0960, WO98/0961, WO98/0962, WO98/0963, WO98/0964, WO98/0966, WO98/0989, WO98/0992, WO98/0993, WO98/0995, WO98/0997, WO98/1007, WO98/1008, WO98/1009, WO98/1078, WO98/1089, WO98/1271, WO98/1327, WO98/1330.
- 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 and the Commonwealth 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



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

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

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

61(5)	Application is in the prescribed form, lodged in the Federal Court, contain prescribed information, and accompanied by prescribed documents and fee
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Reasons relating to this sub-condition	Application passes the condition
<p>1. The amended application is in the Prescribed form: The amended application has been filed in the prescribed form; a Form 1 re-engrossed application, with attachments.</p>	
<p>2. The amended application contains all of the following prescribed information:</p> <ul style="list-style-type: none"> • As required by s.62(2)(a), the application includes information about the boundaries of the area covered by the application at Attachment B of the amended application, and describes any areas within those boundaries that area not covered by the application at Schedules B and B1. • Maps of the claim area are referred to in Schedule C and are provided at Attachments C to C6 of the amended application, as required by s.62(2)(b). • Details and results of searches are provided at Attachment D as referred to at Schedule D, as required by s.62(2)(c). • Description of native title rights and interests claimed is provided at Schedule E, as required by s.62(2)(d). • Description of the factual basis is provided at Schedule F, as required by s.62(2)(e). • A statement about activities conducted by the claim group in relation to land and waters is provided at Schedule G, as required by s.62(2)(f). • Details of any other applications are provided in Schedule H, as required by s.62(2)(g). • Details of any notices under s29 are provided at Schedule I, as required by s.62(2)(h). 	
<p>3. The application contains all the prescribed documents:</p> <ul style="list-style-type: none"> • Affidavit – There are 18 applicants. Affidavits from 10 applicants were filed with the amended application. The remaining 8 were filed between filing and the hearing on 29 June 1999, the last one being filed on the day of the hearing. Only the first 10 have been supplied to the NNTT by the Federal Court, however the case manager has checked with the Federal Court to ensure that the others form part of the application in the Court. • Map – Schedule C, Attachments C to C6 	
<p>4. The applicants are exempted from fees: The original application lodged with the Tribunal was fee exempt.</p>	
<p>5. Conclusion: For the reasons outlined above, the requirements of s.61(5) are met.</p>	

Details required in section 62(1)

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

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

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

62(2)(a)(ii)	<i>Information identifying any areas within those boundaries which are not covered</i>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 1. Information identifying the ‘internal boundaries’ of the application is given at Schedules B and B1 of the amended application in the following terms: <ol style="list-style-type: none"> 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 Titles Validation Act 1994, as amended, at the time of the Registrar’s consideration: <ul style="list-style-type: none"> • Category A past acts, as defined in NTA s.228 and s.229; • Category A intermediate period acts, as defined in NTA s.232A and s.232B. 2. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in s.23B of the NTA, was done in relation to the 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 s.23E in relation to the act. 3. The Applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:- <ol style="list-style-type: none"> 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 title which is permanently inconsistent with the continued existence of native title. <p>To avoid any uncertainty, the Applicants exclude from the claim area any of the areas</p> 	

contained within the following descriptions or tenures which have been validly granted, set out in Schedule B1

B1.1 Any former or current unqualified grant of an estate in fee simple and all other freehold land.

B1.2 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-

1. a Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;
2. a 999 Year Lease under the Land Act 1898;
3. a Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s.117; or
4. a Special Lease under s.117 of the Land Act 1933 (WA).

B1.3 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.

B1.4 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.

B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B1.6 A Permanent public work and "the land or waters on which a public work is constructed, established or situated" within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D.

B1.7 An existing public road or street used by the public, or dedicated road.

4. Paragraphs (1) to (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 such areas as may be listed in Schedule L.

2. For the reasons given at s.190B(2) the application passes this condition.

62(2)(b)

A map showing the external boundaries of the area covered by the application

Reasons relating to this sub-condition

Application passes the condition

1. The amended application at attachment C includes a map showing the external boundaries of the area covered by the application. Attachments C1 to C6 show detail of various areas inside the external boundary (eg townsites).

2. For the reasons given at s.190B(2), the application passes this condition.

62(2)(c)	<i>Details/results of searches carried out to determine the existence of any non-native title rights and interests</i>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none">1. Schedule D notes that the details and results of searches are attached at Attachment D. Attachment D of the amended application comprises the results of three searches.2. These are:<ul style="list-style-type: none">• the search conducted by the Land Claims Mapping Unit at the request of the Tribunal in January 1997 (covering leases, licences, reserves, mineral and petroleum interests);• the search conducted by the State Government and included in their submission to the NNTT of 23 December 1998 (covering leases, licences and reserves); and• the search conducted by the Commonwealth Government and included in their submission to the NNTT of 28 January 1999 (extracts from WA Govt Gazette and Certificate of Title).3. I am not aware of any other searches that have been conducted.4. The application passes this condition.	

62(2)(d)	Description of native title rights and interests claimed
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 native title rights and interests claimed are the rights to the possession, occupation, use, and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:</p> <ul style="list-style-type: none"> a rights to 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 trade in resources of the area; h the right to receive a portion of any resources taken by others from the area; i the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and j the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area. <p style="padding-left: 40px;">Subject to:</p> <ul style="list-style-type: none"> 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 The claim area does not include any 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 s.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 s.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 Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing. v The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth. <p>3. This description satisfies s.62(2)(d).</p>	

62(2)(e)(i)	<i>Factual basis – claim group has, and their predecessors had, an association with the area</i>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 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). 	

62(2)(e)(ii)	<i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 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 and of the amended application. 2. This description satisfies s.62(2)(e)(ii). 	

62(2)(e)(iii)	<i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 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). 	

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>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 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)	<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>
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Reasons relating to this sub-condition	Application passes the condition
<ol style="list-style-type: none"> 1. Schedule H of the amended application contains information on 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. This list was checked against the list of overlapping applications (both those on the Register and those on the Schedule) sourced from the NNTT Geospatial database as at 12/7/99, and all overlapping applications are listed. 2. The details supplied are sufficient to comply with s.62(2)(g). 	

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>
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Reasons relating to this sub-condition	Application passes the condition
<p>1. The amended application lists at Schedule I details of the five s.29 notices issued over any part of the application area since 30/9/98. This list includes all those on the list extracted from the NNTT Geospatial system at the time of filing of the amended application (3 June 1999). I note that seven new s29 notices falling within the boundary of this application were issued on 16 June 1999, however as these were issued after filing of the application, it would not be possible for these to be included in the application.</p> <p>2. The application passes this condition.</p>	

Reasons for the Decision

<p>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.</p> <p>2. I am satisfied that the application meets the requirements of this condition.</p>
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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>
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Reasons for the Decision

1. A check of the Register of Native Title Claims was conducted on 14 July 1999.
2. This check revealed that there are four overlapping native title applications on the Register of Native Title Claims. Of these, in two (WC95/82 Sir Samuel 2 and WC96/22 Wutha) the area of overlap of the external boundaries is less than 0.1 square kilometres and is therefore insignificant. Of the remaining two, WC96/86 (Widi Marra) has not yet been considered pursuant to s190A.
3. Accordingly there is only one overlapping native title application on the Register of Native Title Claims, or not removed from the Register of Native Title Claims, as a result of consideration pursuant to s190A.
4. This application is WC99/5 (Koara), which was found to comply with the conditions of the registration test on 23 March 1999. The application is the result of a combination of six applications, all of which were on the Register of Native Title Claims at the time that the current application (WC96/98) was made.
5. Having considered the description of the respective claim groups, the question of common claimants could not be answered definitively from the descriptions alone. WC 99/5 employs a description of the claim group by **[mode of description deleted for privacy reasons]**. WC96/98 employs a description of the claim group on the basis of **[mode of description deleted for privacy reasons]**. It is conceivable that there are members in common.
6. The applicants' representative has addressed this issue in a letter to the Tribunal dated 12 July 1999. The applicants' representative, Dwyer Durack, have advised that they have been instructed by the Yamatji Land and Sea Council that there are no common members of the native title claim group for the Badimia WC96/98 native title claim and the Koara (WC99/5) native title claim.
7. On clarification from the applicants' representative, I am satisfied that the requirements of s.190C3 have been met.

190C4(a) and 190C4(b)	<p>Certification and authorisation:</p> <p>The Registrar must be satisfied that either of the following is the case:</p> <p>(a) 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</p> <p>(b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</p>
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Reasons for the Decision

<ol style="list-style-type: none"> 1. A certificate issued by a Native Title Representative Body pursuant to s.202(4)(d) does not form part of the amended application. However two such certificates have been supplied by the applicants direct to the Tribunal. 2. The applicants supplied such a certificate from the Yamatji Land and Sea Council on 3 June 1999. The applicants also supplied such a certificate from the Noongar Land Council on 23 June 1999. 3. An inspection of the Native Title Representative Body gazetted boundaries establishes that the claim area is predominantly within the Yamatji Land and Sea Council gazetted area, but that there is a substantial part of the application (3672 sq. km) which falls within the Noongar Land Council gazetted area. In addition, there appears to be a small overlap with the Goldfields Land Council gazetted area of 8.9 sq. km. 4. In respect of the apparent overlap with the Goldfields Land Council gazetted area, I am advised by the Tribunal's Geospatial Information Unit that this overlap arises from discrepancies between the shire boundary datasets held by the Native Title Representative Bodies and more recent data now used by the Land Claims Mapping Unit. The area is a strip of negligible width that extends down part of the eastern boundary of the application. 5. I am satisfied that for the purpose of s190C(4)(a), the 'overlap' with the Goldfields Land Council gazetted area can be disregarded. 6. Section 190C(4)(a) requires certification by each representative Aboriginal/Torres Strait Islander body that could certify the application. Section 190C(6)(a) qualifies this requirement, stating that certification is not required by all representative bodies if the application has been certified by 2 or more bodies whose areas, when combined, include all of the area of land or waters to which the application relates. As indicated at 3-5 above, the Yamatji Land and Sea Council and Noongar Land Council gazetted areas, when combined, cover all of the area of this application. <p><u>Certification by the Yamatji Land and Sea Council and Noongar Land Council</u></p> <ol style="list-style-type: none"> 7. 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><u>Compliance with s.202(7)</u></p> <ol style="list-style-type: none"> 8. 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: <ul style="list-style-type: none"> A certification of an application for a determination of native title by a representative body must: <ol style="list-style-type: none"> 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 b. Briefly set out the body's reasons for being of that opinion; and c. Where applicable, briefly set out what the representative body has done to meet the
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requirements of subsection (6)

9. The first certificate provided by the applicants is signed by **[name deleted for privacy reasons]**, Chairperson, Yamatji Land and Sea Council, and is dated 3 June 1999.
10. The second certificate provided by the applicants is signed by **[name deleted for privacy reasons]**, Executive Director, Noongar Land Council, and is dated 14 June 1999
11. In my view both certificates provided by the applicants comply with s.202(7).

Conclusion

12. As a result of the above considerations, I am satisfied that the application has been certified by both the Yamatji Land and Sea Council and the Noongar Land Council pursuant to s.202(4)(d) and in accordance with s.207(7).
13. This certification satisfies the requirements of s.190C(4)(a) of the Act.

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 Recommendation

This requirement is not applicable as the applicants have been found to meet the requirements of s190C(4)(a). See reasons for 190C(4) above.

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>
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Reasons for the Decision

Map and External Boundary Description

- 1 A map is supplied at attachment C of the amended application. The map supplied shows the external boundaries of the areas claimed. In addition, the application also includes at Attachments C1 to C6 larger scale maps of townsites that fall within the external boundary of the application, namely Austin, Lennonville, Mt Magnet, Boogardie, Paynesville and Yoweragabbie. These additional Attachments do not assist in identifying the external boundary.
- 2 The map at Attachment C displays a list of coordinates to enable the position of sites or localities within the boundary to be identified. In addition, it shows a scale allowing distances and areas to be ascertained and identifies pastoral leases 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.
- 3 The map meets the requirements of s62(2)(b) as the boundaries of the areas covered by the application can be identified.
- 4 Additional information identifying the external boundary of the claim is supplied at Attachment B of the amended application.
- 5 The Tribunal's Geospatial Unit has plotted this information and conclude that the description is internally consistent, fully encloses the claim area and does not discernibly contradict the map accompanying the application.

Internal Boundary Description

6. The areas excluded from the application are described in the following terms:
 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 Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:
 - Category A past acts, as defined in NTA s.228 and s.229;
 - Category A intermediate period acts, as defined in NTA s.232A and s.232B.
 2. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in s.23B of the NTA, was done in relation to the 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 s.23E in relation to the act.
 3. The Applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:-

- 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 title which is permanently inconsistent with the continued existence of native title.

To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions or tenures which have been validly granted, set out in Schedule B1

- B1.1 Any former or current unqualified grant of an estate in fee simple and all other freehold land.
- B1.2 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-
 - 1. a Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;
 - 2. a 999 Year Lease under the Land Act 1898;
 - 3. a Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s.117; or
 - 4. a Special Lease under s.117 of the Land Act 1933 (WA).
- B1.3 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.
- B1.4 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.
- B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.
- B1.6 A Permanent public work and "the land or waters on which a public work is constructed, established or situated" within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D.
- B1.7 An existing public road or street used by the public, or dedicated road.

- 4. Paragraphs (1) to (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 such areas as may be listed in Schedule L.
- 7. The description of areas excluded from the claim area at Schedule B, 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.
- 8. The description of areas excluded from the claim at schedule B 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.23E are likewise readily identified by reference to that legislation and thereafter searches of the relevant registers.
- 9. Paragraph 3(b) of Schedule B excludes areas of land where actual use by the holder of a tenure is permanently inconsistent with continued existence of native title. Schedule B1

provides 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 Schedule B1 is sufficient for me to be satisfied that the areas excluded from the application are identified with reasonable certainty.

10. The applicants seek the protection of ss.47, 47A and 47B by stating at paragraph 4 that any areas excluded from the claim area are subject to these legislative provisions. Details of what, if any, areas enjoy this legislative protection are not provided.
11. The description at paragraph 4 allows it to be shown objectively, upon the provision of such particulars, whether applicants may have benefit of these provisions.

Conclusion

12. 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.

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

<p>1. The native title claim group is described at Schedule A of the amended application in the following terms:</p> <p style="padding-left: 40px;">The claim is brought on behalf of those people descended from and including [18 names deleted for privacy reasons].</p> <p>2. I find that the persons in the native title claim group are the 18 people listed at Schedule A (who are [information identifying individuals deleted for privacy reasons]) plus their descendants.</p> <p>3. As Schedule A relies on a description other than naming the persons in the claim group, the application does not satisfy s.190B(3)(a). Consequently, the applicants must rely on satisfying s.190B(3)(b).</p> <p>4. In my view the description at Schedule A provides an objectively verifiable mechanism for ascertaining whether any particular person is in the claim group. For example, it would be possible to ascertain whether any particular person is in the native claim group by reference to the named applicants and/or genealogical information.</p> <p>5. 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.</p> <p>6. The description satisfies the requirements of s.190B(3)(b).</p>

190B4	<p>Identification of the native title rights and interests:</p> <p>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.</p>
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Reasons for the Decision

<p>1 This condition requires me to be satisfied that the native title rights and interests claimed can be readily identified.</p> <p>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'.</p> <p>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</p> <p>4 The amended application at Schedule E describes the native title rights and interests claimed</p>

as follows:

The native title rights and interests claimed are the rights to the possession, occupation, use, and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:

- a rights to 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 trade in resources of the area;
- h the right to receive a portion of any resources taken by others from the area;
- i the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- j the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Subject to:

- 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 The claim area does not include any 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 s.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 s.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 Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing.
- v The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth.

- 5 In my view the native title rights and interests described at schedule E are readily identifiable.
- 6 Also, the qualifications listed at items i, ii, iii, and v are clear in their scope and intention, reciting general limitations to the operation of the listed rights and interests, where relevant.
- 7 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.
- 8 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'.
- 9 I am satisfied that the description in schedule E allows the native title rights and interests claimed to be readily identified in compliance with s.190B(4).

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

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 E of the amended application is sufficient to support that assertion.
2. In reaching this decision I must be satisfied that the factual basis supports the 3 criteria identified at s.190B5 (a) – (c).

Information Provided

3. Submitted by the applicants for my consideration are:
 - Affidavit of **[name deleted for privacy reasons]**, sworn 22 June 1999;
 - Affidavit of **[name deleted for privacy reasons]**, affirmed 3 June 1999;
 - Affidavit of **[name deleted for privacy reasons]**, sworn 29 January 1999;
 - Affidavit of **[name and occupation deleted for privacy reasons]**, sworn 12 July 1999
4. Also considered is information in overlapping applications WC96/83 – Pandawn, WC96/86 – Widi Marra, WC99/5 - Koara.
5. Also considered is material from relevant Future Act files, notably
 - From WO98/114 – material submitted by native title party including – as an attachment to an affidavit sworn by **[name deleted for privacy reasons]**, on 28 May 1998 (submitted to NNTT 9/6/98) - a *Report on Aboriginal Heritage Herald resources survey leases M57/68 and M57/1* by **[name deleted for privacy reasons]**. Although these tenements were slightly outside the area of this application (to the east), the general anthropological information about the wider area is of relevance.
 - Also from WO98/114 – material submitted by grantee party including (*Extracts from*) *Report on the Survey for Aboriginal Sites at the Windimurra Project Area, Mt Magnet*, prepared by **[name deleted for privacy reasons]** in February 1992, submitted 20/5/98 as annexure to the Statement of Contention by the grantee party that the expedited procedure should apply.

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

6. This criteria requires me to be satisfied that:
 - the members of the native title claim group have an association with the area (under claim) *and*
 - the predecessors of the members of the native title claim group had an association with the area (under claim)
7. The word 'association' is not defined in the Act. In my view, the nature of the association required to be demonstrated by the applicants is governed by the nature of the native title rights and interests claimed. In this case the applicants claim the rights and interests identified at schedule E of the amended application.
8. 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, broadly associated with the particular land and waters claimed. I note in this case that the external boundary of the claim encloses an area of 36,129 square kilometres.
9. Schedule 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. At point (v) of Schedule F it is asserted that the claim group have a connection with the land according to traditional law and customs. The truthfulness of these assertions is deposed in the accompanying affidavits of each applicant.
10. Further information provided in the affidavits of **[information identifying three persons deleted for privacy reasons]** link members of the claim group to a number of places within the claim area, from **[place name deleted for privacy reasons]** in the north of the claim area to **[place name deleted for privacy reasons]** in the south. The affidavits refer to numerous **[type of place deleted for privacy and cultural reasons]** throughout the claim area. The evidence provided for association is particularly strong for the central and southern portion of the application area. In addition, the Future Act materials detail connection of members of the claimant group with the north-eastern area.
11. This information is corroborated by the affidavit of **[name deleted for privacy reasons]**.
12. Based on this information I am satisfied that current members of the claim group have an association with the area.
13. The document *Report on Aboriginal Heritage Herald resources survey leases M57/68 and M57/1*, by **[name deleted for privacy reasons]**, includes general anthropological material about the region of the application, including material linking Badimia people to the region back to "traditional (ie pre-European contact) times". There is evidence, albeit limited, which connects these persons to the current members of the claim group. This is supported by the affidavit of **[name deleted for privacy reasons]**.
14. I am satisfied from this material that the predecessors of the claim group had an association with the area.
15. I am satisfied that the evidence 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.

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.

16. 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

17. I have considered information contained within files relating to overlapping claims WC96/83 – Pandawn, WC96/86 – Widi Marra, and WC99/5 - Koara. I am satisfied that there is no relevant information that would aid consideration of this condition within applications WC96/83 – Pandawn and WC96/86 – Widi Marra.

18. Overlapping claim WC99/5 – Koara has previously been considered for registration under s.190A of the *Native Title Act* and was accepted for registration on 23 March 1999. WC99/5 – Koara overlaps this current application by 745 square kilometres. The applicants in WC99/5 – Koara appear to identify a system of traditional laws and customs which give rise to their particular native title rights and interests that are different of those identified in the current application (see paragraphs 20 - 25 below for details of the laws and customs identified in the current application).

19. In my view, the identification by the applicants in WC99/5 – Koara of a different system of laws and customs over part of the current application is not, in this particular situation, adverse to the applicants in the current application. I have based this view on the following:

- The relatively small size of the overlap
- The native title rights and interests identified at schedule E of the current application are specifically made subject to the rights and interest of other who may hold native title.
- The document *Report on Aboriginal Heritage Herald resources survey leases M57/68 and M57/1*, by **[name deleted for privacy reasons]** includes general anthropological material which suggests **[information deleted for cultural reasons]**.
- I take this to mean that the configuration of boundaries of each claim and the consequent overlap is consistent with the laws and customs of the respective groups.

20. The amended application at Schedule F asserts that the native title rights and interests claimed by the applicants are pursuant to and possessed under the laws and customs of the claim group. The traditional laws and customs which give rise to rights and interests in land and waters are vested in members of the native title claim group on the basis of:

- Descent from ancestors connected to the area
- Conception in the area
- Birth in the area
- Traditional religious knowledge of the area
- Traditional knowledge of the geography of the area
- Traditional knowledge of resources of the area
- Knowledge of traditional ceremonies of the area

21. To be satisfied that those laws and customs are respectively acknowledged and observed by the native title claim group, I have examined the affidavits provided by **[information identifying three persons deleted for privacy reasons]** in terms of the above. Information about descent, knowledge (religious, geographical, of resources and their use) and activities, which can be linked to each of the above criteria are provided in the affidavits. In my view,

such examples substantiate the assertion of the factual basis that traditional laws and customs are observed by the group.

22. Furthermore, it is stated at Schedule F that such traditional law and custom has been passed by traditional teaching, through the generations preceding the present generations to the contemporary generations of persons comprising the native title claim group.
23. The information provided supports the notion that there exists a body of traditional laws acknowledged by and tradition customs observed by the native title claim group and that these laws and customs give rise to the claimed native title rights and interests.
24. This is supported by the affidavit of **[name and occupation deleted for privacy reasons]**.
25. I am satisfied that this criterion 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.

26. This criteria requires me to be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.
27. The assertions at schedule F together with consideration of the other information detailed above supports the notion that the native title claim group continue to hold native title in accordance with traditional laws and customs. Furthermore, the assertion that the claim group continue to hold native title in accordance with traditional law and custom is deposed in the affidavits accompanying the amended application.
28. This information is corroborated by the affidavit of **[name deleted for privacy reasons]**.
29. I am satisfied this condition is met.

Summary

30. In summary, each applicant has sworn to the truth of the statements contained in the amended application, which contain certain assertions attesting to the factual basis.
31. Supporting information provided in the affidavits of **[information identifying three persons deleted for privacy reasons]** - and corroborated by the affidavit of **[name deleted for privacy reasons]** - gives clear examples of the claim group's association with the claim area and a life governed by traditional laws and custom which in turn give rise to the native title rights and interests claimed.
32. Statements are made and information is provided connecting members of the claim group and their predecessors to the area of the claim and to their adherence to traditional laws and customs.
33. There is evidence of **[details of specific activities deleted for cultural reasons]** (in accordance with traditional laws and customs taught by their predecessors). There is evidence that members of the claim group continue to hold traditional knowledge associated with the religious and the economic significance of the country. There is evidence that the laws and customs practiced by the claim group give rise to the native title rights and interests claimed.

Conclusion

34. There is evidence to support the factual basis in each of the 3 criteria identified at s.190B5 (a) – (c). This evidence in turn is sufficient for me to be satisfied that the factual basis on which

the assertion of the existence of the native title rights and interests claimed is sufficient to support the assertion.

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. Submitted by the applicants for my consideration are:
 - Affidavit of [name deleted for privacy reasons], sworn 22 June 1999;
 - Affidavit of [name deleted for privacy reasons], affirmed 3 June 1999;
 - Affidavit of [name deleted for privacy reasons], sworn 29 January 1999;
 - Affidavit of [name and occupation deleted for privacy reasons], sworn 12 July 1999
2. I have previously noted in these reasons that the native title rights and interests claimed at Schedule E of the amended application are readily identifiable. While to meet the current condition, only some of these rights and interests need to be able to be prima facie established, all of the rights and interests claimed need to be considered as this will determine which of these rights and interests are entered on the Register of Native Title Claims.
3. In considering, that prima facie, at least some of the native title rights and interests claimed can be established, it is necessary to have regard to both what is permitted by law to be claimed, and what, on the facts adduced by the applicants, can be established *prima facie*.
4. The principal barrier at law to a claim for native title rights and interests is that they should not be made over tenures that have been the subject of exclusive possession acts, nor should they involve a claim for exclusive possession over non-exclusive possession act areas (s61A NTA). For the reasons given at s.190B(8) and s190B(9)(c) the applicants have clearly and unambiguously excluded any area over which an impermissible claim could be made.
5. I note that the native title rights and interests claimed at Schedule E are claimed *subject to any native title rights and interests which may be shared with any others who establish that they are native title holders*. The claim to exclusive possession is further qualified in terms of the five paragraphs set out in Schedule E which state that the claimed native title rights and interests are subject to other validly granted rights and interests. Taken together, these limitations on the claim area and the scope of the native title rights and interests satisfies the first limb of the prima facie test.
6. 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:
 - 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.
7. I have already outlined 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.
8. Having considered the information provided in the affidavits previously identified, I am satisfied

that the following native title rights and interests can be established:

- a rights to 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 trade in resources of the area;
- i the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- j the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

9. I could not find prima facie evidence to establish the following native title right or interest:

- h the right to receive a portion of any resources taken by others from the area;

Conclusion

10. 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 The claim area does not include any 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 s.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 s.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 Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing.
- v The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth.

The applicants have established prima facie, the following native title rights and interests:

The native title rights and interests claimed are the rights to the possession, occupation, use, and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:

- a rights to 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 trade in resources of the area;
- i the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and

- j the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

11 The application passes this condition of the test.

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

Information considered

- Submitted by the applicants for my consideration are:
 - Affidavit of **[name deleted for privacy reasons]**, sworn 22 June 1999;
 - Affidavit of **[name deleted for privacy reasons]**, affirmed 3 June 1999;
 - Affidavit of **[name deleted for privacy reasons]**, sworn 29 January 1999;
 - Affidavit of **[name and occupation deleted for privacy reasons]**, sworn 12 July 1999

Findings

- This section requires me to 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.
- Traditional physical connection is not defined in the Native Title Act. 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.
- For the reasons given at s.190B(5), I am satisfied that there exist traditional laws acknowledged by and customs observed by the claim group sufficient to support traditional physical connection.
- I am further satisfied from the information supplied, that **[name deleted for privacy reasons]** currently has a traditional physical connection with the land or waters covered by the application.
- The application passes this condition.

190B8	<p>No failure to comply with s61A:</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>
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Reasons for the Decision

<p><u>s61A(1) – Native Title Determination</u></p> <p>1. A search of the Native Title Register conducted on 14 July 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>2. 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>3. 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>4. 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>5. 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>6. The application passes this condition.</p>
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190B9 (a)	<p><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><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></p>
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Reasons for the Decision

<ol style="list-style-type: none">1. Native title rights and interests are described at Schedule E of the amended application.2. None of the native title rights described in Schedule E specifically claim ownership of resources including minerals, petroleum or gas.3. In any event, paragraph (i) of schedule E in the amended application makes the statement that: <p style="margin-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>4. Consequently, the application and accompanying documents do not disclose, and I am not otherwise aware that the applicant claims ownership of minerals, petroleum or gas that are wholly owned by the Crown.5. The application passes this condition.
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190B9 (b)	<p><i>Exclusive possession of an offshore place:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><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></p>
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Reasons for the Decision

<ol style="list-style-type: none">1. The application does not include any offshore place – the area of the application is, at its closest point to the coast, approximately 180 kilometres inland from the coast.2. Accordingly the native title rights and interests claimed do not relate to waters in an offshore place.3. The application passes this condition.
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190B9 (c)	<p><i>Other extinguishment:</i></p> <p><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></p> <p><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></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 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.

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