



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD464/2016
NNTT number: WC2016/003

Application Name: Herbert Eagles & Ors and State of Western Australia (Combined Thiin-Mah Wariyangka, Tharrkari, Jiwarli)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 07/10/2016

Current status: Full Approved Determination - 16/04/2019

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Date claim entered on Register of Native Title Claims: 21/10/2016

Registration decision status: Accepted for registration

Registration history: Registered from 21/10/2016 to 24/04/2019,

Date claim / part of claim determined: 16/04/2019

Applicants: Herbert Eagles, Heidi Mippy, Lorraine Monika Dodd, Philomena Dodd, Peter Windie Senior, Wayne Laphorne

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Additional Information

Not applicable

Persons claiming to hold native title:

The descendants of the people who belong to the Thiin Mah, Warriyangka, Tharrkari and Jiwarli ("TMWTJ") language groups, in particular the descendants of the following ancestors:

- (i) Maldurdari and Jiraguru;
- (ii) Balgonyunga and Wurajulba;
- (iii) Yagaraja and Kurmainma;
- (iv) Thaldungu and Jigura;
- (v) Larry Brewer and Nancy Cameron;
- (vi) Togo Griffin and Agnes Barron;
- (vii) Marigold; and
- (viii) Warngarri and Didibirri.

OR

Who are adopted by such biological descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the TMWTJ groups;

AND

Identify themselves as members of the TMWTJ groups under traditional law and custom and are so identified by other native title claimants as members of the TMWTJ groups;

AND

Have a connection with the land and waters in the claim area, in accordance with traditional laws acknowledged and traditional customs observed by the TMWTJ groups.

Native title rights and interests claimed:

"Area A" means land within the application area that is landward of the high water mark and which comprises:

- (i) areas of unallocated Crown land that have not been previously subject to any grant by the Crown;
- (ii) areas to which s.47 of the Act applies;
- (iii) areas to which s.47A of the Act applies;
- (iv) areas to which s.47B of the Act applies; and
- (v) other areas to which the non-extinguishment principle, set out in s. 238 of the Act, applies and in relation to which there has not been any prior extinguishment of native title.

"Area B" means land and waters within the application area that is not included in Area A.

Subject to laws and customs

The native title rights and interests claimed in this application are subject to and exercisable in accordance with:

1. the common law, the laws of the State of Western Australia and the Commonwealth of Australia;
2. valid interests conferred under those laws; and
3. the body of traditional laws and customs of the Aboriginal society under which rights and interests are possessed and by which native title claim groups have a connection to the area of land and waters the subject of this application.

Rights in Area A

The applicant claims the following listed native title rights and interests relating to exclusive possession, subject to any native title rights and interests which may be shared with any other native title claimants, in relation to Area A only:

1. The right to possess, occupy, use and enjoy the area as against the whole world.

Rights in Area B

The applicant claims the following listed native title rights and interests in relation to Area B:

1. a right to hunt in the area;
2. a right to fish in the area;
3. a right to take traditional resources, other than minerals, petroleum and gas from the area;
4. a right to take fauna;
5. a right to occupy the area;
6. a right to use the area;
7. a right to enjoy the area;
8. a right to be present on or within the area;

9. a right to speak for and make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;
10. a right to invite and permit others to have access to and participate in or carry out activities in the area;
11. a right to speak authoritatively about the area among other Aboriginal people in accordance with traditional laws and customs;
12. a right to control access to and use of the area by other Aboriginal people who seek access in accordance with traditional laws and customs;
13. a right of access to the area;
14. a right to live within the area;
15. a right to erect shelters upon or within the area;
16. a right to camp upon or within the area;
17. a right to move about the area;
18. a right to engage in cultural activities within the area;
19. a right to conduct and participate in ceremonies and meetings within the area;
20. a right to conduct burials on the area;
21. a right to visit, care for and maintain places of importance and protect them from physical harm;
22. a right to transmit cultural heritage of the native title claim group related to the area, including knowledge of significant sites and places;
23. a right to take flora (including timber);
24. a right to take soil;
25. a right to take sand;
26. a right to take stone and/or flint;
27. a right to take clay;
28. a right to take gravel;
29. a right to take ochre;
30. a right to have access to water;
31. a right to take water;
32. a right to take shells;
33. a right to trade in shells;
34. a right to manufacture traditional items from the resources of the area;
35. a right to trade in the resources of the area; and
36. a right to maintain, conserve and protect significant places and objects located within the area.

Application Area: **State/Territory:** Western Australia
Brief Location: Pilbara Region
Primary RATSIB Area: Geraldton
Approximate size: 6809.9844 sq km
 (Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: No

Area covered by the claim (as detailed in the application):

Information identifying the boundaries of:

(a) the area covered by the application

The external boundaries of the area of land and waters covered by the application are as set out in the document entitled "Description of External Boundary" which is annexed as **Attachment 'B'**.

(b) any areas within those boundaries that are not covered by the application.

1. Subject to Schedule B paragraph 5, the applicant excludes from the application area any areas that are covered by any of the following acts as these are defined in either the Act, as amended (where the act in question is attributable to the Commonwealth), or *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)*, as amended, (where the act in question is attributable to the State of Western Australia) at the time of the Registrar's consideration:

- (a) Category A past acts;
- (b) Category A intermediate period acts;
- (c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests; and
- (d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.

2. Subject to Schedule B paragraph 5, the applicant excludes from the application area any areas in relation to which:

- (a) a “previous exclusive possession act”, as defined in s.23B of the Act, was done and the act was an act attributable to the Commonwealth; or
(b) a “relevant act” as that term is defined in s.12I of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* was done and the act is attributable to the State of Western Australia; or
(c) a previous exclusive possession act under s.23B(7) of the Act was done in relation to the area and the act was attributable to the State of Western Australia.

3. Subject to Schedule B paragraph 5, the applicant does not claim any native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others over areas in relation to which:

- (a) a “previous non-exclusive possession act” as defined in s.23F of the Act was done and the act was an act attributable to the Commonwealth; or
(b) a “previous non-exclusive possession act” as defined in s.12M of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* was done and the act is an act attributable to the State of Western Australia.

4. Subject to Schedule B paragraph 5, the applicant also excludes from the application area areas in relation to which native title rights and interest have otherwise been wholly extinguished.

5. The application area includes any area in relation to which the non-extinguishment principle (as defined in s.238 of the Act) applies, including any area to which ss 47, 47A and 47B of the Act apply, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L

The applicant does not have details of:

1. any area for which a pastoral lease is held by or on behalf of the members of the native title claim group;
2. any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders and occupied by or on behalf of the members of the native title claim group;
3. any vacant crown land occupied by the members of the native title claim group; and
4. any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by ss 47, 47A or 47B of the Act to be disregarded;

The applicant has not had the opportunity nor do they have the resources to fully obtain or analyze the land tenure status of the whole of the claim area and so must take advice on the tenure history. It is to be noted that the applicant reserves the right to dispute the tenure history as may be provided by the State.

Attachments:

1. Attachment B - External boundary description, 8 pages - A4, 07/10/2016
2. Attachment C - Map of application, 1 page - A4, 07/10/2016

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