



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: NSD2300/2011
NNTT number: NC2011/005

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

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 19/12/2011

Current status: Full Approved Determination - 04/05/2021

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: 13/01/2020

Registration decision status: Accepted for registration

Registration history: Registered from 29/03/2012 to 24/12/2019, Registered from 13/01/2020 to 4/05/2021,

Date claim / part of claim determined: 04/05/2021 , 12/07/2018

Applicants: Tim Torrens, David Mundine, Kathy Malera-Bandjalan, Bronwyn Bancroft, Leonard Gordon, David Walker, Terrence Robinson, Andrew Donnelly, Gary Brown, Graeme Walker

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Additional Information

A consent determination of native title in respect of part of the application area was made by Justice Jagot on 29 August 2017 - see *Western Bundjalung People v Attorney General of New South Wales* [2017] FCA 992. That determination was registered on the National Native Title Register on 7 August 2018. A consent determination of native title in respect of the remaining application area was made by Justice Jagot on 27 June 2018 – see *Western Bundjalung People v Attorney General of New South Wales* [2018] FCA 970 (27 June 2018). Order 2 of the determination provided that the 'Part B Determination shall take effect upon the date on which the later of the agreements described in paragraphs 1 and 2 in Schedule Three of the Part B Determination is registered on the Register of Indigenous Land Use Agreements, pursuant to the Native Title Act 1993 (Cth).' The later of the agreements described in paragraphs 1 and 2 in Schedule Three of the Part B Determination was registered on the Register of Indigenous Land Use Agreements on 4 May 2021, and therefore the determination came into effect on 4 May 2021.

Persons claiming to hold native title:

The Western Bundjalung People are the native title claim group on whose behalf the Applicant makes this application. The native title claim group comprises all the descendants of the following apical ancestors:

Herbert 'Hunter' Avery (who was born in Grafton circa 1881)

King Bobby (who was born circa 1840s)

Queen Jinny Little (who was born in Yugilbar in 1840)

Richard 'Old Dick' Donnelly (who was born in Timbarra circa 1870)

Jane 'Jenny' 'Barbin Boatshed' Brown (who was born in Baryulgil circa 1855)

Thomas 'Tom' Donnelly (who was born in Tenterfield circa 1877)

Thomas Gordon (who was born in Copmanhurst in 1870)

Ethel Bawden (who was born in Yugilbar in 1884)

Grace Kelly also known as Grace Lardner (who was born on the Orara River circa 1876)

Mariah Little (who was born in Baryulgil circa 1855)

William 'Billy' 'Charles' Charles (was was born circa 1860)

Harry Joseph Mundine (who was born in Tabulum in 1868)

Teresa Agnes 'Ponjam' Derry (who was born in Tabulum in 1872)

Mick 'Bucky' Robinson (who was born in Timbarra/Tenterfield circa 1859)

Kate Gatton (who was born circa 1870)

Matilda 'Tilly' Gatton (who was born in Yugilbar in 1879)

Harry Walker (who was born circa 1850)

Jenny 'Ginny' Pearson (who was born circa 1860)

Alice Tindal also known as Alice Brown (who was born in Lionsville circa 1870)

William Pearson (who was born in Gordon Brook in 1872)

Descendants include persons who are descendants by incorporation and adoption according to traditional law and custom.

Native title rights and interests claimed:

1. Where exclusive native title can be recognised (such as areas where there has been no prior extinguishment of native title or where s.238 and/or ss.47, 47A and 47B apply), the Western Bundjalung People as defined in Schedule A of this application, claim the right to possession, occupation, use and enjoyment of the lands and waters of the application area to the exclusion of all others subject to the valid laws of the Commonwealth and the State of New South Wales.

2. Where exclusive native title cannot be recognised, the Western Bundjalung People as defined in Schedule A of this application, claim the following non-exclusive rights and interests including the right to conduct activities necessary to give effect to them:

- (a) the right to access the application area;
- (b) the right to use and enjoy the application area;
- (c) the right to move about the application area;
- (d) the right to camp on the application area;
- (e) the right to erect shelters and other structures on the application area;
- (f) the right to live being to enter and remain on the application area;
- (g) the right to hold meetings on the application area;
- (h) the right to hunt on the application area;
- (i) the right to fish in the application area;
- (j) the right to have access to and use the natural water resources of the application area;
- (k) the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well as materials for fabricating tools, hunting implements, making artwork and musical instruments);
- (l) the right to manage natural resources including the right to carbon;
- (m) the right to share and exchange resources derived from the land and waters within the application area;
- (n) the right to participate in cultural and spiritual activities on the application area;
- (o) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;
- (p) the right to conduct ceremonies and rituals on the application area including burials;
- (q) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area;
- (r) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;
- (s) the right to speak authoritatively about the application area among other Aboriginal people in accordance with traditional laws and customs; and
- (t) the right to control access to or use of the lands and waters within the application area by other Aboriginal People in accordance with traditional laws and customs.

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 of the application area 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 and customs of the Western Bundjalung People for personal, domestic and communal

purposes (including social, cultural, religious, spiritual and ceremonial purposes).

Application Area: **State/Territory:** New South Wales
Brief Location: North East NSW near Tenterfield & Casino
Primary RATSIB Area: New South Wales
Approximate size: 3.6551 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):

(A) Area covered by application

The area covered by the application (the 'Application Area') comprises all the land and waters within the external boundaries described in Attachment B and depicted in the map at Attachment C.

The application area description and map have been prepared with the assistance of the Geospatial Unit of the National Native Title Tribunal. The area covered by this application does not include the areas described at point B below.

(B) Areas within the external boundaries not covered by the application

1. The area covered by the application excludes any land and waters covered by past or present freehold title or by previous valid exclusive possession acts as defined by section 23B of the Native Title Act 1993 (Cth).

2. The area covered by the application excludes any land and waters which are:

- a) a Scheduled interest;
- b) a freehold estate;
- c) a commercial lease that is neither an agricultural 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 s.23B(2)(c)(vii) of the Native Title Act 1993 (Cth); and
- h) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters.

3. Subject to paragraphs 5 and 6, the area covered by the application excludes any land or waters covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commenced on or before 23 December 1996.

4. Subject to paragraphs 5 and 6, exclusive possession is not claimed over areas which are subject to valid previous non-exclusive possession acts done by the Commonwealth, State or Territory.

5. Subject to paragraph 7 below, where the act specified in paragraphs 2, 3 and 4 falls within the provisions of:

- a) s.23B(9) - Exclusion of acts benefiting Aboriginal Peoples or Torres Strait Islanders;
- b) s.23B(9A) - Establishment of a national park or state park;
- c) s.23B(9B) - Acts where legislation provides for non-extinguishment;
- d) s.23B(9C) - Exclusion of Crown to Crown grants; and
- e) s.23B(10) - Exclusion by regulation;

the area covered by the act is not excluded from the application.

6. Where an act specified in paragraphs 2, 3 and 4 affects or affected land or waters referred to in:

f) s.47 - Pastoral leases etc covered by claimant application;

g) s.47A - Reserves covered by claimant application;

h) s.47B - Vacant Crown land covered by claimant application;

the area covered by the act is not excluded from the application.

7. The area covered by the application excludes land or waters where the native title rights and interests claimed have been otherwise extinguished.

8. The area covered by the application excludes the land and waters covered by the Bandjalang People's native title determination application NSD6107/1998 (Bandjalang People #2 v NSW Minister for Land & Water Conservation).

Attachments:

1. Description of the area covered by the application, Attachment B of the Application, 43 pages - A4, 19/12/2011
2. Map of the area covered by the application, Attachment C of the Application, 1 page - A3, 19/12/2011
3. Remaining Areas Inset, 1 page - A3, 29/08/2017
4. Remaining Areas Cover, 1 page - A3, 29/08/2017

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