

Reason

Status:	Publish on Web
Date Published:	
Application Name:	Wiluna (Combined Application)
Application (NNTT) No:	WC97/32; WC98/7; WC99/24
Application (Fed Crt) No:	WAG6164/98; WAG6227/98; WAG6164/98
State:	WA
Region:	Pilbara
Date Application Made:	28/04/97, 25/02/98, 05/08/99
Date Registration Test	24/09/99
Decision made:	
Decision:	Accepted

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Brief history of the application

This application is a combination of native title determination applications WC97/32 – Tullock lodged with the Tribunal on 28 April 1997 and WC98/7 - Wiluna lodged with the National Native Title Tribunal on 25 February 1998

The applications were combined and other amendments made by order of the Federal Court on 17 September 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: WC98/7 – Wiluna and WC98/7 - Tullock
- 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.

S190B(2)	Identification of area subject to native title	Met
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190B(2) *Description of the areas claimed:*

The Registrar must be satisfied that the information and map contained in the application as required by paragraph 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.

Reasons for the Decision

Map and External Boundary Description

1. A map is supplied at Attachment A of the amended application.
2. The map supplied shows the external boundaries of the areas claimed.
3. The map was produced by the land Claims Mapping Unit. It 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. 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.
4. The map meets the requirements of s62 (2)(b) as the boundaries of the areas covered by the application can be identified.
5. Additional information, technically identifying the external boundary of the claim is supplied at Attachment D, of the amended application.

Internal Boundary Description

- 6 The areas excluded from the application are described in the following terms:

(1) subject to (b) (4) the applicants exclude from the claim any area 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 1999, as amended, at the time of the Registrar's consideration and or at the time that the application is determined, namely:-

- i. category A past Acts, as defined in Sec 228 and sec 229 Native Title Act 1993
- ii. category A intermediate including Category intermediate period acts attributable to the State as defined in NTA sec 232A and Sec.232B (sec 12A Titles Validation Amendment Act 1999)
- iii. category B intermediate period acts that are partly inconsistent with the continued existence enjoyment or exercise of the native title rights and interests concerned to the extent of the inconsistency subject to s 24EBA (6) of the NTA (sec 12 TVAA 1999)

(2) subject to (b) (4) the applicants exclude any areas in relation to which a previous exclusion(sic) possession act as defined in Sec 23B Native Title Act 1993 , 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 for that act as described in Sec 23E Native Title 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:

- i. an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or
- ii. actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title

and to avoid any uncertainty exclude from the claim any areas contained within the following descriptions or tenures which have been validly granted namely:

- (i) unqualified grant of an estate in fee simple
- (ii) a dedicated public road or street .

(3) (sic) paragraphs (1), (2)& (3) are subject to such of the provisions of Sections 47, 47A and 47B of the Native Title Act 1993 as apply to any part of the area contained within this application , particulars of which will be provided prior to the hearing but which includes such areas as may be listed in Schedule L.

7. I note that this description contains two paragraph '3'. I take it that the latter of these should correctly be paragraph '4'. I also note that paragraph 2 refers to 'exclusion' possession acts. I take this to mean 'exclusive' possession acts.

8. The description of areas excluded from the claim area at Schedule B, paragraphs 1, and 3(i) 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.

9. 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.

10. Paragraph 3(ii) of Schedule B excludes areas of land where actual use by the holder of a tenure is permanently inconsistent with

S190B(3)

Identification of native title claim groups

Met

Identification of the native title claim group:

190B(3)

The Registrar must be satisfied that:

- (a) the persons in the native title claim group are named in the application; or*
- (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.*

Reasons for the Decision

1. The native title claim group is described at Schedule A of the amended application in the following terms:

Barry Abbott, Norman Abbott, Nigel Abbott, Clem Abbott, Reynold Allison, Monty Allison, Topsy Anderson, Vera Anderson, Alw Anderson, Betty Anderson, Dora Anderson, Marlene Anderson, Michael Anderson, Milton Anderson, Sharon Anderson, Rebecca Anders Stephanie Anderson, Roxanne Anderson, Beverley Anderson, William Anderson, Dierdre Anderson, Desiree Anderson, Gladys Ashw Victor Ashwin, Allan Ashwin, Judy Ashwin, Valerie Ashwin, Henry Ashwin, Moya Ashwin, Brendan Ashwin, Raymond Ashv Geoffrey Ashwin, Ralph Ashwin, John Ashwin, Catherine Adams, Maxine Beaman, Theo Beaman, Danny Beaman, Eddie Beaman, C Bingham, Kaye Bingham, Douglas Bingham, Kevin Bingham, Jeanie Bingham, Grant Bingham, Carl Bingham, Joanne Bingh Christopher Bingham, Narelle Bingham, Glen Bingham, Masey Bingham, Robert Bin Saia, Andrew Bin Saia, Russell Brand, Henry Bra Nellie Brand, Lucy Brand, Ben Brown, Louie Brown, Natalie Brown, Andie Campbell, Dada Campbell, Clarrie Cameron, Maria Caly Brenda Calyon, Colin Cosmos, Eileen Clause, Shirley Connors, Marvis Curley, Collette Dhu, Raymond Dhu, Nadine Dhu, Noami D Rita Elliott, Russell Elliott, Colin Elliott, Marilyn Elliott, Ross Elliott, Jane Elliott, Darren Farmer, Gordon Farmer, Jorna Farn Kenny Farmer, Wilma Freddie, Desmond Freddie, Rex Freddie, Peter Gogo, Tony Green, June Harrington Smith, Eileen Harris, Ar Harris, Andrew Harris, Noel Harris, Dallas Harris, Edward Harris, Raymond Harris, Pauline Harris, Peter Ingram, Theonie Jaco Margie Jackman, Justine Jackman, Merlene Jackman, Calvin Jackman, Bob Jackman, Jimmy Jackman, Maudie Jackman, Maur Jackman, Molly Jackman, Robert Jackman, Dempsy James, Simon Jones, Sheila Friday Jones, Friday Jones, Sheila Yakka Jones, Tre Jones, Fred Jones, Allison Jones, Barney Jones, Dean Jones, Lawrence Jones, Nareldah Jones, Bobby Jones, Michael Jones, Der Jones, Paula Jones, Roderick Kelly, John Long, Gilbert Long, Lesley Long, Grita Long, Alanna Lockyer, Lynette Lockyer, Lind Lockyer, Edward Lockyer, Bruce Michael, Jean Miller, Dara McGrath, Janice Mc Noulty, Jimmy Morgan, Musso Morrison, M Murphy, Barry Murphy, Janelle Murphy, Wesley Murphy, Reynold Nanji, Lydia Nanji, Keith Narrier, Richard Narrier, Rosl Narrier, Angeline Narrier, Graham Narrier, Jennifer Narrier, Billy Patch, Kelman Patch, Roselee Patch, Allanna Patch, Dion Pat Johnny Ray, Eddie Redmond, Lester Redmond, Angie Redmond, Jonathon Redmond, Sheree Redmond, Kitty Richards, Teddy Richar Bruce Richards, Colin Richards, Margaret Richards, Celina Richards, Jennifer Richards, Kevin Riley, Hedley Riley, Mary Riley, Ol Riley, June Riley, Edith Riley, Brian Samson, Edna Sceghi, Keith Sceghi, Alison Sesar, Tilly Stevens, Dusty Stevens, Monday Steve Carlene Stevens, Gary Stevens, Cedric Stevens, Robert Stevens, Roderick Stevens, Lula Stevens, Geoffrey Stewart, Norman Stew Ray Stewart, Elisa Stewart, Lance Stewart, Tammy Stewart, Glenda Stewart, Laurel Stewart, Linda Stewart, Louie Thompson, Norn Thompson, Ted Tullock, Ian Tullock, Les Tullock, Joyce Tullock – Taylor, June Tullock, Barry Tullock, Kelman Tullock, Charma Tullock, Neville Tullock, Barry Tullock Junior, Nathan Tullock, Melanie Tullock, Cindy Tullock, Aiden Tullock, Michael Tulle Leslie Tullock, Ronald Tullock, Sharrack Tullock, Warwick Tullock, Lyle Walker, Brenda Walker, Nola White, Kerina White, Sunsh Williams, Elaine Williams, Ronda Williams, Presley Williams, Kim Williams, Maudie Williams, Dorothy Williams, John Willia Glennys Williams, Anette Williams, Lorna Willis Jones, Joan Winch, Mickie Wongawol, Stanley Wongawol, Timmy Wongawol, R Wongawol, Forrester Wongawol, Frank Wongawol, Lorna Wongawol, Marjorie Wongawol, Sandra Wongawol, Lionel Wongawol, Brac Wongawol, Wayne Wongawol, Dudley Wongawol, Michael Wongawol, Rodney Wongawol, Lizzie Wongabong, Shirley Wongabo Neville Wumi.

2. This list of members of the native title claim group satisfies the requirements of s.190B(3)(a).

S190B(4)

Identification of claimed native title

Met

190B(4)

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 The amended application at Schedule E describes the native title rights and interests claimed as follows:

The native title rights and interests claimed are rights and interests 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) and in particular comprising:

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

Further or in the alternative enjoy the right to :

- (a) possession of the land waters and resources
- (b) occupation of the land waters and resources
- (c) use and enjoyment of the land , water and resources
- (d) own and control knowledge and information comprising and concerning the traditional laws and customs of the native title holders in relation to the land and waters and resources and the passing of this knowledge on to younger generations
- (e) bear rear and teach children on the land
- (f) conduct ceremonies on and for the land water and resources and to attend sites of cultural and religious significance
- (g) live and erect residences and other infrastructure on the land
- (h) move freely about the land and waters including camping and seeking shelter
- (i) hunt and fish on the land and in the waters and otherwise collect food from the land and waters
- (j) take and use the resources of the land including water plants medicines animals fisheries forests products and all other components and attributes of the land
- (k) dig for take from the land and waters and use all minerals and ores including extractive and quarry minerals such as flints clay soil sand gravel rock and like resources
- (l) manufacture materials artefacts tools and weapons from the products of the land waters and resources
- (m) dispose of products of the land waters and resources and manufactured products by trade or exchange
- (n) manage conserve and look after the land waters and resources including locating and cleaning water sources and drinking water on the land
- (o) manipulating the environment by burning the land harvesting produce sowing seed and doing other activities
- (p) grant or refuse permission to any person to do some of all of subparagraphs (a) – (o) inclusive either at all or subject to terms and conditions
- (q) inherit native title rights and interest
- (r) bestow and acquire native title rights and interests
- (s) resolve amongst themselves any disputes concerning land waters and resources
- (t) regulate access to parts of the land according to initiation status and gender and otherwise to exclude strangers from the land
- (u) permit persons other than native title holders to enter the land
- (v) exclude persons other than native title holders from the land

all claimed native title rights and interests are 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) 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 according to international law in relation to the whole or any part of the offshore place.

S190B(5)

Factual basis for claimed native title

Met

190B(5)

Sufficient factual basis:

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:

- (a) that the native title claim group have, and the predecessors of those persons had, an association with the area*
- (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;*
- (c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.*

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 interest 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 to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]

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

4. 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)

5. 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.

6. In addition the affidavits identified above list numerous places within the claim area to which current members of the claim group and their predecessors are associated.

7. I am satisfied that this sub-condition is met.

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.

8. 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

9. The affidavits identified above provide substantial information about the existence of a body of traditional laws acknowledged by a 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.

10. 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.

11. 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.

12. Consideration of the information identified 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.

13. I am satisfied this condition is met.

Summary

S190B(6)

Prima facie case

Met

190B(6)

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 to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]

2. To meet the current condition, only some of these rights and interests need to be *prima facie* established, however, 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(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, are claimed *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)*. The rights and interests are then particularised and 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. In my view taken together, these limitations on the claim area and the scope of the native title rights and interests satisfies the first arm 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. When read in its totality, the information provided by the applications and identified above, in my view, establishes that *prima facie* the native title rights and interests claimed can be made out.

Conclusion

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. Subject to paragraph (iv) 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

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

S190B(7)

Physical connection

Met

190B(7)

Traditional physical connection:

The Registrar must be satisfied that at least one member of the native title claim group:

- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered the application; or*
- (b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:*
 - (i) the Crown in any capacity; or*
 - (ii) a statutory authority of the Crown in any capacity; or*
 - (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.*

Reasons for the Decision

Information considered

Submitted by the applicants for my consideration are:

- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]

Findings

1. 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.
2. 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.
3. 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.
4. I am further satisfied from the information supplied, that [Names deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.] currently have a traditional physical connection with the land or waters covered by the application.
5. The application passes this condition.

S190B(8)

No failure to comply with section 61A

Met

190B(8) *No failure to comply with s61A:*

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.

Reasons for the Decision

s61A(1) – Native Title Determination

A search of the Native Title Register conducted on 22 September 1999, has revealed that there is no approved determination of native title relation to the area claimed in this application

S61A(2) – Previous Exclusive Possession Acts

The claim has not been made over tenure to which a previous exclusive possession act, as defined in s23B, applies. [see schedule B]

S61A(3) – Previous Non-Exclusive Possession Acts

The applicant are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts. [See schedule E]

S61A(4) – s47, 47A, 47B

The applicant have sought to invoke the provisions of s47, 47A or 47B of the Native Title Act.

Conclusion

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.

The application passes this condition.

S190B(9)	No extinguishment etc. of claimed native title	Met
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190B(9) *Ownership of minerals, petroleum or gas wholly owned by the Crown:*

(a) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that*
(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;

Reasons for the Decision

1. Native title rights and interests are described at Schedule E of the amended application.
2. Paragraph (i) of schedule E in the amended application makes the statement that:

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.

3. As the native title rights and interests are claimed subject to this clause, in my view 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 is wholly owned by the Crown.
4. The application passes this condition.

Exclusive possession of an offshore place:

190B(9)

(b)

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that 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;

Reasons for the Decision

- 1 The amended application qualifies the native title rights identified at Schedule E by making them subject to paragraph (ii) which states:

To the extent that the native title rights and interests claimed 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.

- 2 The application passes this condition.

Other extinguishment:

190B(9)

(c)

The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that 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)).

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 paragraph 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 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.

S190C(2) Information etc required by sections 61 & 62 Met

Information, etc, required by section 61 and section 62:

190C(2) *The Registrar must be satisfied that the application contains all details and other information, and is accompanied any affidavit or other document, required by sections 61 and 62.*

Details required in section 61

61(3) Name and address for service of applicant

Reasons relating to this sub-condition

1. Name of the applicant given at annexure 1 of the amended application.
2. Address for service of the applicant given at Part B of the amended application.
3. This satisfies the requirements of s.61(3).

61(4) 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

Reasons relating to this sub-condition

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

Reasons relating to this sub-condition

- 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.
- 2. The amended application contains all of the following prescribed information:**
 - As required by s.62(2)(a), the application includes information about the boundaries of the area covered by the application and information on the boundaries that area not covered by the application.
 - A map of the claim area is provided as required by s.62(2)(b).
 - Details and results of searches are provided as required by s.62(2)(c).
 - A description of the native title rights and interests claimed is provided as required by s.62(2)(d).
 - A description of the factual basis is provided as required by s.62(2)(e).
 - A statement about activities conducted by the claim group in relation to land and waters is provided, as required by s.62(2)(f).
 - Details of any other applications are provided as required by s.62(2)(g).
 - Details of any notices under s29 are provided as required by s.62(2)(h).
- 3. The application contains all the prescribed documents:**
 - Affidavit – Affidavits are supplied for the 12 applicants
 - Map is provided.
- 4. The applicants are exempted from fees:** The original application lodged with the Tribunal was fee exempt.
- 5. Conclusion:** For the reasons outlined above, the requirements of s.61(5) are met.

Details required in section 62(1)

62(1)(a) Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)

Reasons relating to this sub-condition

1. The applicants have each provided an affidavit in the prescribed form and 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) Details of physical connection (information not mandatory)

Comment on details provided

1. No specific details provided.

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

62(2)(a)(i) Information identifying the boundaries of the area covered

Reasons relating to this sub-condition

1. A description, sufficient for the area covered by the application to be identified, is 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) Information identifying any areas within those boundaries which are not covered

Reasons relating to this sub-condition

1. 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

1. The amended application at attachment C includes a map showing the external boundaries of the area covered by the application.
2. For the reasons given at s.190B(2), the application passes this condition.

62(2)(c) Details/results of searches carried out to determine the existence of any non-native title rights and interests

Reasons relating to this sub-condition

1. Attachment D of the amended application includes spreadsheets detailing searches carried out by the NNTT at the State Government.
2. The application passes this condition.

62(2)(d) Description of native title rights and interests claimed

Reasons relating to this sub-condition

1. The amended application at Schedule E and attachment E contains a description of the native title rights and interests claimed in respect of the area claimed.
2. For the reasons given at 190B(4) this description satisfies s.62(2)(d).

62(2)(e)(i) Factual basis – claim group has, and their predecessors had, an association with the area

Reasons relating to this sub-condition

1. A general description of the factual basis for the assertion that the claim group has, and their predecessors had, 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) Factual basis – traditional laws and customs exist that give rise to the claimed native title

Reasons relating to this sub-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)

62(2)(e)(iii) Factual basis – claim group has continued to hold native title in accordance with traditional laws and custom

Reasons relating to this sub-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)

62(2)(f) If native title claim group currently carry on any activities in relation to the area claimed, details of those activities

Reasons relating to this sub-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) 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)

Reasons relating to this sub-condition

1. No claims overlap this application.

62(2)(h) 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

Reasons relating to this sub-condition

1. The amended application at attachment I lists details of s.29 notices issued over any part of the application area.
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.

S190C(3) No previous overlapping claim groups Met

Common claimants in overlapping claims:

- 190C(3) *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:***
- (a) the previous application covered the whole or part of the area covered by the current application; and*
 - (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*
 - (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190C(3).*

Reasons for the Decision

1. A check of the Register of Native Title Claims was conducted on 22 September 1999
2. This check revealed that there are no overlapping applications.
3. I am satisfied that the requirements of s.190C(3) have been met.

S190C(4) Identity of claimed native title holders Met

Certification and authorisation:

190C(4)(a) *The Registrar must be satisfied that either of the following is the case:*

and *(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*

190C(4)(b) *(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.*

Reasons for the Decision

Information provided for this condition

- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]
- Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.]

1. This condition requires me to be satisfied that the application is certified according to s.190C4(a) or authorised according to s.190C4(b).
2. The applicant has not supplied the certificate required under s.190C4(a) and must therefore rely on authorisation according to s.190C4(b).
3. When an application is authorised according to s.190C4(b) I cannot be satisfied that the application has been authorised unless the application fulfils the conditions identified in s.190C5(a) & (b). For the following reasons the application fulfils the requirements therein:
 - The affidavits accompanying the amended application includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met. This in my view, complies with s.190C5(a).
 - The affidavits accompanying the amended application briefly sets out the grounds on which the Registrar should consider that it has been met. This in my view, complies with s.190C5(b).
 - The amended application at schedule R also contains the information required in s.190C5(b).
4. In my view, the two remaining questions to which I need to be satisfied in s.190B(4) are:
 - Are the applicants members of the native title claim group?, and
 - Do all the current (that is, at the time of consideration of the Registration Test) persons in the native title claim group authorise the applicant to make the application and to deal with matters arising in relation to it?

Findings

5. The applicants are members of the native title claim group.
6. The affidavit of Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.] corroborated by the other affidavits, details the process by which the applicants were authorised by the member of the claim group.
7. Affidavit of [Name deleted to address the cultural and /or customary concerns of the applicant or to protect the privacy of an individual.] states the date and location of meetings, the people who attended, the questions put to the meeting and the resolutions of the meetings.
8. This information gives a clear picture of a highly consultative process in obtaining the authorisation of the members of the claim group.
9. I am satisfied that following this process, the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it
10. The application passes this condition.