

National Native Title Tribunal

**S.190A REGISTRATION TEST
REASONS FOR DECISION COVER SHEET**

DELEGATE:	Andrew Solomon
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APPLICATION NAME	Gumbaynggirr People
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NAME(S) OF APPLICANT(S)	Margaret Boney-Witt
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NNTT NO	NC98/15
FEDERAL COURT NO	NG6104/98
DATE APPLICATION MADE	3 June 1998
APPLICATION AMENDED	3 October 2000

REGION	NSW/ACT
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The delegate has considered the application against each of the conditions contained in s.190B and s.190C of the *Native Title Act 1993*.

DECISION

The application **IS ACCEPTED** for registration pursuant to s.190A of the *Native Title Act 1993*.

.....
Andrew Solomon

Date of Decision

Brief History of the Application

The application was lodged with the NNTT on 3 June 1998 and was entered onto the Register of Native Title Claims the same day.

On 21 October 1999 the Deputy District Registrar of the Federal Court provided the Tribunal with a copy of an amended native title determination application, filed in the Court on 20 October 1999. The application was considered against each of the conditions contained in ss.190B and 190C of the *Native Title Act 1993* (Cth) (“the Act”) on 9 August 2000 and was accepted for registration pursuant to s.190A.

On 4 October 2000 an amendment to the application was filed in the Federal Court pursuant to leave granted on 23 August 2000.

I have read the decision of the delegate of the Registrar dated 9 August 2000 and adopt those reasons as part of my decision. I have therefore in these reasons for decision addressed only the conditions in 190C2, 190B2, 190B4 and 190C4 which have been changed in this version of the application.

References to the application refer to the most recent version of the application as filed in the Federal Court on 4 October 2000 except where otherwise stated.

Information considered in making the decision

In making this decision on this application, I have considered and reviewed all of the information and documents from the following files, databases and other sources:

- NC98/15 - Application as amended on 21 October 1999;
- NC98/15 – Application as amended on 4 October 2000;
- NC98/15 - Registration Testing File;
- The National Native Title Tribunal Geospatial Database;
- The Register of Native Title Claims

A. Procedural Conditions

190C2	<i>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.</i>
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Reasons for Decision

I have examined all the details and other information together with the affidavits and other documents accompanying this application. I find that s61 and s62 have been complied with. The application contains all the information etc required by s61 and s62 as I have outlined below.

- s.61(3);** Name of applicant and address for service is provided.
- s.61(4);** Description of persons in native title claim group is provided.
- s.61(5);** Application is in prescribed form, lodged in Federal Court, contains prescribed information and is accompanied by any prescribed documents¹
- s.62(1)(a)** The application is accompanied by affidavits which comply.
- s.62(1)(b);** Details required in s.62(2) above are provided.
- s.62(1)(c);** Details of physical connection are provided.

Details required in section 62(2)

62(2)(a)(i); Information which identifies the boundaries of the area covered by the application is provided (see further my reasons under s190B2).

62(2)(a)(ii); Information which identifies any areas within those boundaries that are not covered is provided (and see my reasons under s190B2).

62(2)(b); A map showing the external boundaries of the area covered by the application is provided. The map and other information is consistent in their description of the area (and see my reasons under s190B2).

62(2)(c); Details and results of searches carried out to determine the existence of non-native title rights and interests are set out in schedule D.

62(2)(d); A description of the native title rights and interests claimed is provided (see reasons at 190B(6) below).

62(2)(e); The application contains a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist and in particular that:

¹ Note that pre 30.09.98 applications are deemed to have been filed in the Federal Court. Note that “prescribed information” is that which is required by s.62(2) as set out in the text of this minute document.

62(2)(e)(i); the claim group have, and their predecessors had, an association with the area.

62(2)(e)(ii); traditional laws and customs exist that give rise to the claimed native title.

62(2)(e)(iii); the claim group has continued to hold native title in accordance with laws and customs.

62(2)(f); Details are provided of activities currently carried on in relation to the land and waters in schedule G of the application.

62(2)(g); The applicant at Schedule H states that there are no other applications that have been made in relation to the whole or part of any area covered by this application.

62(2)(h); At Schedule I the applicant states that he is not aware of any notices under section 29 of the Act that have been issued since 30 September 1998 and that relate to a whole or a part of the area.

For the reasons set out against the conditions listed above the application **passes** the procedural requirements of section 190C2 of the Act.

190B2	<p>(a) Description of the areas claimed:</p> <p><i>The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.</i></p>
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Reasons for the Decision

Internal Boundaries

Schedule B of this application has been amended so as not to exclude two parcels, DP 583777 and DP 219743 Parish of Newry, County of Raleigh, in relation to which it is asserted that section 47B of the Native Title Act 1993 applies. This is being achieved by:

1. Exempting those two parcels from the named areas which are expressly excluded; and
2. Making the exclusionary formulas subject to a new paragraph 4 which read as follows:

“Any areas within the external boundary of the Application in relation to which the extinguishment of native title is required by Section 47B of the Act to be disregarded are not excluded from the application. The native title rights and interests claimed in relation such areas are subject to any interests which fall within subparagraph 47B(3)(a) of the Act.”

I note the parcels DP 583777 and DP 219743 were included in the original application of 3 June 1998. I am mindful of Lee J in *Kogolo & others v State of Western Australia* in which his honour allowed the applicants to re-include an area of land excluded by a previous amendment. Following the judicial guidance as to the administrative function before me I have formed the view that I am satisfied the information and map provided by the Applicants, read in conjunction with the exclusions specified, are sufficient for it to be said with reasonable certainty that the native title rights and interests are claimed in relation to particular areas of land or waters within the external boundaries of the claim area.

The application passes this condition.

190B4	<p>Identification of claimed native title</p> <p><i>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.</i></p>
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Reasons for the Decision

At Schedule E the application has a new paragraph 7 included in the exclusionary formula that reads as follows:

“The native title rights and interests referred to in paragraph 1 and/or 2 are claimed in respect of any areas covered by the Application in relation to which the extinguishment of native title is required by section 47B of the Act to be disregarded. Those rights and interests are claimed subject to any interests which fall within subparagraph 47B(3)(a) of the Act.”

The native rights and interests claimed have not changed and had complied in a previous amended application with the requirements of this subsection on 9 August 2000.

I find the effect of the limitation, by way of the exclusion formula in this application, on the claimed native title rights and interests are not inconsistent with the validly granted rights and interests of others with respect to the claim area.

The application **passes** this condition.

190C4(a) or 190C4(b)	<p>Certification and authorisation:</p> <p><i>The Registrar must be satisfied that either of the following is the case:</i></p> <p><i>(b) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></p> <p><i>(c) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</i></p>
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Reasons for the Decision

Schedule K of the application states:“There is currently no representative Aboriginal/Torres Strait Islander body for the area by the Application.”

I note that the application contains no changes to the description of the claim group and authorisation process. Therefore I am satisfied that the NSW Aboriginal Land Council certificate 18 August 1999 complies with the requirements of certification as required by s.190C(4).



Decision of Delegate

1. The application is ACCEPTED for registration pursuant to s.190A of the *Native Title Act 1993*

If the claim is not accepted for registration, written notice of the decision and the reasons for the decision, are to be provided to the applicant and to the Federal Court, in accordance with s.190D of the *Native Title Act*.

The Registrar is to give notice of the decision, as required by s66(3) of the *Native Title Act*, whether or not the claim has been accepted for registration.

Andrew Solomon
DELEGATE

DATE