

National Native Title Tribunal
REGISTRATION TEST
REASONS FOR DECISION
WEB EDITED VERSION

DELEGATE: Klim Gollan

Application Name: Gnaala Karla Booja

Names of Applicants: Lorraine Bellotti
Joseph Northover
Peter Michael
Franklyn Nannup
Mervyn Abraham
Harry Narkle
Derrick Smith
Joseph Walley
Barbara Corbett-Stammner

Region: Coastal plain, SW of WA **NNTT No:** WC 98/58
Date Application Made: 17 September, 1998 **Fed Court No:** WAG 6274/98

DECISION – Gnaala Karla Booja - WC98/58

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

DECISION

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

.....

Klim Gollan

Delegate of the Registrar pursuant to
sections.190, 190A, 190B, 190C, 190D

10th August 2000

Date of Decision

Brief History of the Application

The original application was lodged with the Tribunal on 17 September 1998 by the Noongar Land Council, who remain as its legal representative.

A notice of motion to amend, together with an amended application was filed in the Federal Court on 18 January 1999. On 22 January 1999 the Federal Court in Perth granted leave to the applicants to amend the application (“the first amended application”).

On 5 February 1999, a further notice of motion to amend the application was filed in the Federal Court, and on 17th February 1999 leave was granted to further amend the application.

On the 3 March 1999 the application passed the registration test pursuant to s190A.

On 16 November 1999, in the case of *State of Western Australia v Native Title Registrar & Ors* [1999] FCA 1591 - 1594 (16 November 1999), Justice Carr held that the Registrar was obliged to provide a copy (or a fair summary) to the State of Western Australia (“State”) of any Documents provided directly to the Registrar for the purposes of the Registration Test. Provision of the Documents is to give the state/territory the opportunity to comment or provide information to the Registrar relevant to the conditions set out in sections 190B and 190C of the *Native Title Act* 1993 (Cth). In his decision, Carr J said that the Registrar can impose confidentiality conditions upon the State for this purpose.

As a result, the registration test decision for this application was set aside by the Federal Court on 16 November 1999; to be returned to the Registrar so that procedural fairness in respect of additional material supplied directly to the Registrar could be given to the State.

The material was supplied to the State on 24 December 1999, and included:

1. Affidavit of [Name deleted for privacy reasons], dated 8 February and annexure “TableG”,
2. Affidavit of [Name deleted for privacy reasons], dated 8 February and annexure “TableG” and “Attachment M2”
3. Affidavit of [Name deleted for privacy reasons], dated 8 February and annexure “TableG” and “Attachment M1”.

The State had entered into a prior agreement that the documents were to be given in confidence, received in confidence and were to be treated as confidential (dated 7 December 1999).

The State responded (10 January 2000) that it had no comment to make with respect to the content of the affidavits.

On 22 January 2000, one of the applicants, Frank Nannup, died.

On 19 July 2000 the applicants filed a notice of motion for amendment to the application, including to remove an applicant, to replace an applicant, to re-define the claim group description, to make a change to the description to the area claimed, to clarify the scope of the native title rights and interests claimed, and to re-certify the application. The Court made orders requiring the applicant to submit variations to the boundary description to remedy an inconsistency between the text boundary description and the digital boundary description, for a re-convened hearing on 4 August 2000.

On the 4 August 2000, orders were made to amend the application in the terms set out above. I have considered this application, as amended, for acceptance for registration.

As at the present date, the Noongar Land Council has not been re-recognised as a Representative Body (pursuant to Part 11, Division 2 of the *NTA*) for the area covered by this application. The implication of non re-recognition is taken up below (in consideration of the condition in s190C(4) and s190C(5)).

Information considered when making the Decision

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

- The National Native Title Tribunal's Working/Personnel Files, Legal Services Files, Party Files and Registration Testing Files for WC98/58.
- Tenure information acquired by the Tribunal in relation to the area covered by this application.
- The National Native Title Tribunal's Working files and related materials for Native title application that overlap the area of this application (if applicable);
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims and Schedule of Native Title Applications;
- The Native Title Register;

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

All references to legislative sections refer to the *Native Title Act 1993* unless otherwise specified.

A. Procedural Conditions

190C2

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

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.

Details required in section 61

61(3) Name and address for service of applicants

Reasons relating to this sub-condition

The application shows the applicants' legal representative as the Noongar Land Council. The address of the Land Council is included.

The application meets the requirement of this condition.

Result: Requirements met

61(4) Name 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

Schedule A of the application describes the native title claim group. For the reasons which led to my conclusion (below), that the requirements for s.190B(3) have been met I am 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.

Result: Requirements met

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

The application is in the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations* 1998. The application was filed in the Federal Court as required pursuant to s.61(5)(b) of the Act.

The application meets the requirements of s.61(5)(c) and contains all information prescribed in s.62. I refer to my reasons in relation to those sections. As required by s.61(5)(d) the application is accompanied by an affidavit as prescribed by s.62(1)(a) and a map as prescribed by s.62(2)(b). I refer to my reasons in relation to those sections of the Act.

I note that s.190C2 only requires me to consider details, other information and documents required by sections 61 and 62. I am not required to consider whether the application has been accompanied by the payment of a prescribed fee to the Federal Court. For the reasons outlined above, it is my view that the requirements of s.61(5) have been met.

Result: Requirements 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

The first amended application (amended on 18 January 1999) contains an affidavit sworn by the ten applicants at that time. Subsequent affidavits have been supplied by a substitute applicant and an applicant who wishes to withdraw as applicant (on 19 Jul 2000) I am satisfied that the affidavits satisfactorily address the matters required by s.62(1)(a)(i)-(v).

Result: Requirements met

62(1)(c) Details of physical connection (information not mandatory)

Reasons relating to this sub-condition

The application refers to details relating to 'traditional physical connection' at Attachment M, which is not found in the application but in additional information supplied direct to the Registrar.

Result: Not Provided in application

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

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information contained in Attachment B, and map, Attachment C, provided by the applicant, enables the boundaries of the area covered by the application to be identified.

Result: Requirements met

62(2)(a)(ii) Information identifying any areas within those boundaries which are not covered

Reasons relating to this sub-condition

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the information contained in the application in Attachment B, is sufficient to enable any areas within the external boundaries of the claim area, which are not covered by the application, to be identified.

Result: Requirements met

62(2)(b) A map showing the external boundaries of the area covered by the application

Reasons relating to this sub-condition.

For the reasons which led to my conclusion that the requirements of s.190B(2) have been met, I am satisfied that the maps provided by the applicant in Attachment C is sufficient to identify the boundaries of the claim area.

Result: Requirements met

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

The application at Attachment D contains the details/results of searches from the State of Western Australia at the time of filing.

Result: Requirements met

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

Reasons relating to this sub-condition

An adequate description of the native title rights and interests claimed by the applicant is contained in Attachment E of the application. I have outlined these rights and interests in my reasons for decision in respect of the conditions in s.190B(4).

Result: Requirements met

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

Reasons relating to this sub-condition

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 contained at Attachment F and Table F of the amended application and in greater detail in additional information sent direct to the Registrar in affidavits from three applicants.

Result: Requirements met62(2)(e)(ii) Factual basis – traditional laws and customs exist that give rise to the claimed native title

Reasons relating to this sub-condition

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 supplied in Attachment F and Table F and in greater detail in affidavits from three applicants.

Result: Requirements met62(2)(e)(iii) Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs

Reasons relating to this sub-condition

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 supplied in Attachment F and Table F supplied in Attachment F and Table F and in greater detail in affidavits from three applicants.

Result: Requirements met62(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

General details of the activities which the native title claim group carries out in relation to the area claimed at schedule G of the application. It is my view that this description of activities is sufficient to comply with the requirements of s.62(2)(f).

Result: Requirements met62(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

In Attachment H of the application the applicants list 11 other applications which overlapped this application at the time of filing of the first amendment. (source NNTT Geospatial Information System).

Result: Requirements met62(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

The application at Attachment I shows the s29 notices which were current at the time of filing of the first amended application.

Result: Requirements met

Reasons for the Decision

For the reasons identified above the application contains all details and other information, and is accompanied by the affidavits and other documents, required by ss.61&62.

I am satisfied that the application meets the requirements of the condition set out in s190C(2).

Aggregate Result: Requirements met

190C3

Common claimants in overlapping claims:

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 190A.**

Reasons for the Decision

For the application to comply with this condition I must be satisfied that no person in the native title claim group was a member of the native title claim group for any previous application if the circumstances set out in s190C(3)(a) to (c) of the Act apply.

The operation of s190C(3) was considered by a full court in *Western Australia v Strickland* [2000]FCA 652. It was held that an application lodged prior to 30 September 1998 is to be regarded as having “been made” on the date it was lodged with the National Native Title Tribunal. I note that the current application was lodged on 17 September 1998 and this is a relevant date when considering the application for the purposes of s190C(3)(b).

A check of the Geospatial database, the Register of Native Title Claims, and the Schedule of Native Title applications, was conducted on 3 August 2000. This analysis reveals that there are 5 native title determination applications on the Register of Claims, which overlap the external boundary of the current application. There is nothing before me to suggest that in each case this anything other than an actual area overlap (having regard to the exclusion clauses and the size of the overlaps).

One application, Southern Noongar (WC96/109), has been recently amended to draw back from the current application’s boundary leaving a small (<0.0001sq Km) technical overlap that is an artefact of the digital capture of the boundary information. On this basis I will not consider this application further.

A further two applications (Ballardong People (WC 97/56) and Donald and Sylvia Collard (WC 97/97)) have been amended (by combination) and have been drawn back from the external boundary of the current application. They remain on the Register of Claims, and in their unamended form both overlap the current application. I am required only to consider overlaps of previous applications based on their area definition, as at the date of the test of the current application. On this basis, I will not deal further with these applications under this condition.

Four applications remain to be considered under the provisions of 190C(3)(b) and (c);

- South West Boorjarah (WC98/63), lodged and entered on the register on 29 September 1998;
- Wagyl Kaip (WC98/70), lodged and entered on the registered on 29 September 1998;
- Combined Metro Working Group (WC99/06), filed on 26 March 1999 and registered on 12 May 1999; and
- Harris Family (WC96/41), made and registered on 3 April 1996.

The first three applications (South West Boorjarah (WC98/63), Wagyl Kaip (WC98/70) and Combined Metro Working Group (WC99/06)) are not previous applications within the meaning of s190C(3). They were made and on the Register, after the current application was made (17 September 1998).

The final overlapping application, Harris Family (WC96/41) was lodged and put on the Register on 3 April 1996, that is, prior to the date of lodgement of the current application (17 September 1998). It is on the Register of Native Title Claims (or not removed), as a result of the application of the tests in s190A (decision date; 15 September 1999). For this reason, I am required to decide whether Harris Family application, has native title claimants in common with the claimant group in the current application.

I have examined the claim group definitions of Harris Family and the current application in order to determine, at face value, whether there are common apical ancestors. I find there is no named person who is common to both claim group definitions (see reasons under s190B(3) for listing of the claim groups for both applications).

Nonetheless, I note that the present application was amended on 4th August 2000 to remove 12 apical ancestors and 19 other named persons and their descendants (who are, by inspection, the applicant group as defined in Harris Family WC96/41). I note that there remains in the claim group description of the current application one apical pair (Mary Campbell and William Harris) who, it may be assumed, give rise to descendants carrying the Harris name. The relevant point is, however, that the descendants of that pair, who may have subsequently been identified as making up the Harris Family claim group, have been excluded by the current applicants of this present matter.

There is nothing before me to suggest that the claim group in the current application includes people recruited, by adoption or other method, from the Harris Family claim group, who are not excluded by the claim group definition above. The 4 August 2000 amendments (at Attachment S) assist me in this regard, by stating that, on the contrary, “(t)he application has been amended specifically to exclude the claimants on the Harris (Family) claim WC96/41”. The applicants have put their mind to this question, by excluding apical ancestors, and other named persons and their biological descendants (who comprise the Harris Family claim group), and by the stated intention to exclude members of the Harris Family claim group.

In my view this provides a satisfactory basis for a finding that no person included in the current application claim group was a member of the Harris Family claim group.

Conclusion: I am satisfied that no person included in the current application’s native title claim group was a member of the native title claim group for any previous application, which overlaps in area, and is on (or not removed from) the Register of Native Title Claims as a result of consideration of the application under s190A.

Result : Requirements met

190C4(a) or 190C4(b)

Certification and authorisation:

The Registrar must be satisfied that either of the following is the case:

(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

(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.

Note: s.190C(5) – 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:

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

Reasons for the Decision

The applicants rely on the first limb of s190C(4). Under s190C(4)(a) I must be satisfied that the application has been certified under paragraph 202(4)(d) by the representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions for that area..

The amended application is certified by [Name and Occupation details deleted for privacy reasons] of the Noongar Land Council at Attachment R, pursuant to s.202(4)(d) of the *NTA*. The areas of land and waters the subject of this application lie wholly within the area for which the NLC was the representative body at the time of the signing of the certificate (29 June 2000). I am able to make this finding on the basis of a WALIS map (Native Title Claims South West Region, produced 11/2/99) which shows the boundaries of the application area and those of the NLC

I have noted that the NLC is not now a recognised representative body pursuant to s203AD; that is, recognition was not achieved at the relevant time (before, 30 June 2000). Nonetheless, I find the NLC's capacity to certify did exist at the time of its certification of the current application (29 June 2000).

Attachment R states that the criteria for certifying applications as set out in s.202 (5) (a) and (b) have been met, namely that the applicants are authorised to make the application and that all reasonable efforts have been made to describe all other persons in the claim group. Attachment R also briefly sets out the basis of the NLC's belief that the above criteria have been met, according to s.202 (7) (b). The research conducted in the area by the NLC demonstrates that effort has been made to ensure the application sufficiently describes the persons in the claim group. Attachment R states that the NLC have attended meetings of the Gnaala Karla Booja claim group and observed the group's mode of decision making.

Attachment R also addresses s.202 (7) (c) in which the NLC attest to the implementation of a comprehensive strategy in an attempt to minimise the number of (overlapping) applications and reach agreement about native title.

Given that s190C (4) (a) has been adequately met, I am not required to consider the condition relating to authorisation of the application (s190C(4)(b)).

I conclude that the application meets the condition of s190C(4)(a).

Result: Requirements met

B. Merits Conditions

190B2

Description of the areas claimed:

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.

Reasons for the Decision

Map and External Boundary Description

A map is supplied at Attachment B of the amended application.

The map supplied shows the external boundaries of the areas claimed.

The map was produced by the Land claims mapping unit on 13/1/1999. It displays coordinates, to enable the position of sites or localities within the claim to be identified. In addition, it shows a scale and legend, 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.

The map meets the requirements of s62 (2)(b) as the boundaries of the areas covered by the application can be identified.

Additional information, technically identifying the external boundary of the claim is supplied at Attachment B, of the amended application. This information was the subject of an amendment application (on 19 July 2000). It was noted in the hearing before District Registrar Jan, that there was a non-correspondence between grid references and the boundary description (text excluding the town of Wagin, was not accurately reflected in the grid referencing). Orders were made that this should be rectified and the application re-filed. Subsequently, at the re-convened hearing (4th August 2000) the applicants asked for an order varying the text description **to not exclude** the town of Wagin, and consequentially retaining the originally filed boundary coordinates.

The Tribunal's Geo-spatial Unit has plotted the original grid information. From that it can be concluded that the description is internally consistent, fully encloses the claim area, and is consistent with the map accompanying the application.

Internal Boundary Description

Areas excluded from the application are described in the amended application at Attachment B, and Attachment S, which includes class exclusions, exclusion of township areas, and specific tenure exclusions.

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

1. 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 1994, as amended, at the time of the Registrar's consideration:

- (a) Category A past acts, as defined in NTA section 229
- (b) Category A intermediate period acts, as defined in NTA 232B.

2. The applicants exclude from the claim any areas in relation to which a previous exclusion possession act, as defined in Section 23B of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was an act attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23E in relation to the act as at the time of the Registrar's consideration.

3. The applicants exclude from the claim any areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:
- (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 exercise of native title.

And, to avoid any uncertainty, the Applicants exclude from the claim:

- (c) an unqualified grant of an estate in fee simple.
 - (d) a lease which is currently in force, in respect of an area not exceeding 5,000 square metres, upon which a dwelling, house, residence, building or work is constructed, and which comprises:-
 - i. a lease of a worker's dwelling under the Workers' Homes Act 1911-1928; or
 - ii. a 999 year lease under the Land Act 1898; or
 - iii. a lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), sec 116; or
 - iv. a Special lease under section 117 of the Land Act 1933 (WA); or
 - (e) a Conditional Purchase Lease currently in force in the agricultural areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887, which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed; or
 - (f) a Conditional Purchase lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed.
 - (g) a Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954; or
 - (h) a permanent public work; or
 - (i) a declared existing public road or street used by the public.
4. Paragraphs 1, 2 & 3 above are subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include areas that are occupied by one or more of the native title claim group and may be listed in Schedule L at a later date.

In addition: the applicants make a conditional exclusion of areas relating to enclosed pastoral leases and mining lease areas (Attachment E) (emphasis added);

(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 area in relation to which a previous non-exclusive possession act, as defined in s23F 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 s23I in relation to the act. **Without limiting the foregoing, the applicants specifically exclude all enclosed pastoral lands and mining lease lands where extinguishment of native title has occurred.**

Findings

The description of areas excluded from the claim area at Attachment B, Internal boundaries, 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.

The description of areas excluded from the claim at paragraph 2 refers to areas in relation to which a previous exclusive possession act, as defined in s.23B of the NTA 1993, was done in relation to the area, and either the act was an act attributable to the Commonwealth, or the act was an act attributable to the State of Western Australia and a law of that State has made provision for that act as described in s.23E NTA. Exclusive possession acts attributable to the Commonwealth can be readily identified through searches of the relevant register and are therefore described with reasonable certainty. Exclusive possession acts attributable to the State of Western Australia under legislation of the type described in s.23 are likewise readily identified by reference to that legislation and thereafter searches of the relevant registers.

The description of areas excluded from the claim at paragraph 3(b) excludes areas of land where actual use by the holder of a tenure is permanently inconsistent with continued existence of native title. In (c) to (i) there is 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 (c) to (i), is sufficient for me to be satisfied that the areas excluded from the application, are identified with reasonable certainty.

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

The conditional exclusion relating to enclosed pastoral leases and mining lease lands is readily identifiable from the relevant records of the State Government of Western Australia.

Conclusion

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.

Result: Requirements met

190B3

Identification of the native title claim group:

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

To meet this condition, the description of the claim group must be sufficiently clear so that it can be said with reasonable certainty whether any particular person is a member of the native title claim group.

An exhaustive list of the persons in the native title claim group has not been provided. Accordingly, the requirements of s190B(3)(a) have not been met.

In the alternative, s190B(3)(b) requires the Registrar to be 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.

An amendment to the claim group was made on 4 August 2000, to exclude some people and to include another person as applicant. Attachment A of the amended application states that the native title claim group comprises:

“The claimants comprise those Aboriginal people who are:

1. the biological descendants of the unions between:-
 - * An Aboriginal man from Pinjarra named Walley + an Aboriginal women from Pinjarra named Tundop
 - * Billy 'Culinbert' Colbung + Nina Bayla Brockman + Clara Bayla Brockman + Eva Wynn
 - * Calyan and Patrick Abraham and Sarah Corrup
 - * Edward 'Ted' Smith + Elizabeth 'Bessie' Punch (Quartermaine) + Sarah Punch
 - * George Riley + Elizabeth (Lizzie) Smith
 - * Jack 'Milberan' Cornwall + Minnie 'Wajeran' Humphries
 - * Jack Hart and Tiottie Cockie and Annie Dickie
 - * James Joseph Collard + Jane Smith/Ayre/Hare/Winmar
 - * Jim Cockie and 'Wyan' Regan
 - * John Jack 'Mungar' Bennell + Cundeyn 'Candy'
 - * Kitty Nordy + Jimmy Wynn
 - * Maggie Penny/Pickett + Johnny Penny
 - * Mary Campbell (Alias Mary Madeline Bunnaro) + William Harris
 - * Robert Edgil + Mary Oracle
 - * Robert Ernst Ugle + Jane Fleay/Dickie
 - * Sarah Kelly + Johnny Narkle
 - * Thomas Reidy + Mabel Collard
2. those persons adopted by the individuals named in 1. above and those persons adopted by the biological descendants of the unions between the individuals named in 1. above.
3. those persons that are the biological descendants of the adopted persons included in 2. above.

Adoption occurs in the following manner: if a man dies and his brother or cousin marries the widow, any of the widow's children are adopted as the children of new husband.

Specifically excluded from being claimants are the following persons:

Minnie Van Leewen

Norman Harris

Carrie Harris

Dorothy Blurton

and their children as listed;

Wendy Harris, Susan Peake, Stephen van Leewen, Elizabeth Embry, Joanne Downey, Norman Harris, Garry Harris, Keith Harris, Mathew Harris, Timothy Harris, Reiner Harris, Wayne Blurton, Mark Blurton, Jenny Maher, Delarna Harris; and the biological descendants of their children.”

It is my opinion that the biological descendants of the persons named could be readily identified with appropriate inquiry.

I am satisfied that the description above constitutes an objective means of verifying the identity of members of the native title claim group such that it can be clearly ascertained whether any particular person is in the group.

Result: Requirements met

190B4

Identification of the native title rights and interests:

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

Reasons for the Decision

This condition requires me to be satisfied that the native title rights and interests claimed can be readily identified. 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'. 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.

At Schedule E of the second amended application, the applicants describe 13 rights and interests which are limited by 5 qualifiers. They are described in the application as follows:

The Qualifications

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

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
- (ii) To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.
- (iii) The applicants do not make a claim to native title rights and interests which confer possession, occupation use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of the State has made provision as mentioned in section 23I in relation to the act. Without limiting the foregoing, the applicants specifically exclude all enclosed pastoral lands and mining lease lands where extinguishment of native title has occurred.
- (iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.
- (v) The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

The Rights and Interests

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

- a) rights and interests to exclusively possess, occupy, use and enjoy the area ;
- b) the right to make decisions about the use and enjoyment of the area;
- c) the right of access of the area ;
- d) the right to control the access of others to the area ;

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

The application identifies the right to ‘exclusively possess, occupy, use and enjoy the area’ as the first right and interest claimed. However, this right and interest along with the other 12 are limited in scope by the terms of the five qualifications which accompany the rights and interests.

On this basis, the native title rights and interests described at schedule E are readily identifiable. 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’.

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).

Result: Requirements met

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

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.

In reaching this decision I must be satisfied that the factual basis supports the 3 criteria identified at s.190B5 (a) – (c).

In applying this condition I have relied on the information provided at :

- Attachment F and Table F
- Additional information supplied:
 1. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
 2. Affidavit [Name deleted for privacy reasons] of dated 8 February 1999.
 3. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
- Transcript of hearing into an expedited procedure for future act matters WO 95/36 and WO 95/37.

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

This criteria requires me to be satisfied that:

- the members of the native title claim group have (that is currently 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).

The applicants have set out a tabulated description of their connection, including reference to the importance of Noongar families and their rights to ‘speak for’ country. This is further supported by the affidavits from three applicants, [Name deleted for privacy reasons], [Name deleted for privacy reasons], and [Name deleted for privacy reasons].

These are [pronoun deleted for privacy reasons], who attest they are elders of the claim group, who by their named forbears can show connection to the area, who have lived in the area for most of their lives, and who by activities that are related to the exercise of native title rights and interests, have provided evidence of sufficient weight to satisfy me that each, along with family, has an association with the area.

They provide evidence of association that is communal in nature, for example by conducting funerals, visiting places of spiritual significance to care for them, participating in heritage studies on behalf of the group, and passing on traditional knowledge to the young, as it was passed on to them by their forebears. Many examples are given of locations in the claim area where native title rights and interests are exercised. The scope of the activities evidences a long association and a communally recognised role as people who speak for the country that comprises the claim.

I am satisfied that the evidence provided is sufficient to support the assertion that native title claim group have, and the predecessors of those persons had, an association with the area.

Result: Requirements 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.

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

The application contains information about a ‘set of inter-related laws and customs that create what the *Noongar* people refer to as ‘*Noongar Way*’, including custodianship of sites, the recognition of the importance of elders in speaking for country, and family custodianship of country. Communal rights to sharing and caring for land are referenced as ‘dictates of Noongar life’.

Affidavits from [Name deleted for privacy reasons], [Name deleted for privacy reasons] and [Name deleted for privacy reasons] (cited above) set out in tabular and itemised form their understanding of the *Noongar Way*, their role in it as elders, and some specific activities that evidence the existence and acknowledgment of traditional laws and customs. The evidence of the claim group’s acknowledgment of [Name deleted for privacy reasons] role as custodian of certain sites, for example, satisfies me that the claim group acknowledges this element of traditional law and custom (p235 transcript of Inquiry into Objection to Expedited Procedure WO95/36, WO95/37). Similar evidence of custodianship of sites is provided for [Name deleted for privacy reasons] and [Name deleted for privacy reasons].

The applicants have linked [Name deleted for privacy reasons] acknowledged role as custodian of sites with particular native title rights and interests, for example, that of the right of access to the country and the right to make decisions about the use and enjoyment of the area. A similar link is made between [Name deleted for privacy reasons] and the law’s recognition of his right to speak for country and the native title right to control the access of others to the area. For this condition, 190B (5) (b) I am not required to consider evidence covering all laws and customs, and all rights and interest that flow from those laws. It is enough for me to be satisfied that there is a factual basis for traditional laws and customs giving rise to specific native title rights and interests.

On the findings above, I am satisfied that there exists a body of traditional law acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claimed native title rights and interests.

I am satisfied that the condition of s190B (5) (b) is met.

Result: Requirements 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.

This criterion requires me to be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

The evidence of traditional laws and customs described in the previous two sub-sections (which give rise to native title), are set out as a continuing way of life for *Noongar* people, and for the three applicants, [Name deleted for privacy reasons], [Name deleted for privacy reasons], and [Name deleted for privacy reasons], in particular. I have had regard to the tabulated factual basis for continuity. There is sufficient evidence to support the existence of continuing traditions, specifically amongst the elders, who are relevantly important to the holding of native title. This includes the teaching of the younger generation in specific cases of proper behaviour in relation to named sites, in relation to the natural resources of the country, spiritual connection to country, gathering of and responsibility for food sources and exploration of country.

For this reason, the applicants have provided me with sufficient evidence, that comprises a factual basis, that the native title claim group have continued to hold native title in accordance with their traditional laws and customs.

I am satisfied that the conditions of s190B (5) (c) are met.

Result : Requirements met

Summary

The accompanying information tells a ‘story’ about 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.

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 continuing adherence to traditional laws and customs that give rise to native title.

Conclusion:

There is satisfactory factual basis to support the assertions of the existence of the claimed native title rights and interests; in particular, there is a factual basis to support the assertions set out in s.190B5 (a) – (c).

Aggregate Result : Requirements met

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

Submitted by the applicants for my consideration are:

- Attachment F and Table F
- Additional information supplied:
 1. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
 2. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
 3. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
- Transcript of hearing into an expedited procedure for future act matters WO 95/36 and WO 95/37.

This condition of the Registration Test requires me to be satisfied that at least *some* (one) of the Native Title rights and interests claimed can, *prima facie*, be established.

I have previously noted in these reasons that the native title rights and interests claimed at Schedule E and Attachment 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.

For the reasons given below, I am of the view that some but not all of the rights and interests claimed can be established.

It is necessary to have regard to both what rights and interests may be claimed at law and what rights and interests *prima facie* can be established. The term *prima facie* was considered in *North Galanjanja Aboriginal Corporation v Qld* 185 CLR 595 by their Honours Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ, who noted: “The phrase can have various shades of meaning in particular statutory contexts but the ordinary meaning of the phrase “*prima facie*” is: “At first sight, on the face of it; as appears at first sight without investigation.” [Citing the Oxford English Dictionary (2nd ed 1989)]. I have adopted the ordinary meaning referred to by their Honours when considering this application.

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.

I have already outlined at s.190B(5) that I am satisfied that the members of the native title claim group have an association with the relevant land and waters and continue to adhere to traditional laws and customs that support the factual basis for the native title rights and interests claimed. I refer to my reasons in relation to that section.

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.

In *Western Australia v Ward* [2000] FCA 191, Beaumont and von Doussa JJ, by majority, held that some of the rights and interests included in the determination of native title made by Lee J at first instance are incapable of being recognised at common law, including;

- right to maintain and prevent misuse of cultural knowledge,
- right to receive a portion of any resources taken by others from the area
- right to control use and enjoyment of others of resources
- right to control access of others
- right to trade in resources in the area (but do have a non-exclusive right to use and enjoy traditional resources).

Their Honours held that rights and interests that involve a physical presence on the land or that are associated with traditional, social and cultural practices are capable of recognition under common law but that those involving (only) religious or spiritual relationships with land are not. See *Ward* at [104]. However their Honours also found that where s47 and 47A applied, the applicants in *Ward* were entitled to possession, occupation, use and enjoyment of the area concerned as against the whole world.

I note that the native title rights and interests claimed are set out in Attachment including five qualifications. The qualifications limit the claim to exclusive possession made at paragraph a. of Attachment E subject to other validly granted rights and interests.

I have examined all of the information contained in the attachments of the amended application in my consideration of the native title rights and interests that can prima facie be made out.

On the evidence provided I am satisfied that the native title rights and interests listed below involve a physical presence on the land or are an expression of traditional social or cultural practices, and can be prima facie made out (subject to the following):

- i. To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants;
- ii. To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place;
- iii. The applicants do not make a claim to native title rights and interests which confer possession, occupation use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the *Native Title Act*, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23I in relation to the act. Without limiting the foregoing, the applicants specifically exclude all enclosed pastoral lands and mining lease lands where extinguishment of native title has occurred.
- iv. Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

- v. The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

The Rights and Interests

- a. rights and interests to exclusively possess, occupy, use and enjoy the area;
- c. the right of access to the area;
- e. the right to use and enjoy resources of the area;
- g. the right to maintain and protect places of importance under traditional laws, customs and practices in the area;
- i. the right to rear and teach children in their country;
- m. the right to manage, conserve and look after the land, waters and resources, including locating and cleaning water sources and drinking water on the land.

I am of the opinion that the prima facie case is not established for the rights and interests listed below, because they do not involve physical presence on the land, or are not associated with traditional social and cultural practices, or are specifically not recognised at common law;

- b. the right to make decisions about the use and enjoyment of the area;
- d. the right to control the access of others to the area;
- f. the right to control the use and enjoyment of others of resources of the area;
- j. the right to live on and erect residences and other infrastructure on the land;
- k. the right to trade in resources of the area;
- l. the right to receive a portion of any resources taken by others from the area.

The application passes this condition of the test.

Result: Requirements met.

190B7**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 by 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 DecisionInformation considered

In addition to the amended application the following material was submitted by the applicants for consideration in this condition;

In applying this condition I have relied on the information provided at :

- Attachment F and Table F
- Additional information supplied:
 1. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
 2. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
 3. Affidavit of [Name deleted for privacy reasons] dated 8 February 1999.
- Transcript of hearing into an expedited procedure for future act matters WO 95/36 and WO 95/37.

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), the claim group 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 and identified previously that [Name deleted for privacy reasons], [Name deleted for privacy reasons] and [Name deleted for privacy reasons] have, or had, a traditional physical connection with the land or waters covered by the application.

Result: Requirements met**190B8**

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 4 August 2000, reveals that there is no approved determination of native title in relation to the area claimed in this application

S61A(2) – Previous Exclusive Possession Acts

In Schedule B of the application, certain tenures are excluded from the claim area. For reasons provided above at s190B2 these exclusions are sufficiently clear to provide reasonable certainty about all the tenure excluded and include all previous exclusive possession acts.

S61A(3) – Previous Non-Exclusive Possession Acts

The applicants are not seeking exclusive possession over areas the subject of previous non-exclusive possession acts, as discussed in my reasons provided above at s190B4.

S61A(4) – s47, 47A, 47B

The application discloses in Attachment B, *Internal boundaries*, paragraph 4, an intention on the part of the applicants to make exclusions in paragraphs 1 to 3 subject to the provisions of s47, s47A and s47B of the NTA. This intention has not been given effect in respect to s47B because the evidence of occupation of the areas is yet to be provided.

I took the view in the condition for s190B (2) (relating to the identification of the area of the claim) that the absence of the specificity in the areas over which s47, 47A and 47B would apply, did not make uncertain the identification of the areas of the claim. I take the same position with respect to the evidence of occupation required if the applicants do establish at some time in the future, an area over which s47B is to apply.

The application does not state that any of these sections apply to it.

Conclusion

For the reasons identified above the application and accompanying documents do not disclose and it is not otherwise apparent that because of Section 61A the application should not have been made.

Result: Requirements met

190B9 (a)

Ownership of minerals, petroleum or gas wholly owned by the Crown:

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

Native title rights and interests are described at Schedule E of the amended application.

None of the native title rights described in Schedule E claim ownership of resources including minerals, petroleum or gas.

In any event, Schedule E and Q 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 right of the Commonwealth or the State of Western Australia, they are not claimed by the Applicants.

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 is wholly owned by the Crown.

Result: Requirements met

190B9 (b)

Exclusive possession of an offshore place:

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

- (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;*

Reasons for the Decision

Native title rights and interests are described at Schedule E of the amended application.

None of the native title rights described in Schedule E claim ownership of resources including minerals, petroleum or gas.

In any event, Schedule E and Q in the amended application makes the statement that:

‘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.’

Consequently, the application and accompanying documents do not disclose, and I am not otherwise aware that the applicant claims exclusive possession of an offshore place.

Result: Requirements met

190B9 (c)

Other extinguishment:

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

- (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)).*

Reasons for the Decision

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.

In any event, the amended application at Attachment B, Internal boundaries, paragraph 3, excludes all areas in relation to where native title rights and interests have otherwise been extinguished. I am satisfied that because native title rights and interests must relate to land and waters (see definition s.223 of the Native Title Act) the exclusion of particular land and waters is an exclusion of native title rights and interests over those lands and waters.

For the above reasons I am satisfied that the application meets this condition.

Result: Requirements met

End of Document