

## Reason

Application Name: Undumbi People  
Application (NNTT) No: QC97/44  
Application (Fed Cr) No:  
  
Region: Queensland  
Date Application Made: 13/10/97  
Date Registration Test: 14/09/99  
Decision made:  
Decision: Not Accepted

### INTRODUCTION

#### Information considered in making the decision

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

- the original application dated 13 October 1997 and amendments to that application, including those contained in the following documents:
  - 28.10.97 Amended Application
  - 17.12.97 Letter from Nall Payne Solicitors
  - 6.5.98 Letter from Nall Payne Solicitors
  - 29.9.98 Facsimile from Nall Payne Solicitors.
- the Tribunal's files for claim QC97/44, including all the Working Files
- other tenure information acquired by the Tribunal in relation to the area covered by this application;
- working files and related materials for native title applications that overlap the area of the application;
- the National Native Title Tribunal Geospatial Database;
- the Register of Native Title Claims;
- 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 the "application" or "amended application" in this decision, unless otherwise stated, refers to the application filed on 13 October 1997 and amended up to 29 September 1998.

#### Brief history of the application

This application was first lodged on behalf of the Undumbi People, on 13th October, 1997. The application was amended on four occasions before 29 September, 1998. From that date leave to amend the application has had to be granted by the Federal Court.

##### *First draft amended application and accompanying documents*

The Tribunal received a letter from Nall Payne solicitors dated 25 June 1999 enclosing the following documents:

- Draft amended application
- Affidavits of [name removed] and [name removed]
- A document referred to as "Confidential Connection Report"
- A diagram referred to as "Undumbi Claimant Group Connections 1999"
- Copies of extracts from various texts referred to "Published references"

- A folder of documents referred to as “Undumbi personal documents”;
- A map referred to as “Undumbi map showing Undumbi boundaries with known site locations”
- A chronological table referred to as “Undumbi time chart”.
- A collection of documents termed *[name removed]* which contains:
  - a copy of the present application;
  - extracts from texts by Langevard and Tindale;
  - a newspaper article dated 27 July 1990 showing a photograph of *[name removed]*;
  - a newspaper article dated 5 December 1997 quoting *[name removed]* discussing evidence in support of the present application;
  - documents relating to another native title application
  - birth, death and marriage certificates relating to various *[name removed]* family members but none of which mention *[name removed]*; and
  - a document describing the *[names removed]* families .

The proposed amended application received on 25th June, 1999 (which I shall refer to as the “first draft amended application”) has not been subsequently filed in the Federal Court of Australia. Accordingly I have not had regard to this document.

I have not been able to consider some of the other documentation received with the first draft amended application, for the reasons that now follow.

Attached to the first draft amended application are standard form affidavits by the proposed applicants, *[names removed]*. Although sworn, those affidavits are appended to and make direct reference to first draft amended application. The first draft amended application changes the current application. Therefore I have had no regard to these affidavits.

The other affidavits of *[names removed]* also provided under cover of letter dated 25 June 1999 were subsequently replaced (see letter dated 6 July 1999 discussed below). The affidavits received on 25 June, 1999 were returned to the applicants’ solicitor on 20 August 1999, as draft only copies of these affidavits. The applicants’ solicitor have not since indicated otherwise or returned these affidavits. Accordingly I have not had regard to those affidavits provided by letter dated 25 June 1999.

I have considered the other documents provided under cover of letter dated 25 June 1999, [pursuant to section 190A(3) or section 11(8) of schedule 5], except where the information contained could constitute an amendment to the application.

For example, I have not had regard to the document referred to as “Undumbi map showing Undumbi boundaries with known site locations”, in so far as it may have been intended to identify the area covered by the application. Such a document would constitute an amendment to the application and would accordingly have to be made in the Federal Court.

To the extent that I may have regard to those other documents, I note the following:

- The documents were provided in support of the first draft amended application, which is different in a number of respects to the application I am considering. It is made by different applicants *[names removed]*, contains different qualifications of the rights and interests claimed to those in the present application, and is made on behalf of a claim group that may be different to that in the present application. In particular I note that the application I am considering is made on behalf of “the Undumbi people”, whereas the draft amended application is made on behalf of “*descendants from [name removed]*’(born approximately 1855) and her children, *[names removed]*”. Where possible however I have assumed that references to the Undumbi people and to Undumbi country are references to the claim group in the current application and to areas covered by the present application.
- The document referred to as a “Confidential Connection Report” is a document that appears to have been prepared by “Ann Whalin & Associates, Cultural Heritage Consultants”. The document is unsigned and no details of the author’s area of expertise are provided. However I note that *[name removed]* and *[name removed]* each swear in their affidavits dated 6 July 1999 (referred to below) to the accuracy of the information in the report.
- The document referred to as “Undumbi Claimant Group Connections” is a diagram depicting the descendants of *[name removed]*. While this document may have been relevant to the first draft amended application, which defines the claim group by reference to the descendants of *[name removed]*, it is of limited relevance to the present application.
- No indication is given as to who prepared the document referred to as the “Undumbi Time Chart”. It may have been prepared by “Ann Whalin & Associates, Cultural Heritage Consultants”. The document is unsigned and no details of the author’s area of expertise are provided.

· The folder referred to as “Undumbi Personal Documents” contains copies of a number of historical documents, relating to members of the Dalton and Lea families. These documents may have been relevant to the first draft amended application which defines the claim group by reference to the descendants of *[name removed]*. However, the present claim group is defined only as the “Undumbi people”. The only persons I can be satisfied are members of the present claim group are *[names removed]*. (I am satisfied they are members of the present claim group for the reasons set out below in relation to s190C(4). I have therefore only had regard to documents relating to those two people. The only documents in the folder relating to *[names removed]* are:

- a document dated 28 January 1942 that refers to *[name removed]*, then aged two years, residing in Caloundra;
- a photograph dated 1951 showing *[name removed]* and others in a boat at Toorbul point.

#### *Second draft amended application and accompanying documents*

The Tribunal received a letter from Nall Payne solicitors dated 6 July 1999 enclosing the following documents:

- Draft amended application
- Affidavit of *[name removed]*
- Affidavit of *[name removed]*
- Further Affidavit of *[name removed]*
- Affidavit of *[name removed]*

The draft amended application referred to above (which I shall refer to as the “second draft amended application”) has not been subsequently filed in the Federal Court of Australia. Accordingly I have not had regard to this document.

Attached to the second draft amended application are standard form affidavits by the proposed applicants, *[names removed]*. Although sworn, those affidavits are appended to and make direct reference to the second draft amended application. The second draft amended application changes the current application. Therefore I have had no regard to these affidavits.

I have considered the other documents provided under cover of letter dated 6th July 1999, [pursuant to section 190A(3) or section 11(8) of schedule 5], except where the information contained could constitute an amendment to the application.

The two affidavits of *[names removed]* respectively, are copies that appear to have been duly sworn. They are not referred to in the letter of 6th July, 1999 as drafts. The applicants’ intention appears to have been to file the documents in the Federal Court of Australia with the amended application. This has not occurred. These affidavits are duly sworn and need not be filed in the Court for me to have regard to them pursuant to section 190A(3) or section 11(8) of schedule within the bounds mentioned above.

I note that the statements in the affidavits are generally made in reference to the second draft amended application, which is different to the present application. For example the second draft amended application is made by different applicants and also contains different qualifications of the rights and interests claimed to those in the present application.

The second draft amended application is also made on behalf of a claim group that may be different to that in the present application. I note that the present application is made on behalf of “the Undumbi people”, whereas the second draft amended application is made on behalf of “*Descendants from [name removed] (born approximately 1855) and her children, [names removed]*”.

Further evidence that the respective claim groups may differ is set out in one of the affidavits of *[name removed]* dated 6 July. At paragraph 8, *[name removed]* states that the claim group in the second draft amended application includes persons who can claim to be Undumbi as well as “other persons who have an interest in the subject of the claim and are therefore also included”.

Where possible however I have assumed that references in the affidavits to the Undumbi people and to Undumbi country are references to the claim group in the present application and to an area which would include at least some of the area covered by the present application.

S190B(2)

Identification of area subject to native title

Not Met

**190B(2)**

*Description of the areas claimed:*

*The Registrar must be satisfied that the information and map contained in the application as required by paragraph 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.*

**Reasons for the Decision**

## External Boundaries:

### Map

There are four maps attached to the application:

1. An area map showing the boundary of the area covered by the application

This map has co-ordinate points and a scale allowing distances and areas to be ascertained. The external boundary of the claim area is drawn by hand and the width of the line varies from fine to thick.

2. Two Blinmaps (maps prepared by the Queensland Department of Natural Resources based on their Basic Land Information Network)

These maps reference one coordinate point and provide details of a "map window position" (containing limited geographical coordinates), nearest locality, as well as the relevant subject parcel description. In some cases additional information is contained on the map to describe the relevant part of the parcel description claimed. Only part of the area claimed is detailed in these maps.

3. A general map defining various townships, roads and a state forest.

This map provides no reference to the claim area.

I have concluded that all these maps, even when combined, do not illustrate the area of land and waters claimed adequately.

However, I have made this decision taking in to account the overall degree of reasonable certainty required under this condition as a whole. In my opinion this has not been met for the reasons detailed below and poor map production adds to the uncertainty about the full extent of the area claimed. In this case the cause of the uncertainty could be easily rectified when further amended.

I am not satisfied that these maps meet the requirements of s.62(2)(b) as the external boundaries of the areas covered by the application cannot be clearly identified from the maps.

### External Boundary

Attachment A6 of the application contains a written description of the claim area. This description was amended on 6th May, 1998 and 2 September, 1998. The description makes reference to railway lines, boundaries of road reserves and the like. In my view this is in sufficient to meet the requirements of this condition.

In particular, I note that the following phrases do not provide a sufficiently certain description of the area covered by the application:

- "the southernmost point of Teewah Beach"
- "a point which is the most western point of Esplanade Road"
- "thereafter in accordance with the boundary marked on BLIN Map SM No 9545 – 33412"
- "along the northern boundary of the road reserve of the Caboolture Bribie island Road to the end of that road at the town of Woorin on Bribie island and then in accordance with the boundary marked on BLIN Map SM No 9543 – 41241 and then to the point which is 27'3", 153'13"E".

I am not satisfied that the physical description of the external boundaries, together with the map, meet with the requirements of s62(2)(a)(i) as they do not provide information which enables the external boundary of the area covered by the application to be identified.

## Internal boundaries:

The internal boundaries are described on a page of the application headed "A6/5 Description of Land Tenure Included In Area".

The areas covered by the application are stated to be "All land and waters (including rivers and creeks) within the following tenures" and thereafter are listed seven categories of land or waters.

Particularising specific land tenure within the area of the application by way of class may amount to sufficient information by which to adequately identify internal boundaries of the relevant area. While such a formula may require considerable research of tenure data held by the State of Queensland, it is nevertheless reasonable to expect that the task can be carried out provided that the classes of land identified in the application are sufficiently certain.

I am not satisfied that all of the classes identified are sufficiently certain. In particular, I note clause (iv) is simply described as "Reserves being:- camping; conservation, drainage, environment; foreshore; nature; and wildlife reserves (1ha or more)". Given the extent of the area covered by the application, there are likely to be many areas within the claim area which may or may not fall within that phrase depending which of the many possible interpretations of each of category is adopted.

## Conclusion

I am not satisfied that the information and maps provided by the applicants are sufficient for it to be said with reasonable certainty that the

S190B(3)

Identification of native title claim groups

Not Met

190B(3)

*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 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 s.190B(3)(a) have not been met.

In the alternative, s.190B(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.

Sections A3 and A5 of the application describe the claim group. These sections provide that:

*“ The applicants claim to hold native title with all Undumbi people”.*

I am not satisfied that above-stated descriptor constitutes an objective means of verifying the identity of the native title claim group such that it can clearly be ascertained whether any particular person is in the group.

The requirements of s190B(3) are therefore not met.

S190B(4)

Identification of claimed native title

Met

190B(4)

*Identification of claimed native title:*

*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



**S.190B(5)(a)**

Under this criterion I must be satisfied that the native title claim group has, and the predecessors of those persons had, an association with claim area.

[name removed] states in his affidavit at para 3 “*The land and waters covered by the application lie within the Undumbi People’s tradition country over which I have become, as an Undumbi Elder, a Custodian on behalf of traditional owners.*” (Although this statement relates to the area covered by the second draft amended application some of the area in that application would also fall within the area of the present application). He also states at para 16 “*I have visited a number of burial sites and other important cultural sites within Undumbi country.*”

The Connection report provides various references to the association over a period of time of Undumbi people with an area that would include the area of the present claim at p7 para 2, p9 para 2, 3 and 4, p10 at para 2 and 3.

I have been provided with a letter from the Gubbi Gubbi Land and Cultural Association Inc. This letters states an objection to the registration of the present application as:

“*We are the traditional owners of the area under claim*”, “*Our research indicates that one of the claimants has an HISTORICAL association with part of the area, but this is all*” and “*We are concerned that people from another area are seeking to claim our land*”.

The information in the Connection report, in my view, provides substantive information about the association of the claimant group with the relevant area. I find this information on balance far more compelling than the above expressed objection which is not supported by any other information. I note that at p11 of the Connection report it states “*the present day Undumbi people have decided to use the name Undumbi to demonstrate clearly their difference from all other Gubbi groups. This is not to say they are not part of the larger Gubbi linguistic group*”

Based on the material before me, I am satisfied that the requirements of s.190B(5)(a) have been met.

**s.190B(5)(b)**

Under this criterion, I must 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 claim group rights and interests.

[name removed] states in his affidavit:

- “*The land and waters covered by the application lie within the Undumbi People’s tradition country over which I have become, as Undumbi Elder, a Custodian on behalf of traditional owners*”(at para 3)
- “*I have visited a number of burial sites and other important cultural sites within Undumbi country*” (at para 16);
- “*from my discussions with Undumbi clan members regarding the cultural heritage work and the native title process I have been informed that members of the native title claim group have received knowledge of Undumbi lore and custom from great-grand parents, grand parents and parents relating to the hunting and preparation of bush foods, such as emu, kangaroo, goanna, porcupine, berries, fish turtle, dugong from Undumbi country as food supplements. These bush foods are also used for other traditional and customary purposes such as medicines*” (at para 13)
- “*My mother passed on to me and my family the knowledge about the spirits, burial sites, story places, language and Aboriginal custom. I learned from my mother that my totem on my father’s side, the Undumbi, was the Dolphin and my bird was the Curlew*” (at para 16).

The Connection Report also provides various references to the traditional laws and customs of the Undumbi people.

I am satisfied on the above information 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 claim

I am therefore satisfied that the requirements of s.190B(5)(b) have been met.

**s.190B(5)(c)**

As outlined above, I am satisfied that traditional laws and customs exist which give rise to the claim to native title rights and interests by the native title claim group. Section 190B(5)(c) requires that the claim group have continued to hold native title in accordance with those traditional laws and customs.

On the basis of my reasons outlined above in relation to ss.190B(5)(a) & (b), I am satisfied that the connection report and affidavit of [name removed] dated 6 July 1999 evidence 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.

S190B(6)

Prima facie case

190B(6)

*Prima facie case:*

*The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.*

### Reasons for the Decision

'Native title rights and interests' are defined at s.233 of the Act. This definition specifically attaches native title rights and interests to land and water, and in summary requires:

- the rights and interests to be linked to traditional laws and customs;
- those claiming rights and interests to have a connection with the relevant land and waters; and
- those rights and interests to be recognised under the common law of Australia.

Under s.190B(6) I must consider that, prima facie, at least some of the rights and interests claimed 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: first sight; on the face of it; as it appears at first sight without investigation." [Citing Oxford English Dictionary (2nd ed 1989)."*

I have adopted the ordinary meaning referred to by their Honours in considering this application.

In deciding which native title rights and interests claimed can prima facie be established, I am able to rely upon the information contained in the following:

- the Connection Report; and
- the Affidavit of [name removed] dated 6 July 1999

The Connection report was provided to the Tribunal on a *confidential* basis for the purposes of the registration test.

I consider that a number of the native title rights and interests claimed in the application can, prima facie, be established. I do not propose detail my considerations in that regard however, as details of these rights are only of relevance when a claim is accepted for registration. My reasons to date establish that this will not be the consequence of this decision.

A more detailed consideration of the rights and interest sought will be made should the application be amended with a view to complying with the conditions with s190B and 190C.

S190B(7)

Physical connection

Met

190B(7)

*Traditional physical connection:*

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

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

### Reasons for the Decision

Under s.190B(7)(a) I must be satisfied that at least one member of the native title claim group has or previously had a traditional physical connection with any part of the land or waters covered by the application.

The affidavit of [name removed] dated 6 July 1999 states that he is an Undumbi person (para 1) and that he has visited a number of burial sites and other important cultural sites within Undumbi country". The connection report details at p18 – 23 additional information which indicates that the Undumbi people are taking active steps to continue traditional practices and also engage in co-operative land management with local authorities in order to protect their traditions and areas of cultural significance.

Accordingly, 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 any part of the land or waters covered by the application.

S190B(8)

No failure to comply with section 61A

Not Met

190B(8)

*No failure to comply with s61A:*

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

On review of the applications and supporting affidavits and material and the Tribunal's relevant files, I have formed the conclusion that the has not been compliance with s.61A and the provisions of this section are not met.

#### **s.61A(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 by the application.

#### **s.61A(2) – Previous Exclusive Possession Acts**

The application includes areas by reference to various classes identified (though without sufficient certainty) in attachment A6/5. The application does not exclude any areas except in so far as attachment 9, in reference to the rights and interests claimed, states that:

- to the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicant accept same;
- exclusive possession is not claimed over areas where lawful abridgement or regulation has not affected the rights of native title holders;
- the native title rights and interests claimed “are not claimed in respect of freehold, leasehold or other alienated Crown land unless it included in the description of land tenure within the (sic) area as set out in this Application”.

The affidavit of [name removed], although referring to the area claimed in the second draft amended application, states (para 7):

“The areas claimed do not cover any land on which an exclusive possession act was done with the possible exception of the land freehold respect of and owned by the City of Caloundra”.

In direct contradiction to this statement [name removed] then states “This land is not the subject of the claim”.

I am not satisfied that these statements, without more, are sufficient to exclude from the claim area previous exclusive possession acts as defined in s.23B of the Act.

#### **s.61A(3) – Previous Non-Exclusive Possession Acts**

I am satisfied that the applicant is not seeking exclusive possession over the areas the subject of previous non-exclusive possession acts. The application qualifies the rights and interests claimed in attachment 9 by stating:

- to the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicant accept same;
- exclusive possession is not claimed over areas where lawful abridgement or regulation has not affected the rights of native title holders;
- these rights and interests “are not claimed in respect of freehold, leasehold or other alienated Crown land unless it is included in the description of land tenure within the (sic) area as set out in this Application”.

#### **s.61A(4) – ss.47,47A,47B**

The applicant does not claim the benefit of ss.47, 47A or 47B..

In view of these matters, I have formed the conclusion that the requirements of S.190B(8) are not met.

S190B(9)

No extinguishment etc. of claimed native title

Not Met

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

**190B(9)**

(a)

*The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*

*(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**

The application claims exclusive possession to the land, water and resources. The application qualifies the rights and interests claimed in attachment 9 by stating:

- to the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicant accept same;
- exclusive possession is not claimed over areas where lawful abridgement or regulation has not affected the rights of native title holders
- these rights and interests “are not claimed in respect of freehold, leasehold or other alienated Crown land unless it is included in the description of land tenure within the (sic) area as set out in this Application”.

The application does not expressly provide that the native title claim group does not claim ownership of minerals, petroleum or gas which is wholly owned by the Crown. I am not satisfied that these general statements ensure that the application complies with the requirements of s.190B(9)(a).

*Exclusive possession of an offshore place:*

**190B(9)**

(b)

*The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, th*

*(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**

The application does not expressly provide that the native title claim group does not claim exclusive possession of all or part of an offshore place. The application extends in some places some 2 kilometres seaward from the high water mark along the coast.

The application qualifies the rights and interests claimed in attachment 9 by stating:

- to the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicant accept same;
- exclusive possession is not claimed over areas where lawful abridgement or regulation has not affected the rights of native title holders
- these rights and interests “are not claimed in respect of freehold, leasehold or other alienated Crown land unless it is included in the description of land tenure within the (sic) area as set out in this Application”.

I am not satisfied that these general statements ensure that the application complies with the requirements of s190B(9)(b).

- 190B(9)** *Other extinguishment:*
- (c) *The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2).*

### Reasons for the Decision

The application qualifies the rights and interests claimed in attachment 9 by stating:

- to the extent that the State or Commonwealth Governments have lawfully and validly abridged or regulated those rights the applicant accept same;
- exclusive possession is not claimed over areas where lawful abridgement or regulation has not affected the rights of native title holders;
- these rights and interests “are not claimed in respect of freehold, leasehold or other alienated Crown land unless it is included in the description of land tenure within the (sic) area as set out in this Application”.

As I was unable to conclude that the application meets the requirements of 190B(8) with regard to previous exclusive possession acts, I am accordingly unable to be satisfied that the applicant is not seeking to claim native title rights and interests that have otherwise been extinguished.

S190C(2) Information etc required by sections 61 & 62 Not Met

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

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

### Details required in section 61

- 61(3)** **Name and address for service of applicant(s)**

Reasons relating to this sub-condition

The names of the applicants are provided on Page 1 of the application, as [name removed] and [name removed]. The address for service of the applicant is detailed on page 1 of the application. The application passes this condition.

- 61(4)** **Names persons in native title claim group or otherwise describes the persons so that it can be ascertained whether any particular person is one of those persons**

Reasons relating to this sub-condition

The native title claim group is described in parts A3 and A5 of the application. In my view the description of the claim group is not sufficient for it to be ascertained whether any particular person is one of those persons. I have reached this view for the reasons contained in my decision at s.190B(3).

**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

**Details required in section 62(1)(a) and (c)**

The application is not in the form required by s.61(5)(a), being the form prescribed by Regulation 5(1)(a) of the *Native Title (Federal Court) Regulations 1998*.

As required by s.61(5)(b), the application was filed in the Federal Court.

The application does not meet the requirements of s.61(5)(c). It does not contain all information prescribed in s.62. I refer to my reasons below in relation to those sections.

As required by s.61(5)(d), the application must be accompanied by the affidavit prescribed by s.62(1)(a) and a map as prescribed by s.62(2)(b). The application contains neither a map nor affidavit that satisfies these requirements. I refer to my reasons below in relation to those sections.

I note that s.190C(2) 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 not been met.

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

Reasons relating to this sub-condition

The applicants have each sworn an affidavit dated 11 October 1997 accompanying the application. The person who witnessed the affidavit is a solicitor and therefore competent as a witness.

The affidavits contain statements addressing each of the matters in s.62(1)(a)(i) – (iii).

However, these affidavits do not contain a statement addressing the matter in s.62(1)(a)(iv). Nor do they set out, as required by s.62(1)(a)(v), the basis upon which the applicant is authorised.

For the reasons outlined earlier, I have not had regard to the first and second draft amended applications and standard form affidavits forming part of those draft amended applications.

I have considered the affidavits of *[name removed]* and *[name removed]* provided under cover of letter dated 6 July 1999. I do not consider these affidavits satisfy the requirements of s.62(1). Specifically:

- the affidavits have not been filed in the Federal Court.

- the affidavits do not contain the information required by section 62(1)(a). *[name removed]* makes a number of statements (paragraph 17) in terms similar to section 62(1). However, it is not expressed to have been made on behalf of both applicants, the statement in section 17(i) does not satisfy the requirement in section 62(1)(a)(ii) and the affidavit is sworn in anticipation of an amended application being filed.

For these reasons, I am not satisfied that there exists an affidavit satisfactorily addressing the matters required by s.62(1)(a).

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

Comment on details provided

No details of the traditional connection of any member of the native title claim group is provided in the 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 below which led me to conclude that the requirements of s.190B(2) have been not met, I am not satisfied that the application contains information that enables the boundaries of the area covered by the application to be identified.

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

Reasons relating to this sub-condition

For the reasons below which led me to conclude that the requirements of s.190B(2) have not been met, I am not satisfied that the application contains information that enables any areas within the external boundaries of the claim area which are not covered by the application to be identified.

**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 below in regard to the requirements of s.190B(2), I am not satisfied that application contains a map that shows the boundaries of the area covered by the application.

**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 requirements of s.62(2)(c) can be read widely to include all searches conducted by any person or body. However, I am of the view that 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 the applicant to have knowledge of, and obtain details about all searches carried out by every other person or body.

The application states in section A8 that "Title searches will be conducted and submitted with the application at a later date".

I am satisfied that the applicant has complied with the requirements of this condition.

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

Reasons relating to this sub-condition

A description of the native title rights and interests claimed by the applicant is contained in Attachment A9 of the application.

For the reasons outlined below in relation to s.190B(4) I consider the description satisfies the requirements of s62(2)(d).

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

Reasons relating to this sub-condition

The application does not contain a statement to the effect that

*“The native title claim group asserts that the native title rights and interests claimed exist by reason that:*

*(a) The native title claim group has and the predecessors of those persons had, an association with the area...”*

Nor does the application contain any description of the factual basis for such an assertion. The Connection Report and affidavit of [name removed] refer to the association of the Undumbi people with areas that fall within the claim area covered by the present application. However, this section has mandatory requirements [s62(1)(b)] and failure to make any reference to the factual basis relied upon in the application does not meet the mandatory requirements.

Requirements are not met.

**62(2)(e)(ii) Factual basis – traditional laws and customs exist that give rise to the claimed native title**

Reasons relating to this sub-condition

The amended application does not contain a statement to the effect that:

*“The native title claim group asserts that the native title rights and interests claimed exist by reason that:...*

*(b) 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;...”*

Nor does the application contain any description of the factual basis for such an assertion. The Connection Report and affidavit of [name removed] refer to the association of the Undumbi people with areas that fall within the claim area covered by the present application. However, this section has mandatory requirements [s62(1)(b)] and failure to make any reference to the factual basis relied upon in the application does not meet the mandatory requirements.

Requirements are not met.

**62(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

The amended application does not contain a statement to the effect that:

*“The native title claim group asserts that the native title rights and interests claimed exist by reason that:...*

*(c) The native title claim group have continued to hold the native title in accordance with those traditional laws and customs.”*

Nor does the application contain any description of the factual basis for such an assertion. The Connection Report and affidavit of [name removed] refer to the association of the Undumbi people with areas that fall within the claim area covered by the present application. However, this section has mandatory requirements [s62(1)(b)] and failure to make any reference to the factual basis relied upon in the application does not meet the mandatory requirements.

Requirements are not met.

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

Reasons relating to this sub-condition

The application contains no general details in relation to activities which the native title claim group carries out on the area claimed. There is no requirement to do so.

Consequently, there has been compliance with the requirements of s.62(2)(f)

**62(2)(g) Details of any other applications to the High Court, Federal Court or a recognised State/Territory body the applicant is aware of (and where the application seeks a determination of native title or compensation)**

Reasons relating to this sub-condition

No details are provided in the application that are sufficient to meet the requirements of s.62(2)(g).

**62(2)(h) Details of any S29 Notices (or notices given under a corresponding State/Territory law) in relation to the area and the applicant is aware of**

Reasons relating to this sub-condition

No details are provided in the application that are sufficient to meet the requirements of s.62(2)(h).

I consider that the application fails the conditions contained in s190C(2).

#### **Reasons for the Decision**

For the reasons outlined above, it is my decision that the requirements of s.190C(2) are not met.

S190C(3)

No previous overlapping claim groups

Not Met

*Common claimants in overlapping claims:*

- 190C(3)** *The Registrar must be satisfied that no person included in the native title claim group for the application (the current application) was a member of the native title claim group for any previous application if:*
- (a) the previous application covered the whole or part of the area covered by the current application; and*
  - (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and*
  - (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190C(3).*

**Reasons for the Decision**

A search of the Register of Native Title Claims made on 13th September 1999 revealed that there are two applications identified as overlapping the application, namely:

QG6107/98 Bond #2 (QC96/102)  
QG6128/98 Jinibara People (QC98/45)

The QG6128/98 Jinibara people application has yet to be considered pursuant to s.190A of the Act.

Application QG6107/98 Bond #2 was considered under s190A on 25 June, 1999 and accepted for registration. This application is a previous application for the purposes of this section. It was lodged on 23 October 1996, almost 12 months prior to the Undumbi application.

Section 190C(3) requires that I be satisfied that no person in the current application is also a member of the claim group for Application QG6107/98 Bond #2.

The members of the current claim group are defined only as the "Undumbi people". The members of the claim group for Application QG6107/98 Bond #2 are *[names removed]*, and their descendants.

Given the imprecise definition of the claim group for the current application I cannot be satisfied that there are not some people in the current claim group who are also members of the claim group for Application QG6107/98 Bond #2.

Accordingly, the application fails this condition.

S190C(4)      Identity of claimed native title holders      Not Met

***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***

**190C(4)(a)**

***(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***

**and**

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

***.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:***

***(a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and***

***(c) briefly sets out the grounds on which the Registrar should consider that it has been met.***

**Reasons for the Decision**

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

For the reasons below, I am satisfied the applicants are members of the native title claim group but I am not satisfied that the applicants are authorised to make the application, and deal with matters arising in relation to it, by all the persons in the native title claim group.

The applicant, *[name removed]*, has sworn an affidavit dated 6 July 1999 stating that he is an Undumbi person (paragraph 1). While this may be taken as a reference to membership of the claim group for the second draft amended application, given that *[name removed]* is an applicant in the present application I am prepared to accept the statement as also evidencing his membership of the present claim group.

*[name removed]* affidavit refers to “meetings of Undumbi clan held on 30th January 1999 and the 21st March 1999 when the *[name removed]* family met”. Annexed to the affidavit is a copy of a document showing those present at the meeting on 30 January 1999, which begins:

“Pursuant to a meeting of the Undumbi Land Council Aboriginal Corporation and in accordance with traditional laws and customs adopted by the Undumbi People and recognised associated groups having an interest in the claim area the following persons have agreed that:

I. At a meeting of the Undumbi clan ...”

The document is then signed by some 24 people.

Also annexed to the affidavit is a copy of a document described as the minutes of a meeting on 21 March 1999, and headed *[name removed] Families Meeting*”. Motion 4 is stated to be “that the Undumbi Native Title claim be amended to include the *[name removed]* name to the document”. Motion 5 is stated to be “that *[name removed]* name be added to the amended Undumbi Native Title claim documents as the *[name removed]* family representative”.

Varying descriptions have been used throughout these documents and the affidavit to describe the group that attended these authorisation meetings. Expressions used include “Undumbi clan”, “the *[name removed]* families”, “the Undumbi Land Council Aboriginal Corporation and the “Undumbi people”. There is also reference to amendment of the claim group to include the *[name removed]* family.

The basis upon which *[name removed]* states that he is authorised to make the application is set out in paragraph 17 of his further affidavit sworn on 6 July 1999. He states that he is “authorised by all persons in the Native Title claim group to make the application and deal with matters arising in relation to it”. However, this statement is a reference to the claim group as defined in the second draft amended application of 6 July 1999. I am not satisfied that the group referred to in the second draft amended application is the same as that described in the application under consideration.

The applicant *[name removed]* has also sworn an affidavit dated 6 July 1999. I am satisfied, that he is a member of the claim group. However, for reasons similar to those outlined above, I cannot be satisfied that the persons who may have authorised *[name removed]* as described are the same as those persons referred to as Undumbi people in the application I am considering.

Requirements are not met.