



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD131/2004
NNTT number: WC2004/005

Application Name: Clive Lyndon & Ors on behalf of the Budina People (Budina People)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 18/06/2004

Current status: Full Approved Determination - 16/10/2017

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: 22/08/2005

Registration decision status: Accepted for registration

Registration history: Registered from 22/08/2005 to 20/10/2017,

Date claim / part of claim determined: 16/10/2017

Applicants: Clive Lyndon, Lorna Corbett, Ruben Lyndon

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Additional Information

Not applicable

Persons claiming to hold native title:

The claim is brought on behalf of:

1) The cognatic descendents of persons recognised under traditional laws and customs to be members of the Budina language group (and including persons who have been adopted into the group according to those laws and customs), in particular, the descendents of the following individuals:

Jirbar;

Tamiguru (Fanny);

Baliaat (Charlie Gray);

Parndabiddy (Milly); and

Topsy.

2) Persons who have been incorporated into the Budina group under traditional laws and customs, being 'grown' up by a member of the native title claim group and taught about the Budina Country from a young age. The person is recognised by members of the native title claim group as being a member of the group having rights and interests in the lands and waters of the application area, according to traditional Budina laws and customs.

Native title rights and interests claimed:

Subject to laws and customs

The native title rights and interests claimed in this Application are subject to and exercisable in accordance with:

- 1) the common law, the laws of the State of Western Australia and the Commonwealth of Australia;
- 2) valid interests conferred under those laws; and
- 3) the body of traditional laws and customs of the Aboriginal society under which rights and interests are possessed and by which native title claim group have a connection to the area of land and waters the subject of this Application.
- 4) In accordance with sub section 61A(3) of the NTA, the applicants do not make claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of others in respect of any areas in relation to the 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 that act;
- 5) In accordance with sub section 61A (4), paragraph 3 above is subject to such of the provisions of section 47B of the Act as apply to any part of the area in this application.

The said native title rights 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.

Rights in Area A

The Applicants claim the following listed native title rights and interests relating to exclusive possession in relation to Area A only.

- 1) The right to possess, occupy, use and enjoy the area as against the whole world;
- 2) A right to occupy the area;
- 3) A right to use the area;
- 4) A right to enjoy the area;
- 5) A right to make decisions about the use of the area by persons who are not members of the Aboriginal society to which the native title claim group belong;
- 6) A right to control access of others to the area;

7) A right to control access of others to the area except such person as may be exercising a right accorded by the common law, statute law of the Commonwealth of the State of Western Australia or a lawful grant by the British sovereign or its successor;

8) A right to control the taking, use and enjoyment by others of the resources of the area;

Rights in Areas A and C

The Applicants claim the following listed native title rights and interests in relation to Areas A and C, but not Area B:

9) A right to hunt in the area;

10) A right to fish in the area;

11) A right to take fauna;

12) A right to take traditional resources, other than minerals and petroleum from the area;

Rights in Areas A, B and C

The Applicants claim the following listed native title rights and interests in relation to Areas A, B and C:

13) A right to be present on or within the area;

14) A right to make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;

15) A right to invite and permit others to have access to and participate in or carry out activities in the area;

16) A right to access the area;

17) A right to live within the area;

18) A right to erect shelters upon or within the area;

19) A right to camp upon or within the area;

20) A right to move about the area;

21) A right to engage in cultural activities within the area;

22) A right to conduct and participate in ceremonies and meetings within the area;

23) A right to visit, care for and maintain places of importance and protect them from physical harm;

24) A right to take flora (including timber);

25) A right to take soil;

26) A right to take sand;

27) A right to take stone and/or flint;

28) A right to take clay;

29) A right to take gravel;

30) A right to take ochre;

31) A right to take water;

32) A right to manufacture traditional items from the resources of the area;

33) A right to trade in the resources of the area;

34) A right to maintain, conserve and protect significant places and objects located within the area;

35) A right to be identified and acknowledged, in accordance with the traditional laws adhered to and traditional customs observed by the group or groups, as the traditional owners in relation to the land and waters of the area.

The application contains the following definitions:

Area A means land within the Application area which comprises:

- (i) areas of unallocated Crown land that have not been previously subject to any grant by the Crown;
- (ii) areas to which s.47 of the Act applies;
- (iii) areas to which s.47A of the Act applies;
- (iv) areas to which s.47B of the Act applies; and
- (v) other area to which the non-extinguishment principle, set out in s.238 of the Act, applies and in relation to which to there has not been any prior extinguishment of native title

Area B means land and waters which are a "nature reserve" or "wildlife sanctuary" (as those terms are defined in the Wildlife Conservation 1950 (WA)) created before 31 October 1975.

Area C means land and waters within the Application area that is not included in Areas A or B above.]

Significant means having social, cultural, religious, spiritual, ceremonial, ritual or cosmological importance or significance to the common law native title holders connected to the area under traditional laws, customs and practices of the Aboriginal society to which they belong.

All words used in this Application which are defined in the Act bear the same meaning as in the Act, or the meaning in the Native Title (Effects of Past Acts) Act 1995 (WA), where that meaning differs from the meaning in the Act, unless the context dictates otherwise.

Application Area:
State/Territory: Western Australia
Brief Location: Upper Gascoyne, Western Australia
Primary RATSIB Area: Pilbara
Approximate size: 4084.3080 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 boundaries of the area of land and waters covered by the Application are set out in the document entitled "Description of External Boundary" which is annexed as Attachment 'B'

Areas of land and waters within those boundaries that are not covered by the Application

1) Subject to 4), the Applicant excludes from the Application area any areas that are covered by any of the following acts as these are defined in either the Act, as amended (where the act in question is attributable to the Commonwealth), or Titles (Validation) and Native Title (Effect the Past Acts) Act 1995 (WA), as amended, (where the act in question is attributable to the State of Western Australia) at the time of the Registrar's consideration:

- (a) Category A past acts;
- (b) Category A intermediate period acts;
- (c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests; and
- (d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment and exercise of any native title rights or interests.

2) Subject to 4), the Applicant excludes from the Application area any areas in relation to which:

- (a) a "previous exclusive possession act", as defined in s. 23B of the Act, was done and the act was an act attributable to the Commonwealth; or
- (b) a "relevant act" as that term is defined in s. 121 of the Titles (Validation) and Native Title (Effect of Past Acts) Act

1995 (WA) was done and the act is attributable to the State of Western Australia; or

(c) a previous exclusive possession act under s. 23B(7) of the Act was done in relation to the area and the act was attributable to the State of Western Australia.

3) Subject to 4), the Applicant also excludes from the Application area areas in relations to which native title rights and interest have otherwise been wholly extinguished.

4) The Application area includes any area in relation to which the non-extinguishment principle (as defined in s. 238 of the Act) applies, including any area to which ss 47, 47A and 47B of the Act apply, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L. The Applicants claim all benefits arising out of provisions of ss 47, 47A and 47B of the Act.

[Act means the Native Title Act]

Attachments:

1. External Boundary Description, Attachment B of the Application, 2 pages - A4, 09/06/2005
2. Land Tenure Map, Attachment C of the Application, 1 page - A4, 09/06/2005

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