



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD124/2004
NNTT number: WC2004/004

Application Name: Ben Ward & Ors v State of Western Australia (Miriuwung Gajerrong #4)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 09/06/2004

Current status: Full Approved Determination - 24/11/2006

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Registration decision status: Accepted for registration

Registration history: Registered from 09/07/2004 to 30/11/2006

Date claim / part of claim determined: 24/11/2006

Applicants: Ben Ward, Kim Aldus, Frank Chulung, Sheba Dignari, Jeff Janama, Maggie John, Chocolate Thomas, Danny Wallace, Carol Hapke, Nancy Dilyai, Pamela Simon, Jerry Moore, Paddy Carlton

Address(es) for Service: Robert James Julius Powrie
Kimberley Land Council
PO Box 2145
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Additional Information

Not applicable

Persons claiming to hold native title:

This claim is brought on behalf of those Aboriginal People who hold in common the body of

traditional law and custom governing the area the subject of the claim. Those people are:

(a) Persons identified with Miriuwung, Gajerrong, Doolboong, Wardenybung and Gija language or dialect and country as at the date of this application, including descendants of the following persons, which persons were identified as:

(i) Gajerrong/Doolboong/Wardenybung

Linmirr, Dambilik, Noongmarria, Bungara Boongara, Ngabitj, Jerad Djerad, Goolingin and Clement Tjulan

(ii) Miriuwung

Mialiny, Tjebelying Djibulyerring, Nilkbarria, Kulalbainy, Waniwung, Biwugin Biwoogin, Kutji, Wulgoi, Wungawyi, Gulbuk, Yirrimaliny, Djuburl, Gubering, Gungui, Dandji, Wunmi, Birrwi, Dunmi, Wumbi, Argyle, Wiyuga, Jungurangan and Kneevil

(iii) Gija

Jungurangan, Kneevil, Wajali, Djuderriny, Nadurur, Banggarrabainy, Lammuiy Lamoin, Ngarri and Biyuwin

(iv) Dundun

Polly Munbi and King O'Malley

and

(b) Person adopted by those descendants in accordance with their traditional law and custom.

Native title rights and interests claimed:

A description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests).

1 Non-exclusive rights to use and enjoy the land and waters in accordance with traditional laws and customs as follows:-

(a) the right to hunt and fish together and use the resources of the land such as food and medicinal plants and trees, timber, charcoal, ochre and stone and to have access to and use of water on or in the land;

(b) the right to live on the land, to camp, erect shelters and other structures, and to travel over and visit any part of the land and waters;

(c) the right to engage in cultural activities on the land, to conduct ceremonies and hold meetings, to teach the physical and spiritual attributes of places and areas of importance on or in the land and waters and to participate in cultural practices relating to birth and death, including burial rights;

(d) the right to have access to, maintain and protect places and areas of importance on or in the land and waters, including rock art, engraving sites and stone arrangements;

(e) the right to make decisions about access to the land and waters by people other than those exercising a right conferred by or arising under a law of Western Australia or the Commonwealth in relation to the use of the land and waters;

(f) the right to make decisions about the use and enjoyment of the land and waters and the subsistence and other traditional resources thereof, by people other than those exercising a right conferred by or arising under a law of Western Australia or the Commonwealth in relation to the use of the land and waters;

(g) the right to share, exchange or trade subsistence and other traditional resources obtained on or from the land and waters;

(h) the right to control the disclosure (otherwise than in accordance with traditional laws and customs) of spiritual beliefs or practices, or of the paraphernalia associated with them (including songs, narratives, ceremonies, rituals and sacred objects) which relate to any part of or place on the land or waters;

(i) the right to determine and regulate the membership of and recruitment to a landholding group;

2 Subject to:

(a) 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.

(b) The claim area does not include any offshore places.

(c) 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, or law of the State, or a law of the Commonwealth.

3 The claimants do not claim native title rights and interests that have been extinguished by operation of Law.

4 The native title claim group do not assert that they possess exclusive possession to any land or waters within the claim area.

Application Area: **State/Territory:** Western Australia
Brief Location: East Kimberley-Western Australia
Primary RATSIB Area: Kimberley
Approximate size: 6832.9571 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):

Area of Application (geographic extent)

6,765.015 sq km

Area covered by the application

The Application includes land, inland waters and coast as specified below:

1 Leases included in the claim:

Pastoral leases 3114/1176 (Carlton Hill)

Pastoral Lease 3114/640 (Ivanhoe)

Pastoral Lease 3114/599 (Rosewood)

General Lease I126901(formerly Special Lease 3116/10690)

2 Reserves included in the claim:

Reserve No. 20679

Reserve No. 21316

Reserve No. 30727

Reserve No. 30728

Reserve No. 39972

Reserve No. 40010

Reserve No. 40745

Reserve No. 41312 (formerly Special Lease 3116/9924)

Reserve No. 41527

Reserve No. 41535

Reserve No. 42304

Reserve No. 42564

External Boundaries

The external boundaries of the claim are set out in the map attached (attachment "C")

Internal Boundaries

(1) The Applicants exclude from the claim area:

(a) Reserve No. 37862

(b) Reserve No. 39612

(c) Freehold Lot 647 on Plan 216714

(2) 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 NTA, 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 228 and s229

(b) Category A intermediate period acts as defined in NTA s232A and s232B

(3) 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 Western Australia and a law of that State has made provision as mentioned in section 23E in relation to the act.

(4) 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.

(5) To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions or tenures which have been validly granted.

(a) Any former or current unqualified grant of an estate in fee simple and all other freehold land.

(b) 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-

(c) A Lease of a Worker's Dwelling under the Workers' Homes Act 1911-1928;

(d) A 999 Year Lease under the Land Act 1898;

(e) A Lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s.117; or

(f) A Special Lease under s.117 of the Land Act 1933 (WA);

(g) 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;

(h) 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;

(i) A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954;

(j) 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) s.251D

(k) A public road.

(6) Paragraphs (2) to (4) above are subject of such of the provisions of s.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. Map of Claim Area , 1 page - A3, 09/06/2004

NNTT Contact Details

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