



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: NSD6104/1998
NNTT number: NC1998/015

Application Name: Gumbaynggirr People v Attorney General of New South Wales (Gumbaynggirr People)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 03/06/1998

Current status: Full Approved Determination - 16/08/2018

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: 03/06/1998

Registration decision status: Accepted for registration

Registration history: Registered from 3/06/1998 to 19/11/2018,

Date claim / part of claim determined: 16/08/2018

Applicants: Larry Kelly, Christine Witt, Marion Witt, Frances Witt, Richard Pacey

Address(es) for Service: Principal Legal Officer
NTSCORP Limited
Unit 1a, Suite 2.02
44-70 Rosehill Street
Redfern NSW 2016
Phone: (02) 9310 3188

Additional Information

Not applicable

Persons claiming to hold native title:

The Gumbaynggirr People are the native title claim group on whose behalf the Applicant makes this application.

Gumbaynggirr People are described as Aboriginal persons who are:

- (a) the biological descendants of
 - (i) King Ben Bennelong;
 - (ii) Maggie Buchanan and Davy Cowling;
 - (iii) Biddy, the mother of Lavina Duncan (Bina Whaddy);
 - (iv) Fanny Purrapine, the mother of Lily Kelly and Hilda Kelly Robinson;
 - (v) Darby Kelly;
 - (vi) The father of Maggie Kelly's mother Biddy;
 - (vii) William 'Old Bill' Dotti;
 - (viii) John 'Jack' Dotti;
 - (ix) Lucy Flanders;
 - (x) Dave Ballangarry;
 - (xi) Robert Walker and Louise Linwood;
 - (xii) John 'Jack' Long;
 - (xiii) Bridget 'Biddy' Briggs Needam;
 - (xiv) Mary Briggs and Fred Briggs;
 - (xv) Susan, mother of Charles Jarrett Snr;
 - (xvi) Rose Taylor;
 - (xvii) Charles Layton;
 - (xviii) Mick McDougall;
 - (xix) Clara Skinner;
 - (xx) Sylvie Craig;
 - (xxi) Elizabeth 'Kitty' Campbell/Cameron (known as Elizabeth Blakeney);
 - (xxii) Emily Sutton;
 - (xxiii) Fred Hookey;
 - (xxiv) Nobby Neville;
 - (xxv) Mary Jane Ferguson;
 - (xxvi) Billy Lardner Jnr;
 - (xxvii) King Bobby of Oban;
 - (xxviii) The parent of Charlie Whitton and Lucy Larrigo (nee Whitton);
 - (xxix) Walter Smith and Stella Jane Davis;

(xxx) Jane Gard/Maskey; AND

(b) persons who have been adopted into the families of those persons (and the biological descendants of any such adopted persons); AND

(c) persons who have been otherwise incorporated, or who are direct descendants of a person who has been otherwise incorporated, as a member of the Gumbaynggirr People and who identify as and are accepted as a Gumbaynggirr person, in accordance with Gumbaynggirr laws and customs.

Native title rights and interests claimed:

1. Subject to paragraphs 2 to 7 of this Schedule E, the Gumbaynggirr People claim the right to possession, occupation, use and enjoyment of the lands and waters covered by the Application area to the exclusion of all others.

2. Where exclusive native title cannot be recognised in parts of the area covered by the Application, the Gumbaynggirr People claim the following non-exclusive rights and interests, including the right to conduct activities necessary to give effect to them, in relation to those areas:

(a) the right to access, to remain on, traverse and to use those areas;

(b) the right to access natural resources in those areas and to take, use, share and exchange those natural resources for any purpose; and

(c) without limiting the generality of (a) and (b) above:

i. the right to hunt on, and gather natural resources from, those areas;

ii. the right to fish in those areas;

iii. the right to take and use water on those areas;

iv. the right to live on those areas;

v. the right to camp, and for that purpose to erect shelters and other structures, on those areas;

vi. the right to light fires on those areas for domestic purposes;

vii. the right to conduct and to participate in cultural and religious activities, practices and ceremonies, including the conduct of burials, on those areas;

viii. the right to conduct and to participate in meetings on those areas;

ix. the right to teach the physical, cultural and spiritual attributes of places and areas of importance under traditional laws and customs on those areas;

x. the right to maintain and to protect from physical harm or desecration, places and areas of importance or significance under traditional laws and customs on those areas;

xi. the right to share and exchange the natural resources from those areas; and

xii. the right to manage the natural resources of those areas;

- (d) the right to be accompanied onto those areas by persons who, though not native title holders, are:
 - i. spouses, partners or parents of native title holders, together with their children and grandchildren;
 - ii. people required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and
 - iii. people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.
- 3. The native title rights and interests referred to in paragraph 2 do not confer possession, occupation, use or enjoyment of the lands and waters covered by the Application to the exclusion of all others.
- 4. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the laws of the State of New South Wales and the Commonwealth of Australia including the common law;
 - (b) the rights (past or present) conferred upon persons pursuant to the laws of the Commonwealth and the laws of the State of New South Wales; and
 - (c) the traditional laws acknowledged and traditional customs observed by the Gumbaynggirr People.

5. Subject to paragraphs 6, 7 and 8 below:

- (a) If:
 - i. The area covered by the Application or a part of the area covered by the Application is or was the subject of a "Previous Non-Exclusive Possession Act" as defined by Section 23F of the Native Title Act and;
 - ii. The Previous Non-Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above, then,

The native title rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to the rights and interests granted under the Previous Non-Exclusive Possession Act (as provided by Section 23G(1)(a) of the Native Title Act

- (b) If:
 - i. The area covered by the Application or a part of the area covered by the Application is or was the subject of a "Previous Non-Exclusive Possession Act" as defined by Section 23F of the Native Title Act and;
 - ii. The Previous Non-Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above but did not extinguish them; then,

The rights and interests claimed under paragraphs 1 and/or 2 are claimed subject to any suspension of them during the currency of the Previous Non-Exclusive Possession Act (as provided by Section 23G(1)(b)(ii) of the Native Title Act;

- (c) If:
 - i. The area covered by the Application or a part of the area covered by the Application is or was the subject of a "Category B Past Act" as defined by Section 230 of the Native Title Act or a "Category B Intermediate Period Act" as defined by Section 232C of the Native Title Act; and
 - ii. The Category B Past Act or Category B Intermediate Period Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in paragraphs 1 and/or 2 above; and
 - iii. The Category B Past Act or Category B Intermediate Period Act was not a Previous Non-Exclusive Possession Act; then,

Those rights and interests referred to in paragraphs 1 and/or 2 which are not inconsistent with the rights and interests granted under the Category B Past Act or the Category B Intermediate Period Act are claimed;

- (d) If:
 - i. The area covered by the Application of a part of the area covered by the Application is or was the subject of:
 - (1) A "Category C Past Act" as defined by Section 231 of the Native Title Act; or

- (2) A "Category C Intermediate Period Act" as defined by 232D of the Native Title Act; or
 - (3) A "Category D Past Act" as defined by Section 232 of the Native Title Act; or,
 - (4) A "Category D Intermediate Period Act" as defined by Section 232E of the Native Title Act; and,
- ii. The Category C Past Act, Category C Intermediate Period Act, Category D Past Act and/or Category D Intermediate Period Act referred to in the preceding subparagraph was not a Previous Non-Exclusive Possession Act; then,

Subject to the operation of the "non-extinguishment principle" as defined by Section 238 of the Native Title Act, those rights and interests claimed under paragraphs 1 and/or 2 are claimed.

6. Subject to paragraph 8 below, native title rights and interests are not claimed in respect of any area to which Section 23B of the Native Title Act 1993 (Cth) applies.

7. Native title rights and interests are not claimed in respect of:

- a. Any land excluded from the area within the boundaries of the area covered by the Application by Schedule B;
- b. Any minerals, petroleum or gas which are wholly owned by the Crown.

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

Application Area: **State/Territory:** New South Wales
Brief Location: Bellinger River south to Oyster Creek
Primary RATSIB Area: New South Wales
Approximate size: 1.1120 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: Yes

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

Information identifying the boundaries of:

- a) the area covered by the application; and
- b) any areas within those boundaries that are not covered by the application.

All Crown land and waters east of the North Coast Railway line, west of the mean high water mark of the Pacific ocean, with the northern boundary at the southern border of Lot 102 in the Parish of Newry, County of Raleigh and the southern boundary at Nambucca Shire.

The Applicant excludes from the application:

- a) Lot 1 DP 620967 (as defined by the title this Lot does not include the saltwater inlet which is geographically located within its external boundaries in the northern part of the Lot); and
- b) Lot 4 DP 219743

Subject to paragraph 4 below the Applicant excludes from the application those areas which were subject to:

- a) Reserve 37514 for public recreation;

- b) The part of Conditional purchase 1907/250 Bellinghen which did not include DP 583777, Parish of Newry, County of Raleigh;
- c) That part of Additional Conditional Purchase 1910/171 Bellinghen which did not include DP 219743, Parish of Newry, County [sic] of Raleigh;
- d) Part Additional Conditional purchase 1911/156 Bellinghen; and
- e) Part Conditional purchase 1941/25 Bellinghen.

And subject to paragraph 4 below;

1. a. If:

- i. The area covered by the application or a part of the area covered by the application is or was subject of a "Previous Non-Exclusive Possession Act" as defined by Section 23F of the Native Title Act; and
- ii. The Previous Non-Exclusive Possession Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in Schedule E, then,

The native title rights and interests claimed under Schedule E are claimed subject to the rights and interests granted under the Previous Non-Exclusive Possession Act (as provided by Section 23G(1)(a) of the Native Title Act).

b. If:

- i. The area covered by the application or a part of the area covered by the application is or was the subject of a "Previous Non-Exclusive Possession Act as defined by s 23F of the Native Title Act; and
- ii. The Previous Non-Exclusive Possession Act involved the grant of rights and interests which were inconsistent with the rights and interests claimed in Schedule E but did not extinguish them; then,

The rights and interests claimed under Schedule E are claimed subject to any suspension of them during the currency of the Previous Non-Exclusive Act (as provided by Section 23G(1)(b)(ii) of the Native Title Act);

c. If:

- i. The area covered by the application or a part of the area covered by the application is or was the subject of a "Category B Past Act" as defined by Section 230 of the Native Title Act or a "Category B Intermediate Period Act" as defined by Section 232C of the Native Title Act; and,
- ii. The Category B Past Act or Category B Intermediate Period Act involved the grant of rights and interests which were not inconsistent with the rights and interests claimed in Schedule E; and
- iii. The Category B Past Act or Category B Intermediate Period Act was not a Previous Non-Exclusive Possession Act; then,

Those rights and interests referred to in Schedule E which are not inconsistent with the rights and interests granted under the Category B Past Act or the Category B Intermediate Period Act are claimed;

d. If:

- i. The area covered by the application or part of the area covered by the application is or was the subject of:

(1) A "Category C Past Act" as defined by Section 231 of the Native Title Act;

or

(2) A "Category C intermediate Period Act" as defined by 232D of the Native

Title Act; or

or,

(3) A "Category D Past Act" as defined by Section 232 of the Native Title Act;

(4) A "Category D Intermediate Period Act" as defined by Section 232E of the Native Title Act; and,

ii. The Category C Past Act, Category C Intermediate Period Act, Category D Past Act and/or Category D Intermediate Period Act referred to in the preceding subparagraph was not a Previous Non-Exclusive Possession Act; then,

Subject to the operation of the "non-extinguishment principle" as defined by Section 238 of the Native Title Act, those rights and interests claimed under Schedule E are claimed.

2. Subject to paragraph 4 below, native title rights and interests are not claimed in respect of any area to which Section 23B of the Native Title Act 1993 (Cth) applies.

3. Native title rights and interests are not claimed in respect of:

- a. Any land excluded from the area within the boundaries of the area covered by the application by Schedule B;
- b. Any minerals, petroleum or gas which are wholly owned by the Crown.

Details of the activities in exercise of those rights and interests are provided in Schedule G.

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

Attachments:

- 1. Map of Application area, Attachment C of the Application, 1 page - A4, 19/06/2001
- 2. Attachment B Identification of Boundaries, 2 pages - A4, 06/12/2017

NNTT Contact Details

Address: National Native Title Tribunal
Sydney Office
Level 14, Law Courts
Queens Square
SYDNEY NSW 2000
GPO Box 9973
SYDNEY NSW 2001

Telephone: +61 2 9227 4000
Freecall: 1800 640 501
Fax: +61 8 9425 1193
Web Page: www.nntt.gov.au

End of Extract