



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: SAD6001/2000
NNTT number: SC2000/001

Application Name: Garth Agius & ors on behalf of the Kaurna People and The State of South Australia & ors (Kaurna Peoples)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 25/10/2000

Current status: Full Approved Determination - 19/11/2018

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: 22/08/2001

Registration decision status: Accepted for registration

Registration history: Registered from 22/08/2001 to 27/11/2018,

Date claim / part of claim determined: 19/11/2018

Applicants: Garth Agius, Vince Buckskin, Lynette Crocker, Dennis Davies, Cecil Graham, Joseph Mitchell, Rodney O'Brien, Glenice Sumner, Suzanne Russell, Frank Wanganeen, Maureen Wanganeen, Georgina Williams

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Additional Information

On 21 March 2018 the Federal Court of Australia made a determination in respect of the application area that native title exists in parts of the determination area – see *Agius v State of South Australia (No 6)* [2018] FCA 358. Order 2 of the determination provides that 'The Determination will take effect upon the ILUA being registered on the Register of Indigenous Land Use Agreements'. The ILUA was registered on 19 November 2018, therefore the condition attached to the determination has been met and the determination came into effect on 19 November 2018. Order 8 of the determination provides that 'To the extent that the Amended Application concerns land and waters that are outside the Determination Area, it is dismissed'. Attached to this extract is a map that has been produced by the National Native Title Tribunal which is an interpretation of the Dismissed Area following the determination on 21 March 2018 referred to above. This attachment does not form part of the application.

Persons claiming to hold native title:

The claim is brought on behalf of the Kuarna people who, for the purposes of this claim, are defined as:

The descendants of the following individuals:

Kudnarto

Farther of Charlotte

Father of King Rodney, known as Willamy or Tairmunda

Nancy Mitchell

Rathoola

Mary Monarto (also known as Mary Wilkins or Nellie Raminyeminemin)

Sam Stubbs

Agness Waddick (also known as Agnes Horrocks or mother of Augusta Horrocks)

James Goldsmith

David Bews or Bewes

Mary McCarthy (sometimes known as Mary McCarty)

The term "descendants" shall mean :

(i) the biological descendants; and

(ii) Aboriginal people raised as children and as part of the family of the biological descendants and their descendants.

Native title rights and interests claimed:

The native title rights and interests claimed are the rights to the possession, occupation, use and enjoyment as against the whole world, and in particular comprise :

- (a) rights to possess, occupy, use and enjoy the area;
- (b) the right to make decisions about the use and enjoyment of the area;
- (c) the right of access to the area;
- (d) the right to control the access of others to the area;
- (e) the right to use and enjoy resources of the area;
- (f) the right to control the use and enjoyment of others of resources of the area;
- (g) the right to trade in resources of the area;
- (h) the right to receive a portion of any resources taken by others from the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- (j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area;
- (k) the discharge of cultural, spiritual, traditional and customary rights, duties, obligations and responsibilities in relation to the area, and
- (l) the right to exercise and carry out economic activity in the area including hunting, and fishing and conducting other activities on the land, including the growing, production of and harvesting of natural resources.

Subject to:

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of South Australia, they are not claimed by the applicants;
- (ii) To the extent that the native title rights and interests claimed relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of South Australia or accorded under international law in relation to the whole or any part of the offshore place;
- (iii) The applicants do not make a claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of South Australia and a law of that State has made provision as mentioned in section 23I in relation to the act;
- (iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing; and
- (v) The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, a law of the State or a law of the Commonwealth.

Application Area:

State/Territory: South Australia
Brief Location: Fleurieu Peninsula north to Broughton
Primary RATSIB Area: Greater South Australia
Approximate size: 3468.4626 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):

The Area Covered by the Application

Area of Application (geographic extent) - 8,160 sq km

Description

Commencing at Longitude 138.451638 degrees east, Latitude 35.568358 degrees south, the application boundary traverses in a generally westerly direction until Longitude 138.104787 degrees east, Latitude 35.580457 degrees south, being approx. 810 metres west of the mean high water mark, in the Gulf St Vincent, as defined in the Australian Maritime Boundaries Information System (AMBIS) dataset as sourced from AUSLIG. This section of the application boundary is coincidental with the boundary of Native Title Claimant Application SC98/004 (Ngarrindjeri and Others Native Title Claim) SG6027/98 as defined on Register of Native Title Claims as at 31 May 2001

From here the boundary traverses generally north easterly, northerly and north westerly through points 3 to 840 as defined in attachment B - Geographic Description Kurna Native Title Claim, being the seaward side of the mean high water mark.

From here the boundary traverses in a generally northerly direction through points 841 to 873. From here the boundary traverses in a generally south-south-easterly direction through points 874 to 887. This section of the boundary is coincidental with the southern boundary of Native Title Claimant Application SC96/005 (Nukunu Native Title Claim) SG6012/1998 as defined on Register of Native Title Claims as at 31 May 2001.

From here the boundary traverses in a generally southeasterly then southwesterly direction through points 888 to 932, the latter being the commencement point.

Geographic coordinates are referenced to Australian Geodetic Datum (AGD) 84, in decimal degrees.

Unless otherwise defined where points are references by number, these refer to attachment B - Geographic Description Kurna Native Title Claim

Use of Coordinates

Where coordinates are used within the description to represent topographic boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by ground survey.

The applicants state that they acknowledge that the area located adjacent to the western side of the north-western boundary of the claim area between Pt Wakefield and Red Hill (Broughton) has significance also to the Narungga peoples. The applicants believe that this area will be protected by this Application and cared for by the Kurna peoples as custodians for and on behalf of those Narungga people with traditional interests in the area.

The applicants further state that they acknowledge that the area located adjacent to the western side of the eastern boundary of the claim area between White Cliffs and the area of forest reserve to the east of Lyndoch has significance also to the Ngadjuri peoples. The applicants believe that this area will be protected by this Application and cared for by the Kurna peoples as custodians for and on behalf of those Ngadjuri people with traditional interests in the area.

Any Areas Within Those Boundaries That Are Not Covered By The Application

(1) The applicants exclude from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the Native Title Act 1993, as amended, or any valid South Australian legislation to a similar effect, at the time of the Registrar's consideration:

Category A past acts, as defined in NTA s228 and s229;

Category A intermediate period acts as defined in NTA s232A and s232B.

(2) The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of South Australia and a law of that State has made provision as mentioned in section 23E in relation to the act.

(3) The Applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:-

(a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or

(b) actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.

To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions or tenures, set out in Schedule B1.

Schedule B1

B1.1 Any land the subject of a grant of an estate in fee simple prior to October 1975, other than any fee simple land vested in the State of South Australia or the Commonwealth of Australia.

B1.2 A Permanent public work and "the land or waters on which a public work is constructed, established or situated" within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D.

B1.3 An existing public road or street used by the public, or dedicated road.

(4) Paragraphs (1) to (3) above are subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

Attachments:

1. A map showing the external boundaries of the area covered by the application, Attachment C of the , 1 page - A3, 04/07/2001
2. Geographic Description, 17 pages - A4, 15/03/2018
3. SAD6001/2000 (SC2000/001) Kurna Peoples Determined & Dismissed Areas, 1 page - A3, 08/03/2018

End of Extract