



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD21/2019
NNTT number: WC1996/093

Application Name: Leedham Papertalk & Ors on behalf of the Mullewa Wadjari People and State of Western Australia & Ors (Mullewa Wadjari Community)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 19/08/1996

Current stage(s): Notification Complete

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: 19/08/1996

Registration decision status: Accepted for registration

Registration history: Registered from 19/08/1996

Applicants: Leedham Papertalk, Glenda Jackamarra, Malcolm Papertalk, Jamie Joseph, Karen Jones, Charles Green, Charles Collard, Raymond Merritt

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Additional Information

On 7 February 2020, the Federal Court of Australia made a determination that native title exists in parts of the application area - see Taylor on behalf of the Yamatji Nation Claim v State of Western Australia [2020] FCA 42. Order 3 of the determination provides that the determination is to take effect immediately after the Separate Orders take effect. A copy of the determination is attached to this Extract. The Federal Court also made the Separate Orders on 7 February 2020. Order 1 consolidated four native title determination applications with WAD345/2019 Yamatji Nation Claim, including WAD21/2019 Mullewa Wadjari Part A. Order 4 provides that the consolidation is to take effect on the date the State of Western Australia files a notice that the Yamatji Nation Indigenous Land Use Agreement has been Conclusively Registered on the Register of Indigenous Land Use Agreements. A copy of the Separate Orders is attached to this Extract. The Separate Orders provide that "Conclusively Registered" has a corresponding meaning to the term "Conclusive Registration". That term is defined to mean the Yamatji Nation Indigenous Land Use Agreement being registered and remaining registered: (a) at a date that is 60 Business Days after the date on which a decision is made to register the Yamatji Nation Indigenous Land Use Agreement, provided that no Legal Proceedings have been commenced in respect of such registration; or (b) otherwise, at a date that is 40 Business Days following the exhaustion and determination of the final available Legal Proceedings in respect of such registration. On 26 October 2020, the State of Western Australia filed a Notice of Conclusive Registration in WAD21/2019 Mullewa Wadjari Part A. The Notice states that the Yamatji Nation Indigenous Land Use Agreement was Conclusively Registered on the Register of Indigenous Land Use Agreements on 26 October 2020. Accordingly, the Separate Orders came into effect and the Mullewa Wadjari Part A application was consolidated into WAD345/2019 Yamatji Nation Claim on 26 October 2020. The determination of WAD345/2019 Yamatji Nation Claim then immediately came into effect and was registered on the National Native Title Register from 26 October 2020. Pursuant to s 190(4)(e) of the Native Title Act 1993 (Cth), Mullewa Wadjari Part B remains on the Register of Native Title Claims only to the extent that it relates to the undetermined area. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

Persons claiming to hold native title:

The Mullewa Wadjari Native Title Claimants are members of the Collard, Merritt, Flanagan, Hannah, Joseph, Jones, Green, Papertalk, Comeagain and Collins families, all originally from the Mullewa region, whose adult living members are hereunder listed in their entirety. The native title claim group is those people here listed and their biological descendants.

Rae Collard, Charles Collard, Cynthia Collard, Gavin Collard, Christine Collard, Adrian Collard.

Raymond Merritt, Graham Merritt, Marilyn Merritt, Helen Merritt, Eric Merritt.

William Flanagan, Leslie Flanagan, Roslyn Kelly, Henry Flanagan, Elizabeth Flanagan, Robert Flanagan, Ernest Flanagan, Dawn Hamlett, Donna Flanagan.

Norma Hannah, Michael Hannah, Francis Hannah.

Robert Joseph, Max Joseph, Francis Joseph, Jamie Joseph.

Jennifer Jones, Tony Jones, Robert Jones.

Charmaine Green, Caroline Green, Charlie Green (jnr), Carl Green.

Donald Papertalk, Victoria Papertalk, Kate Papertalk, John Papertalk, Doreen Papertalk, Margaret Papertalk, Henry Papertalk, Leedham Papertalk, Patrick Papertalk, Dorothy Papertalk, Marilyn Papertalk, Alison Papertalk.

Douglas Comeagain (Snr), Elizabeth Comeagain, Allan Comeagain, Grace Comeagain, Morris Comeagain, Jacqueline Comeagain.

Malcolm Papertalk (Collins), Alison Collins, Victor Collins, Edward Collins.

Native title rights and interests claimed:

The native title rights and interests claimed are the rights to the possession, use, occupation and enjoyment of the land and waters claimed, and in particular are comprised of:

- a) The right to possess, use, occupy and enjoy the area claimed.
- 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 the resources of the area, subject to exclusions of Schedules P and Q
- f) The right to control the use and enjoyment of others of the resources of the area, subject to the exclusions of Schedules P and Q.
- g) The right to trade in resources of the area, subject to the exclusions of Schedules P and Q.
- h) The right to receive a portion of any resources taken by others from the area, subject to the exclusions of Schedules P and Q.
- i) The right to maintain and protect places of importance under traditional laws, practices and customs in the area.
- j) The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.
- k) The right to hold meetings and traditional ceremonies on the land.
- l) The right to manage and protect the sacred sites and spirituality of the land and to camp, hunt, fish, gather bush tucker, medicines and building materials according to the laws and customs of the Mullewa Wadjari people.
- m) The right to gather materials to make tools, weapons and utensils to perform our traditional ceremonies.
- n) The right to maintain and care for water resources (particularly springs) in significant areas of the land.
- o) The right to prevent others from fouling our sacred areas and water resources.

Along with the exclusions of Schedules P and Q below, the above listed native title rights and interests are subject to the following:

(1) The applicants do not make a claim for native title rights or interests which confer possession, occupation, use or 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 s23F 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 Western Australia and a law of that State has made provision as mentioned in s23L of the NTA in relation to the act.

(2) Paragraph (1) above is subject to such of the provisions of s47, s47A and s47B of the Act as apply to any part of the area contained within the application, particulars of which will be provided prior to the native title hearing.

(3) The said native title rights and interests are not claimed to the exclusion of any other rights and interests validly created by or pursuant to the common law, the law of the State or a law of the Commonwealth.

Schedule P states:

To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by the Commonwealth or the State of Western Australia, or accorded under International Law in relation to the whole or the part of the offshore place.

Schedule Q states:

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 Western Australia, they are not claimed by the applicants.

Application Area: **State/Territory:** Western Australia
Brief Location: In & around Mullewa
Primary RATSIB Area: Geraldton
Approximate size: 16287.9237 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):

The external boundary of the amended application is as in the original application WC96/93 save for the changes to reduce the area covered by the application filed 28 October 2016 for leave to amend the application. The coordinates of the amended external boundary are set out in Attachment B.

Internal boundaries:

(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 Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:

- Category A past acts, as defined in NTA s 228 and s 229;
- Category A intermediate period acts as defined in NTA s 232A and s 232B.

(2) The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in s 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 Western Australia and a law of that State has made provision as mentioned in s 23E in relation to the act.

(3) The applicants exclude from the claim areas in relation to which native title rights and interest 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 areas the tenures set out in Schedule B1 below:

Schedule B1

B1.1 An unqualified grant of an estate in fee simple.

B1.2 A lease which is currently in force, in respect of an area not exceeding 5,000 square metres; upon which a dwelling, house, residence, building or work is constructed; and which comprises:

- (1) a lease of a worker's dwelling under the Workers' Homes Act 1911- 1928;
- (2) a 999 year lease under the Land Act 1898;
- (3) a lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s 117; or
- (4) a special lease under s 117 of the Land Act 1933 (WA).

B1.3 A Conditional Purchase Lease currently in force in the Agricultural areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887, which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed.

B1.4 A Conditional Purchase lease of cultivable land currently in force under Part V, Division 1 of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed.

B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B1.6 A permanent public work.

B1.7 An existing public road or street used by the public.

(4) Paragraphs (1) to (3) above are subject to such of the provisions of sections 47, 47A and 47B of the NTA as apply to any part of the area contained within this application, particulars of which will be provided prior to the Mullewa Wadjari native title hearing.

Attachments:

1. Attachment B - External Boundary Description, 11 pages - A4, 12/12/2016
2. Attachment C - Map of Claim Area, 1 page - A4, 12/12/2016
3. Yamatji Nation Determination, 70 pages - A4, 07/02/2020
4. Yamatji Nation Separate Orders, 2 pages - A4, 07/02/2020
5. Map of Undetermined Area, 1 page - A3, 26/10/2020
6. Description of Undetermined Area, 2 pages - A4, 26/10/2020

End of Extract