



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD6286/1998
NNTT number: WC1998/070

Application Name: Alan Bolton, Hazel Brown & Ors v the State of Western Australia & Ors (Wagyl Kaip)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 29/09/1998

Current status: Full Approved Determination - 01/12/2021

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: 29/09/1998

Registration decision status: Accepted for registration

Registration history: Registered from 29/09/1998 to 3/12/2021,

Date claim / part of claim determined: 01/12/2021

Applicants: Hazel Brown, Glen Colbung, Mingli Wunjurri Nungala

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Additional Information

Not applicable

Persons claiming to hold native title:

The claimants comprise those Aboriginal people who are:

1. the biological descendants of unions between:-

- . Billy Colbung + Clara Brockman + Nina Bayla Brockman;
- . Helen Williams + Bill Woods;
- . Sarah Yettung James + Jack Woods;
- . Sammy 'Jimmy' Miller + Polly, from Gnowangerup;
- . Alice Davidson + Alice Williams + Henry Woods;
- . Charles or Peter Eades + Lucy Coyne;
- . William Hayward + Minnie Knapp;
- . Emily Coyne + William 'Peg' Farmer;
- . Fred Coyne + Margaret Davidson;
- . Johnny Penny + Margaret 'Maggie' Piggott (Starlight);
- . Charles Williams + Ellen Nelly Foot;
- . Elijah Quartermaine + Mary 'Wartum';
- . Ah-Lee + Mary Bateman;
- . Peerup Roberts + Monkey + Emily (Mudah) D'Abb;
- . Edward Smith + Sarah Punch;
- . Ernie or George Moir or Muir + Aboriginal woman named Karlbyirt.

2. Those persons adopted by the individuals named in (1) above and those persons adopted by the biological descendants of the unions between the individuals names in (1) above.

3. Those persons that are the biological descendants of the adopted persons included in (2) above.

Adoption occurs in the following manner: if a man dies and his brother or cousin marries the widow, any of the widow's children are adopted as the children of the new husband.

Specifically excluded from being claimants are the persons listed in Attachment A(1).

Native title rights and interests claimed:

The applicants claim in relation to the claim area, including land and waters, the native title rights and interests set out below ("The Rights and Interests") subject to the following qualifications:

- 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 Western Australia, they are not claimed by the applicants;
- ii. 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 a law of the Commonwealth or the State of Western 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 Western 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 NTA 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.

v. The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

The Rights and Interests

Subject to the above qualifications, the rights and interests claimed in relation to the claim area, including land and waters, are:

- a. rights and interests to exclusively 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 maintain and protect places of importance under traditional laws, customs and practices in the area;
- h. the right to maintain, protect, and prevent the misuse of cultural knowledge of the common law native title holders associated with the area;
- i. the right to rear and teach children in their country;
- j. the right to live on and erect residences and other infrastructure on the land;
- k. the right to trade in resources of the area;
- l. the right to receive a portion of any resources taken by others from the area; and
- m. the right to manage, conserve and look after the land, waters and resources, including locating and cleaning water sources and drinking water on the land.

Application Area:

State/Territory: Western Australia

Brief Location: South West and Great Southern WA

Primary RATSIB Area: South West

Approximate size: 52430.7788 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):

A) a map showing the external boundary of the area covered by the claim; (Attached)

B) a technical description of the external boundary; (Attached)

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:

(a) Category A past acts, as defined in NTA s.229;

(b) Category A intermediate period acts, as defined in NTA 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 the area, and either the act was an act attributable to the Commonwealth, or the act was an act 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 as at the time of the Registrar's consideration.

3. The applicants exclude from the claim any 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.

AND, to avoid any uncertainty, the applicants exclude from the claim:

c) an unqualified grant of an estate in fee simple; or

d) 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:

i) a lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928; or

ii) a 999 Year Lease under the Land Act 1898; or

iii) a lease of a Town Lot or Suburban Lot pursuant to section 117 of the Land Act 1933 (WA); or

iv) a Special Lease under section 117 of the Land Act 1933 (WA); or

e) 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; or

f) 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; or

g) a Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954; or

h) a permanent public work; or

i) an existing public road or street used by the public.

4. Paragraphs (1), (2) and (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 hearing but which includes areas that are occupied by one or more of the native title claim group and may be listed in Schedule L at a later date.

Attachments:

1. List of persons specifically excluded from the Claim Group, Attachment A(1) of the Application, 6 pages - A4, 18/02/1999
2. Technical Description of the External Boundary, Attachment B of the Application, 5 pages - A4, 18/02/1999
3. Map of the Claim Area, Annexure A, Attachment C of the Application, 1 page - A3, 18/02/1999

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