

***National Native Title Tribunal***  
**REASONS FOR DECISION COVER SHEET**  
**REGISTRATION TEST**

DELEGATE:	Simon Nish
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APPLICATION NAME	Bandjalang People
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NAMES OF APPLICANTS:	Lawrence Wilson
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NNTT NO:	NC96/16
FEDERAL COURT NO:	NG6034/98
DATE APPLICATION MADE:	17 May 1996

REGION:	NSW/ACT
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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*.

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Simon Nish  
Delegate of the Registrar

16/2/2000  
Date of Decision

## Brief History of the Application

The application was lodged with the NNTT on 17 May 1996 and was entered onto the Register of Native Title Claims on the same day.

The native title determination application covers areas of land, sea and inland waters located in and around the town known as Evans Head, including parts of Broadwater National Park in the North, Bunjalung National Park in the South, and five kilometres out to sea in the East. The Aboriginal name for the area around Evans Head is known as Diddawang and Bogurr by the Claimants.

Submissions on behalf of the Minister for Land & Water Conservation regarding the native title determination application were received by the Registrar on 22 December 1998 and 15 December 1999.

A letter with respect to the native title determination application was received by the Registrar from the Australian Government Solicitor on behalf of the Commonwealth of Australia on 27 January 1999.

An overlapping native title determination application, NC98/19 has been lodged by Lawrence Wilson for the Bandjalang people, subsequent to this application.

Various drafts of the native title determination application were provided to the Tribunal for comment or information – on 25 August 1999 and 30 September 1999.

The applicants sought leave of the Federal Court to amend the application and an amended native title determination application was filed with the Federal Court on 30 November 1999. The Federal Court granted leave for the amendment of the application on 18 November 1999. The external boundaries of the area covered by the application were not altered by those amendments.

A further affidavit made by the applicant in relation to the amended application was sent to the Tribunal on 20 December 1999, which was also filed on that same day in the Federal Court. The Tribunal was informed by the applicant's legal representative that this affidavit was also served on the State government on that same day.

Further, the Tribunal also received a letter from the applicant's legal representative, dated 20 December 1999, which provided additional written clarification of the description of the application area that was provided in Attachment B of the amended application. The Tribunal was informed that this letter was also provided to the State government.

On 27 January 2000 the Registrar received notice from the Federal Court that the applicant's affidavit of 19 October 1999, which had previously been provided to the Registrar, was filed in the Federal Court.

## Information considered in making the decision

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

- ◆ NC96/16 - Working Files (containing documents dated pre 29 September 1998);
- ◆ NC96/16 - Registration Testing File (containing documents dated post 29 September 1998);
- ◆ The National Native Title Tribunal Geospatial Database
- ◆ The Register of Native Title Claims
- ◆ The Native Title Register
- ◆ State Government and third party submissions – specified in table below.

Documents deemed to be of sufficient relevance, probative value and weight in relation to the registration of this application are:

- ◆ NC96/16 – Application, as filed in Federal Court on 30 November 1999;
- ◆ Affidavit of the applicant, Lawrence Wilson, sworn 16 November 1999, which accompanied the amended application filed in Federal Court on 30 November 1999;
- ◆ Affidavit of the applicant, Lawrence Wilson, sworn 19 October 1999;
- ◆ Affidavit of [name removed], sworn 19 October 1999;
- ◆ Affidavit of [name removed], sworn 19 October 1999;
- ◆ Affidavit of [name removed], consultant anthropologist, sworn 19 October 1999, with attached anthropological statement;
- ◆ Statutory Declaration provided by the applicant, Lawrence Wilson, as part of the amended application, dated 12 December 1997 (Attachment T of the amended application);
- ◆ Letter of Wroth Wall, applicant's representative, dated 20 December 1999, clarifying the description of the external boundary at Attachment B of the amended application;
- ◆ Affidavit of the applicant, Lawrence Wilson, sworn 20 December 1999;

- ◆ Submission from the Director General of the NSW Department of Land & Water Conservation, dated 22 December 1998;
- ◆ Submission from the Australian Government Solicitor, on behalf of the Commonwealth, dated 27 January 1999;
- ◆ Submission from the Director General of the NSW Department of Land & Water Conservation, dated 15 December 1999; and
- ◆ Letter from Department of Land and Water Conservation, on behalf of the Director General, dated 22 December 1999.
- ◆ Letter from Deputy District Registrar of the Federal Court dated 27 January 2000 indicating that the attached affidavit of the applicant, Lawrence Wilson, has been filed in the Court and is to be placed with the amended application.
- ◆ File note of officer of the Tribunal dated 15 December 1999 recording additional material filed by the applicants with the Tribunal has also been served on the State by the applicants.
- ◆ File note of officer of the Tribunal dated 1 February 2000, which records inspection of the Federal Court application file.

Any references to ‘the application’ in the reasons below refer to the most recent version of the application as filed in the Federal Court on 30 November 1999, unless otherwise stated.

## A. Procedural Conditions



<b>190C2</b>	<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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### Details required in section 61

<b>61(3)</b>	<b><i>Name and address for service of applicants</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
The application identifies the name of the applicant as Lawrence Wilson. The address for service for the applicant is provided at page 14 of the application.	
<b>61(4)</b>	<b><i>Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
Attachment A of the amended application lists the persons in the native title claim group.	
<b>61(5)</b>	<b><i>Application is in the prescribed form<sup>1</sup>, lodged in the Federal Court, contains prescribed information<sup>2</sup>, and is accompanied by prescribed documents and fee</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>The application is in the form prescribed by Regulation 5(1)(a) <i>Native Title (Federal Court) Regulations 1998</i>. As required under section 61(5)(b), the amendments to the application were filed in the Federal Court.</p> <p>The application meets the requirements of section 61(5)(c) and contains all information as prescribed in section 62. I refer to my reasons for recommendation in relation to those sections.</p> <p>As required by section 61(5)(d) the application is accompanied by affidavits that fulfil the prescriptions of section 62(1)(a); namely the affidavits sworn by the applicant on 16 November 1999 and 20 December 1999. I refer to my reasons for recommendation below, in relation to that section of the Act. A map as prescribed by section 62(1)(b) also accompanies the application. I refer to my reasons below for recommendation in relation to section 62(2)(b) of the Act below.</p> <p>I note that section 190C(2) only requires me to consider that the application contains all details and other information, and documents required by section 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.</p> <p>For the reasons outlined above, it is my view that the requirements of s61(5) are met.</p>	

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

<sup>1</sup> Note that in relation to pre 30.09.98 applications, the application does not need to be in the prescribed form as required by the amended *Act*. Note also that pre 30.09.98 applications are deemed to have been filed in the Federal Court.

<sup>2</sup> Note also that “prescribed information” is that which is required by s62 as set out in the text of this reasons document under “Details required in section 62(1)”.

<b>62(1)(a)</b>	<b><i>Affidavits address matters required by s62(1)(a)(i) – s62(1)(a)(v)</i></b>
Reasons relating to this sub-condition	Application <b>fails</b> the condition
<p>An affidavit sworn by the applicant on 16 November 1999 accompanied the amended application filed in the Federal Court on 30 November 1999. A competent witness has witnessed the affidavit. I am satisfied that it addresses the matters required by s62(1)(a)(i) - (iv) at paragraphs (a) to (d) of the affidavit respectively. However, this affidavit does not provide the information required by s62(1)(a)(v).</p> <p>A second affidavit sworn by the applicant on 20 December 1999 again addresses s62(1)(a)(i) –(iv). It also addresses s62(1)(a)(v), by stating that the basis of the authorisation is stated in the applicant’s affidavit sworn on 16 November 1999. I have seen the file note of an officer of the Tribunal dated 1 February 2000 which states that upon inspection of the application file in the Federal Court it was found that this affidavit had not been filed with the Court.</p> <p>On 27 January 2000 the Registrar received a letter from the Deputy District Registrar of the Federal Court, indicating that when the applicants filed their amended application on 18 November 1999 pursuant to leave being granted, their solicitors inadvertently failed to include the affidavit of Lawrence Wilson dated 19 October 1999 which was to accompany the application. The Deputy District Registrar stated that a copy of this affidavit has now been placed with the amended application. I am satisfied that this affidavit addresses the requirement in s62(1)(a)(v) as it states the basis for which the applicant is authorised to make the application and deal with matters in relation to it.</p> <p>I am satisfied that this affidavit, when taken in tandem with the affidavit of 16 November 1999, meets the requirements of s61(1)(a).</p>	

<b>62(1)(c)</b>	<b><i>Details of any traditional physical connection (information not mandatory)</i></b>
Comment on details provided	Application <b>passes</b> the condition
<p>The applicants have provided details of traditional physical connection at Attachment F (1)(s), Schedule G and Attachment M of the application.</p> <p>The applicant has provided further details including traditional physical connection in a Statutory Declaration at Attachment T of the application.</p>	

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

<b>62(2)(a)(i)</b>	<b><i>Information identifying the boundaries of the area covered</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>At Attachment B, Part A, the applicant has provided a description identifying the area covered by the application. Five separate areas are identified and described. The Registrar has also received a letter from the applicant’s representative dated 20</p>	

December 1999 clarifies two minor typographical errors in the description of the external boundaries of the application.

For the reasons provided under s190B(2) I am satisfied that the boundaries of the area covered by the application are sufficiently identified by these documents.

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

Reasons relating to this sub-condition | Application **passes** the condition

The applicant has provided information at Attachment B, Part B identifying areas in the claim area which are excluded from the claim.

For the reasons provided under s190B(2) I am satisfied that the boundaries of the area covered by the application are sufficiently identified by these documents.

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

Reasons relating to this sub-condition | Application **passes** the condition

The applicant has provided a map at Attachment C. See also my reasons provided under s190B(2). The Geospatial Information Unit, National Native Title Tribunal, produced the map based on data sourced from the Land Information Centre, DITM.

The map shows the external boundaries of the application.

I find that the map showing the external boundaries meets the requirements.

**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 | Application **passes** the condition

The requirements of s62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that under this condition I need only be informed of searches conducted by the applicant in order to be satisfied that the application complies with this condition. It would be unreasonably onerous to expect applicants to have knowledge of, and obtain details about all searches carried out by every other person or body.

The applicant refers at Schedule D to Attachment D. .

Attachment D includes the following:

- A copy of a letter from the Tribunal addressed to the applicant, through the NSW Aboriginal Land Council, dated 22 December 1998;
- A copy of a submission from the NSW Department of Land & Water Conservation

which refers, at page 3, to historical search in relation to the claim area which reveals scheduled interests and other interests

The Attachment indicates that State Tenure searches on information available within the Department of Land & Water Conservation only, has been conducted.

I am of the view that the applicant has not conducted any of their own searches and has provided information on searches of which he is aware. I am satisfied that the application complies with this condition.

<b>62(2)(d) Description of native title rights and interests claimed</b>	
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>A detailed description of the native title rights and interests claimed by the applicant is contained in Attachment E to Schedule E of the application.</p> <p>In accordance with section 62(2)(d), the rights and interests claimed do not merely consist of a statement to the effect that the native title rights and interests that may exist or that have not been extinguished at common law. The description is a list of individually identifiable rights and interests. I have outlined these rights and interests claimed in my reasons for decision in relation to s190B(4).</p> <p>The application passes this condition.</p>	

<b>62(2)(e)(i) Factual basis – claim group has, and their predecessors had, and association with the area</b>	
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>The applicant asserts at Schedule F of the application that the necessary information is provided in:</p> <ul style="list-style-type: none"><li>(i) Attachment “F” and</li><li>(ii) Affidavit of the claimant labeled (sic) as Attachment “T”.</li></ul> <p>Material in both attachments is provided on a <i>confidential</i> basis.</p> <p>I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have, and their predecessors had, an association with the area. This matter is tested further in relation to s190B(5)(a).</p> <p>I am satisfied that the application complies with this condition.</p>	

<b>62(2)(e)(ii)</b>	<b><i>Factual basis – traditional laws and customs exist that give rise to the claimed native title</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>The applicant asserts at Schedule F of the application that the necessary information is provided in:</p> <ul style="list-style-type: none"> <li>(iii) Attachment “F” and</li> <li>(iv) Affidavit of the claimant labeled (sic) as Attachment “T”.</li> </ul> <p>Material in both attachments is provided on a <i>confidential</i> basis.</p> <p>I am satisfied that there is sufficient factual basis to support the assertion that there exist traditional native title rights and interests, acknowledged and/or observed by the native title claim group that give rise to the native title rights and interests claimed. This matter is tested further in relation to s190B(5)(b).</p> <p>I satisfied that the application complies with this condition.</p>	

<b>62(2)(e)(iii)</b>	<b><i>Factual basis – claim group has continued to hold native title in accordance with traditional laws and customs</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>The applicant asserts at Schedule F of the application that the necessary information is provided in:</p> <ul style="list-style-type: none"> <li>(v) Attachment “F” and</li> <li>(vi) Affidavit of the claimant labeled (sic) as Attachment “T”.</li> </ul> <p>Material in both attachments is provided on a <i>confidential</i> basis.</p> <p>I am satisfied that there is sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs. This matter is tested further in relation to s190B(5)(c)..</p>	

<b>62(2)(f)</b>	<b><i>If native title claim group currently carry on any activities in relation to the area claimed, details of those activities</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>Schedule G of the application provides a list of activities that the native title claim group carries out in relation to the area claimed.</p> <p>Attachment F (1)(s) provides current activities in exercise of native title rights and interests and traditional physical connection.</p> <p>Attachment M repeats the information provided in Attachment F (1)(s) giving examples of activities carried out by several members of the native title claim group.</p> <p>In my view the description of activities is sufficient to comply with the requirements of 62(2)(f).</p>	

<b>62(2)(g)</b>	<b><i>Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>At Schedule H the applicant states the following:</p> <p>The only other application that the applicant is aware of in relation to whole or part of the area covered by this application is;  NC98/19 (NG6107/98) Lawrence Wilson for the Bandjalang People.</p> <p>I am satisfied that the application complies with this condition.</p>	

<b>62(2)(h)</b>	<b><i>Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area, and the applicant is aware of</i></b>
Reasons relating to this sub-condition	Application <b>passes</b> the condition
<p>The applicant states he is not aware of any section 29 notices.</p> <p>Requirements are met.</p>	

## Reasons for the Decision

The application **meets** the requirements of s 190C(2), for the reasons detailed above.

<b>190C3</b>	<p><b>Common claimants in overlapping claims:</b>  <i>The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:</i></p> <ul style="list-style-type: none"> <li>(a) <i>the previous application covered the whole or part of the area covered by the current application; and</i></li> <li>(b) <i>an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and</i></li> <li>(c) <i>the entry was made, or not removed, as a result of consideration of the previous application under section 190A.</i></li> </ul>
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## Reasons for the Decision

At Schedule H the applicant has identified an overlapping application – NC98/19 (NG6107/98).

Lawrence Wilson lodged the overlapping application, on behalf of the Bandjalang people on 10 July 1998, well after the lodgement date of this application. There are no previous overlapping applications in relation to this application.

Consequently the application complies with this condition.

<b>190C4(a) or 190C4(b)</b>	<p><b>Certification and authorisation:</b>  <i>The Registrar must be satisfied that either of the following is the case:</i></p> <ul style="list-style-type: none"> <li>(a) <i>the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or</i></li> <li>(b) <i>the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.</i></li> </ul>
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## Reasons for the Decision

The application has not been certified pursuant to s.190C(4)(a).

**NB s190B(5) requires evidence of authorisation:**

*If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:*

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

At Part A the applicant states that he is entitled to bring the application as a member of the native title claim group and he is authorised by the native title claim group to make the Native Title determination application.

Part A 2 continues:

“The applicant is the senior Elder, holding the authentically transmitted knowledge of the sites in the claimant area and holding unbroken connection to the land, recognised by peer Elders of the Bandjalang.

The Bundjalung Council of Elders endorsed the applicant as the claimant for the Bundjalung people at a meeting in January 1995.

At a meeting at Evans Head on the 20<sup>th</sup> April 1997 for members of the Bundjalung clan the applicant was unanimously endorsed as the native title claimant for the Bundjalung Native Title claim.”

In an additional affidavit, sworn on 19 October 1999 by the applicant he says:

2. I am duly authorised by all members of the Bandjalang clan to apply for a determination of native title over all of the traditional Bandjalang territory including the land referred to in native title claim NC96/16 and to deal with all matters in relation to such claim.
3. The authority given to me by the Bandjalang clan to speak on their behalf and for the land comprising the traditional Bandjalang territory derives from traditional Bandjalang laws and customs.
4. At a Bandjalang clan meeting conducted at Goanna Headlands at Evans Head on 20 April 1997 conducted for the purpose of explaining native title claim NC96/16 the Bandjalang community who were present expressed their support for me to pursue this native title claim. The attendance list for that meeting is annexed and marked “A”.

On 27 January 2000 the Registrar received a letter from the Deputy District Registrar of the Federal Court notifying that the above affidavit was inadvertently not filed with the amended application on 18 November 1999. The affidavit was filed in the Court on 27 January 2000 and has now been placed with the amended application.

That the applicant is authorised by the native title claim group according to traditional Bandjalang law is reiterated in the affidavits of [names removed], members of the native title claim group, and consultant anthropologist, [name removed].

On the basis of that information I am satisfied that the requirements of s190C(5) have been met. The application passes the condition..

## B. Merits Conditions

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

Having regard to the amended application filed in the Federal Court on 16 November 1999 I am satisfied that it can be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

### Map and External Boundaries

#### *Map/s*

At Attachment C the applicant has provided a map showing the external boundaries of the claim area which has a locality diagram and clearly marked grid references.

The map was sourced and produced by the Land Information Centre for the National Native Title Tribunal. The maps shows the boundaries of the five parcels of land described in Schedule B to the application, and provides coordinate points and a scale. In general, details of these land parcels are available on the public record and are sufficient to identify the location of the areas claimed on the surface of the earth.

I am satisfied that the maps submitted with the application meets the requirements of s62(2)(b) as the boundaries of the areas covered by the application can be identified.

#### *Written Description*

Part A, Attachment B to Schedule B describes five separate areas that make up the application claim area (Areas A to E).

The application has identified those areas using geographic coordinates in decimal degrees (latitude and longitude). The description provided gives latitude and longitude commencement points then refers to reference points and direction. The reference points are included in Attachment B. The geographic coordinates are referenced to Australian Geodetic Datum 1984 and are based on the position of spatial referenced data as sourced from the Land Information Centre, Department of Information Management and Technology NSW.

On 20 December 1999 the applicant's representative sent the Registrar a letter confirming that there were two typographic errors contained in the description of the external boundaries. These errors related to the descriptions in relation to Areas D and E. The letter acknowledged that the description for Area D in the amended application states:

*“Commences at 153.397497 east Longitude and 29.112403 south Latitude, the boundary traverses north, east and south through points 2578 to 2617 back to the commencement point.”*

The description for Area D should have read as follows:

*“Commences at 153.397497 east Longitude and 29.112403 south Latitude, the boundary traverses **west, north, east and south** from the commencement point and through points 2578 to 2617 back to the commencement point.”*

The description for Area E in the application form states:

*“Commences at 153.415637 east Longitude and 29.129022 south Latitude, the boundary traverses north, west, generally south easterly and south westerly through points 2413 to 2562 back to the commencement point.”*

The letter states that the description for Area E should have stated as follows:

*“Commences at 153.415637 east Longitude and 29.129022 south Latitude, the boundary traverses north, west, **north**, generally south easterly and south westerly through ...”*

I am satisfied that these errors in the description are minor typographic errors and the written description of the external boundaries has been sufficiently clarified by the letter of the applicant’s representatives dated 20 December 1999. This clarified external boundary description is also consistent with the external boundary depicted on the map filed with the application.

#### *Internal Boundaries*

At Part B, Attachment B to Schedule B the applicant has provided information identifying the internal boundaries of the claimed area by way of a formula that excludes a variety of tenure classes from the claim area. The applicant states:

“1. Subject to paragraph 3 below, the area covered by the application excludes any land and waters covered by:

- a) a scheduled interest;
  - b) a freehold estate;
  - c) a commercial lease that is neither an agriculture lease nor a pastoral lease;
  - d) an exclusive agricultural lease or an exclusive pastoral lease;
  - e) a residential lease;
  - f) a community purpose lease;
  - g) a lease dissected from a mining lease and referred to in section 23B(2)(vii) of the Native Title Act (1993) (C’t);
  - h) any lease (other than a mining lease) that confers a right to exclusive possession over particular land and waters;
  - i) a public road;
- which were validly granted on or before 23<sup>rd</sup> December 1996.

2. Subject to paragraph 3, the area covered by the application excludes any area

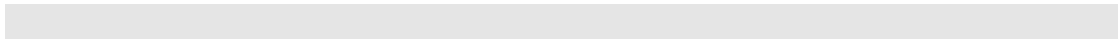
covered by the valid construction or establishment of any public works, where the construction or establishment of the public work commenced on or before 23<sup>rd</sup> December 1996.

3. Where the act specified in paragraphs 1 and 2 falls within the provisions of:
- a) Section 23B(9) (exclusion of acts benefiting Aboriginal people or Torres Strait Islanders);
  - b) Section 23B(9A) (establishment of a National Park or State park);
  - c) Section 23B(9B) (acts where legislation provides for non-extinguishment);
  - d) Section 23B(9C) (exclusion of crown to crown grants); and
  - e) Section 23B(10) (exclusion by regulation)
- the area covered by the act is not excluded from the application.
4. All other areas in which native title has been extinguished are to be excluded.”

The description of areas excluded can be objectively applied to establish whether any particular area of land or waters within the external boundary of the application is within the claim area or not. This may require considerable research of tenure data held by the particular custodian of that data, but nevertheless it is reasonable to expect that the task can be done on the basis of the information provided by the applicant. I consider that the description provides a reasonable level of certainty.

Taken together, I am satisfied that the maps, written descriptions and additional information provided are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land and waters.

The application passes this condition.



<b>190B3</b>	<p><i>Identification of the native title claim group:</i> <i>The Registrar must be satisfied that:</i></p> <ul style="list-style-type: none"><li><i>(a) The persons in the native title claim group are named in the application; or</i></li><li><i>(b) The persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.</i></li></ul>
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## Reasons for the Decision

Attachment A provides a list of named persons in the native title claim group, which, in my view, clearly satisfies the condition.



<b>190B4</b>	<p><b>Identification of claimed native title</b>  <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

Paragraphs 1 and 2 of Attachment E identify 23 itemised native title rights and interests claimed by the applicant. Paragraphs 3, 4 and 5 qualify those rights and interests claimed.

The description provided is more than an assertion and it qualifies the exclusivity of rights and interests asserted by reference to areas covered by previous non-exclusive possession acts and other acts which extinguish such rights by operation of law.

In addition, I note that the applicants have sought to limit the claimed native title rights and interests. Essentially, the limitation qualifies the applicants' claim to occupy and enjoy the land, and waters, subject to the valid laws of the State of New South Wales and the Commonwealth of Australia and any validly granted rights and interests conferred upon non-native title holders.

The claimed rights and interests are further qualified by Schedules P and Q.

I am satisfied that all of the claimed native title rights and interests listed can be readily identified from the description provided.

The application **passes** the condition.

<b>190B5</b>	<p><b>Sufficient factual basis:</b>  <i>The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:</i></p> <ul style="list-style-type: none"> <li><i>(a) that the native title claim group have, and the predecessors of those persons had, an association with the area;</i></li> <li><i>(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;</i></li> <li><i>(c) that the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.</i></li> </ul>
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## Reasons for the Decision

There are three criteria to consider in determining over all whether or not I am satisfied that there is a sufficient factual basis to support the applicants' assertion about the existence of the native title rights and interests listed at Schedule E of this application.

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

To be satisfied under this criterion, it must be evident that the association with the area is and was communal, that is, shared by a number of members of the native title claim group.

At Attachment F (1)(c)-(f) the applicant states

- (a) native title claim group are the descendants in accordance with Bandjalong law and custom of the Aboriginal community which had rights and interests in relation to the Bandjalong area prior to European arrival.
- (b) From prior to the date of European arrival to the present day, the native title claim group and their ancestors have occupied, been present upon, used and enjoyed the area covered by the application and on other land and water in the Bandjalong area.
- (c) From prior to the date of European arrival to the present day, the native title claim group and their ancestors have lived on or adjacent to the area covered by the application and on other land and water in the Bandjalong area.
- (d) From prior to the date of European arrival to the present day, the native title claim group and their ancestors have traveled (sic) on the area covered by the application and on other land and water in the Bandjalong area.

I am satisfied, having considered the material in Attachment T of the application and the affidavits of the applicant, [names removed] that it is sufficient to evidence a factual basis to support the assertion that the native title claim group have, and the predecessors of those persons had, an association with the claim area.

The application passes the condition.

190B(5)(b) – that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests.

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 claim to native title rights and interests.

Attachment F (1) states:

- (a) Prior to European arrival on the 7<sup>th</sup> February, 1788, an Aboriginal community had rights and interests in relation to the Bandjalong area, which rights and interests were possessed under the laws acknowledged, and the customs observed, by them.
- (b) That the native title claim group are the descendants of the Bandjalong people which holds these rights and interests.

Other relevant evidence provided by the applicant in Attachment F includes that the native title claim group and their ancestors:

- have travelled on the area covered by the application and on other land and water in the Bandjalong area

- have hunted and prepared animals on the area covered by the application and on other land and water in the Bandjalang area
- gathered plants on the area covered by the application and on other land and water in the Bandjalang area
- have taken and collected timber and bark on the area covered by the application and on other land and water in the Bandjalang area
- collected clays, stones and minerals on the area covered by the application and on other land and water in the Bandjalang area
- have managed the natural resources on the area covered by the application and on other land and water in the Bandjalang area
- have carried out traditional ceremonies and activities on the area covered by the application and on other land and water in the Bandjalang area
- have enjoyed free access to the area covered by the application and on other land and water in the Bandjalang area
- have the right to speak for the area covered by the application and on other land and water in the Bandjalang area
- consider themselves to collectively be the owners of all land and waters of the Bandjalang area, which area includes the area covered by the application and adjacent areas, and pursuant to their ownership of such land and waters, entitled as of right to exercise the rights and interests, and carry out the activities identified in foregoing paragraphs
- in accordance with the system of rules observed by them, considered themselves the owners of the Bandjalang country (which country includes the area covered by the application and on other land and water in the Bandjalang area)
- it is a traditional law and custom of the native title claim group to be present on, occupy, use and enjoy the Bandjalang area (including the area covered by the application and adjacent area)

Further information provided by the applicant in Attachment T demonstrates that a body of traditional laws and customs exists, and were passed to him by Bandjalang Elders and extended family members through traditional initiation [paras 26 and 27] and traditional teaching [paras 11, 26 and 28]. The applicant describes hunting and fishing and collecting other ‘bush tucker’ and his knowledge of what animals were allowed to be killed and why based on traditional rights and customs [paras 28, 32, 34 and 35]. The applicant also describes visiting and being taught about sacred sites and their significance [paras 19, 20, 29 & 30]. The applicant also describes the management of natural resources and trading [para 33].

The applicant states at Paragraph 2 Attachment M that cultural knowledge is passed on to children of the claim group and other Aboriginal children from the broader Bandjalang nation.

Additional supporting affidavits have been provided by [name and identifying information removed] Bandjalang person and [name and identifying information removed], both member of the native title claim group, and [name removed], a consultant anthropologist.

Attachments F, M and T are evidence of the existence of a body of traditional laws and customs observed by the native title claim group. Read together, they identify a system

of rules and beliefs adhered to by members of the native title claim group.

I am satisfied that there is a sufficient factual basis to support the assertion that there exist traditional laws acknowledged by, and traditional customs observed by the native title claim group that give rise to the native title rights and interests claimed.

The application passes this condition.

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

Under this criterion, I must be satisfied that the native title claim group continues to hold native title in accordance with their traditional laws and customs.

Attachment F(1)(s) states:

In the present day, Lawrence, [names removed] maintain their language as well as hunt, fish, gather, walk and camp on the area of the claim and adjacent areas in Bandjalang country, as do many other members of the native title claim group.

Attachment M(1) restates Attachment F(1)(s). Attachment M(2) gives examples of traditional physical connection with any of the land or waters covered by the application by any member of the native title claim group. It states:

For example, [names removed] regularly;

- (a) hunt for kangaroo, carpet snake and echidna;
- (b) fish for catfish, snapper, bream, cod, flathead, mullet, tailor perch, eels, crayfish, sand crabs and turtle;
- (c) collect bush foods such as pippies, mussels, oysters, cobra worm, wild bush lemons, berries, bush limes, witchetty grub, wild honey, swan eggs, wild duck and ibis;
- (d) pass on cultural knowledge to children of the claim group and other Aboriginal children from the broader Bandjalang nation;
- (e) conduct story telling sessions of cultural information from respected Elders;
- (f) conducts cultural tours for schools (primary and secondary) and National Parks discovery ranger tours;
- (g) make regular visit to cultural sites and areas;
- (h) collect ochres and bark for artwork and participates in traditional painting; and
- (i) collect materials to make clap sticks, boomerangs, spears and coolamans.

The authorisation process conducted by the Elders of the Bandjalang people is further evidence of the native title claim group continuing to hold native title in accordance with traditional laws and customs.

Further, at Schedule G, the applicant provides a list of activities carried out by the Bandjalang people on their traditional lands:

- Visitation and maintenance of cultural sites by Elders and other Bandjalang members
- Residing and camping on land
- Traditional hunting and fishing; and use of available resources on the land in what ever ways service livelihood and trade
- Cultural heritage work to maintain sites of significance

- Education of younger members of the native title group in ways of Bandjalang culture
- Fossicking
- Traditional ceremonies
- Naming of sites and places
- Telling stories and singing songs in relation to sites and places
- Telling of stories of own, parents and grandparents activities in the area through their lifetimes
- Observation and comments on activities of non-relatives in the area and changes of land form and land use
- Use of medicinal resource material, vegetable and animal.

Additional supporting affidavits have been provided by [names and identifying information removed], both members of the native title claim group, and [name removed], a consultant anthropologist.

Although the individual native title claim group members who participate in these activities have not been identified I am of the view that as Bandjalang people, their traditional physical connection with any part of the land or waters covered by the application is evidenced by the activities listed.

On the basis of this and the reasons outlined above in relation to paragraphs 190B(5)(a) and (b) I am satisfied that the information provided by the applicant at Schedule G, Attachments F, M and T is evidence of a sufficient factual basis to support the assertion that the native title claim group have continued to hold the native title in accordance with their traditional laws and customs.

The application passes this condition

<b>190B6</b>	<p><i>Prima facie case:</i></p> <p><b><i>The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.</i></b></p>
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## Reasons for the Decision

In considering this condition I have had particular regard to the affidavits and material provided at Attachments F, M, R and T.

Those attachments and affidavit provide sufficient material and information to satisfy me on a prima facie basis that **most** of the native title rights and interests claimed by the applicants at Attachment E to Schedule E of the application can be established.

The attachments and the affidavits have provided me with specific evidence addressing each of the native title rights and interests as follows:

1(a) the right to possess, occupy, use and enjoy the claim area to the exclusion of all others, subject to:

- i. the valid laws of the State of New South Wales and the Commonwealth of Australia; and
- ii. any valid rights and interests conferred upon non-native title holders, or the subject of an agreement made under the Native Title Act 1993 (C'th), or by the principles of Aboriginal law and custom.

Attachment T paras 1-4, 19, 20 and 28.

Affidavit of :

[name removed]; paras 3,5,10.

1(b) the right to have access to, and use of the natural resources of the claim area including the right to:

- i. maintain and make use of the claim area;
- ii. to conserve the natural resources of the claim area;
- iii. safeguard the claim area and the natural resources of the claim area for the benefit of native title holders;
- iv. manage the claim area for the benefit of native title holders;
- v. use the claim area and the natural resources for social, cultural, economic, religious, spiritual, customary and traditional purposes;

Attachment F (1)(e-q) and (s), Attachment M(1) and (2), Attachment T paras 10, 19-21, 26-35, Affidavit of [name removed]; paras 3,5,10 and the affidavit of [name removed].

1(c) reside on, camp on, and travel across the claim area, subject to regional customary lawful expectations and protocols

Attachment F (1)(e-f), (m-q) and (s), Attachment M(1) and (2) and Attachment T paras 10, 19-23, 28-33.

1(d) exercise rights of use and disposal over the natural resources, including the right to confer use of those natural resources upon non-native title holders

See my comments provided at 1(b).

1(e) exercise and carry out economic life on the claim area, including the creation, growing, production, husbandry, harvesting, and exchange of natural resources, and that which is produced by the exercise of the native title rights and interests

See my comments provided at 1(b).

1(f) discharge cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities on, in relation to and concerning the claim area and its welfare; and, including to:

- i. preserve sites of significance to the native title holder, and other Aboriginal people on the claim area;

- ii. conduct secular, ritual and cultural activities on the claim area;
  - iii. conduct burials on the claim area;
- Note: I find no evidence that the applicants currently exercise this right.**
- iv. determine, give effect to, pass on, and expand the knowledge and appreciation of the culture and traditions;
  - v. regard the claim areas as part of the inalienable affiliation of the native title holder to the claim area;
  - vi. maintain the cosmological relationship, beliefs, practices and institutions through proper and appropriate custodianship of the claim area, and special and sacred sites to ensure the continued vitality of culture, and the well-being of native title holders;
  - vii. inherit or dispose of native title rights and interests in relation to the claim area in accordance with custom and traditions;
  - viii. determine who are the native title holders
  - ix. resolve disputes between the native title holders and other Aboriginal persons in relation to the claim area;

Applicant's affidavit, Attachment F (1)(d-q) and (s), Attachment M(1) and (2) and Attachment T paras 3, 4, 7, 9-11, 19-21, 26-35, Affidavit of [name removed]; paras 3,5,10 and the affidavit of [name removed].

The applicant has acknowledged that the native title rights and interests claimed are generally restricted as detailed in my reasons in respect of s190B(4) and s190B(9). The application passes the condition.

<b>190B7</b>	<p><b><i>Traditional physical connection:</i></b></p> <p><b><i>The Registrar must be satisfied that at least one member of the native title claim group:</i></b></p> <ul style="list-style-type: none"> <li><b><i>(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or</i></b></li> <li><b><i>(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></b> <ul style="list-style-type: none"> <li><b><i>(i) the Crown in any capacity; or</i></b></li> <li><b><i>(ii) a statutory authority of the Crown in any capacity; or</i></b></li> <li><b><i>(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.</i></b></li> </ul> </li> </ul>
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## Reasons for the Decision

Under s 190B(7)(a) I must 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.

Attachment F(1)(o-p) the applicant states:

(o) The native title claim group considers themselves to collectively be the owners of all land and waters of the Bandjalong area, which area includes the area covered by the application and adjacent areas, and pursuant to their ownership of such land and waters, entitled as of right to exercise the rights and interests, and carry out the activities identified in foregoing paragraphs.

(p) At all times since the date of European arrival, the Bandjalong people and their ancestors have, in accordance with the system of rules observed by them, considered themselves the owners of the Bandjalong country (which country includes the area covered by the application and on other land and water in the Bandjalong area).

(q) It is a traditional law and custom of the native title claim group to be present on, occupy, use and enjoy the Bandjalong area (including the area covered by the application and adjacent area).

Activities in exercise of native title rights and interests and traditional physical connection.

1(s) In the present day, Lawrence, [names removed] maintain their language as well as hunt, fish, gather, walk and camp on the area of the claim and adjacent areas in Bandjalong country, as do many other members of the native title claim group.

Attachment M (1 ) repeats Attachment F (1)(s). Attachment M (2), as discussed at s190B(5)(c), provides further examples of traditional physical connection with the land or waters covered by the application by a member of the native title claim group.

Schedule G provides a list of activities carried out by the Bandjalong people on their traditional lands:

- Visitation and maintenance of cultural sites by Elders and other Bandjalong members
- Residing and camping on land
- Traditional hunting and fishing; and use of available resources on the land in what ever ways service livelihood and trade
- Cultural heritage work to maintain sites of significance
- Education of younger members of the native title group in ways of Bandjalong culture
- Fossicking
- Traditional ceremonies
- Naming of sites and places
- Telling stories and singing songs in relation to sites and places
- Telling of stories of own, parents and grandparents activities in the area through their lifetimes
- Observation and comments on activities of non-relatives in the area and changes of land form and land use
- Use of medicinal resource material, vegetable and animal.

In the statutory declaration provided at Attachment T the applicant states his address is

within the native title claim area. He states he was also born in the claim area (para 1). I substantially rely on the confidential information provided by the applicant in Attachment T. The evidence provided in the attachments has already been outlined above in relation to the requirements of s190B(5). I will rely on those particulars without repeating them here.

The State submission, dated 22 December 1998 states there is no evidence provided in this application on which the Registrar can be satisfied that at least one member of the native title claim group has the requisite connection in accordance with s190B(7)(a) and (b). The application has been amended several times since the date of the State's submission.

On the basis of the information provided at Schedule G, Attachments F, M and T of the application I am satisfied that at least one member of the native title claim group currently has and/or previously had a traditional physical connection with part of the land or waters covered by the application.

The application passes this condition

<b>190B8</b>	<p><b><i>No failure to comply with s61A:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of s61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.</i></b></p>
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## Reasons for the Decision

For the reasons that follow I have formed the conclusion that there has been compliance with s61A and that the provisions of this section are met.

### s61A(1) – Native Title Determination

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

### S61A(2) – Previous Exclusive Possession Acts

Attachment B confirms that the application does not include any lands and waters subject to a previous exclusive possession act as defined under s.23B of the *Native Title Act 1993* – save where the Act allows those lands to be part of a native title determination application.

This exclusion clause meets the requirement of this subsection.

### S61A(3) – Previous Non-Exclusive Possession Acts

Attachment E confirms that the application does not include a claim for exclusive

possession over previous non-exclusive possession act areas as defined under s.23F of the *Native Title Act 1993* – save where the Act and/or common law allows such a claim to be part of a native title determination application.

Attachment B includes a general clause excluding from the claim all other areas in which native title has been extinguished.

The application passes this condition.



<b>190B9</b> <b>(a)</b>	<p><b><i>Ownership of minerals, petroleum or gas wholly owned by the Crown:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(a) to the extent that the native title rights and interests claimed consist or include ownership of minerals, petroleum or gas - the Crown in right of the Commonwealth, a State or Territory wholly owns the minerals, petroleum or gas;</i></b></p>
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## Reasons for the Decision

This section clearly states it's requirement – the application must not disclose, and I must not otherwise be aware, that there is any native title right or interest claimed in this application which either consists of or includes a claim to ownership over minerals, petroleum or gas wholly owned by the Crown in right of the Commonwealth, a State or Territory.

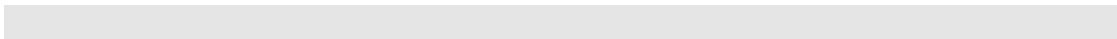
Schedule Q of the application states that the applicant does not make any claim to ownership of minerals, petroleum or gas wholly owned by the Crown.

This is restated at Attachment E (5) which says:

Native Title rights and interests are not claimed in respect of:

(b) Any minerals, petroleum or gas which was wholly owned by the Crown.

The application passes this condition.



<b>190B9</b> <b>(b)</b>	<p><b><i>Exclusive possession of an offshore place:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place - those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place;</i></b></p>
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## Reasons for the Decision

Attachment E paras 1(a) and 2 claim the native title rights and interests in relation to the land and waters covered by the application to the exclusion of all others. These native title rights and interests are stated subject to certain exclusions as discussed at s190B(4).

Schedule P states:

The application does not claim exclusive rights and interests of all or part of an offshore place.

The State submission says “In relation to the sea exclusive possession of the sea is claimed and as this is a non-exclusive possession area the registrar’s attention is drawn to the Croker Island case.

As Schedule P clearly states the application does not claim exclusive rights and interests of all or part of an offshore place in my view I do not need to consider the Croker Island case.

The application passes this condition

<b>190B9</b> <b>(c)</b>	<p><b><i>Other extinguishment:</i></b></p> <p><b><i>The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:</i></b></p> <p><b><i>(c) in any case - the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).</i></b></p>
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## Reasons for the Decision

The State submission asserts “that there is at least one area claimed which has been granted or subject to a grant in freehold to the Tweed/Byron Local Aboriginal Land Council pursuant to the New South Wales Aboriginal Land Rights Act.”

Attachment B para 4 of the application includes a general exclusion of native title rights and interests such that “All other areas in which native title has been extinguished are to be excluded”.

This general exclusion clause covers any areas that may otherwise have extinguished native title rights and interests, and yet have not been specifically excluded or otherwise removed from the claim area as a result of being listed at Attachment B part B paras 1 and 2.

The Australian Government Solicitor’s submission makes reference to the extinguishing effect of public works in the claimed area. I am satisfied that the exclusions in Attachment B2 apply to exclude these areas from the claimed area.

The application and accompanying documents therefore do not disclose, and I am not aware of, any additional extinguishment of native title rights and interests in the area claimed.

The application passes this condition.

## Decision of Delegate

1. The application IS ACCEPTED for registration pursuant to s190A 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 s190D 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.

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*Simon Nish*  
**DELEGATE**

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*16 February 2000*  
**DATE**