



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD297/2008
NNTT number: WC2008/005

Application Name: Harvey Murray on behalf of the Yilka Native Title Claimants -v- State of Western Australia & Ors (Yilka)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 15/12/2008

Current status: Full Approved Determination - 26/09/2019

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: 06/08/2009

Registration decision status: Accepted for registration

Registration history: Registered from 6/08/2009 to 3/10/2019,

Date claim / part of claim determined: 27/09/2017

Applicants: Harvey Murray

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Additional Information

On 27 September 2017, the Federal Court of Australia made a determination that native title exists in the entire determination area – see the attached determinations: Harvey Murray and State of Western Australia & Ors (Yilka and Yilka #2) and G.S. (dec'd) & Ors and the State of Western Australia & Ors (Sullivan Family). On 26 September 2019, the Federal Court ordered that the Yilka Talintji Aboriginal Corporation ICN 8415 hold the native title on trust and perform the functions mentioned in s 57(1) of the Native Title Act 1993 (Cth), (i.e. become the registered native title body corporate for this determination). Therefore, this determination is now finalised as from 26 September 2019.

Persons claiming to hold native title:

[Paragraph numbers as per amended application filed 10 June 2011]

5. See Points of Claim [24] and [83]

[24] Rights or interests in relation to land and waters are possessed by a person:

(a) who has a connection to the land and waters, through:

(i) his or her own birth and/or long association or holding senior ritual authority; or

(ii) the birth and/or long association of one or more of his or her ancestors,

by which the person, or another on his or her behalf, claims or is claimed to possess rights or interests in relation to the land and waters;

and

(b) in respect of whom that claim is accepted generally under WDCB laws and customs.

[83] The persons who, under the traditional laws and customs referred to in [24], [26] - [35] above, possess rights and interests in relation to the claim area are the persons referred to in Order 2 of the Determination sought.

The persons referred to in Order 2 are:

(a) the descendants of Marnupa, Waltila and Nanuma, Billy Kurlu, Sandy Grey, Skipper Elliot, Charlie Winter and Danny Harris; and

(b) Andrew Watson and any other or others who, in accordance with traditional laws and customs, have a connection to the Determination Area by which they claim country, through their own birth on, long association with, or the holding of senior ritual authority with respect to places on, the Determination Area and in respect of whom that claim is recognised according to traditional laws and custom.

Native title rights and interests claimed:

49. See Points of Claim [89], Determination Sought [3] - [7]

Points of Claim

[89] It is contended that the rights and interests that are recognisable in a determination of native title as native title rights and interests in relation to the claim area are the rights and interests set out in Orders [3] [4] and [5] respectively of the Determination sought.

Determination Sought

[3] Subject to Orders 6 and 7, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 (being land and waters where there has been partial extinguishment other than where such extinguishment must be disregarded) are the following rights or interests:

- (a) the rights to access, to remain in and to use that part for any purpose;
- (b) the rights to access resources and to take for any purpose resources in that part;
- (c) the right to engage in spiritual and cultural activities on that part;
- (d) the right to maintain and protect places and objects of significance in or on that part; and
- (e) the right to protect resources and the habitat of living resources in that part.

5. The native title rights and interests referred to in Order 4 do not confer possession, occupation, use and enjoyment of the native title areas or any parts thereof on the native title holders to the exclusion of all others.

6. The native title rights and interests are exercisable in accordance with and subject to the:

- (a) traditional laws and customs of the native title holders; and
- (b) laws of the State and the Commonwealth, including the common law.

7. Notwithstanding anything in this determination, there are no native title rights and interests in the native title areas in or in relation to:

- (a) such minerals as are wholly owned by the Crown; or
- (b) such petroleum as is wholly owned by the Crown.

Application Area: **State/Territory:** Western Australia
Brief Location: Shire of Laverton, Western Australia
Primary RATSIB Area: Central Desert
Approximate size: 12245.3450 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):

Part A. External Boundaries and Description

18. The area covered by this application is wholly within the Shire of Laverton in the State of Western Australia.

19. Some of the major geographical features in this area are Bullrush Rockhole (Wanta-Wanta), Point Pater Waterhole (Purnukulayin), Hunter Waterfall (Nyanyirri), Mount Gill (Yinti), Point Salvation/Munjil Soak (Mantjal) and Bhildbit/Minnie Creek (Pilpirr).

20. The Cosmo Newberry Aboriginal Community is located in the north west portion of the area covered by the application and the Laverton-Warburton road (Great Central Highway) passes through the area covered by the application.

21. The boundaries of the area covered by the application are as described in the Determination Sought in Schedule 1, Part 1.

Schedule 1 - Determination Area, Part 1 - External Boundaries

Starting at the south western corner of the north eastern severence of Reserve 25051 and extending northerly, easterly and southerly along boundaries of that Reserve and onwards to the westernmost north western corner of Reserve 36271. Then southerly, easterly, again southerly and again easterly along boundaries of that Reserve to the easternmost north eastern corner of Reserve 20396. Then southerly and westerly along boundaries of that Reserve to the south eastern corner of Reserve 25050. Then westerly, northerly, north westerly, again westerly and again northerly along boundaries of that Reserve to the westernmost southern boundary of Reserve 22032 and then westerly, northerly, easterly, again northerly, again easterly, again northerly and again easterly along boundaries of that Reserve to the starting point.

22. The area covered by the application includes the Yamarna Pastoral Lease, part of the Warburton Stock Route and four Reserves marked on the "Great Desert Tracks" map as Cosmo Newberry reserves, North, South, East and West. These reserves - numbers 22032, 25050, 25051 and 20396 - are vested in either the Aboriginal Lands Trust. A portion of Reserve no. 22032 is held by the Cosmo Newberry Aboriginal Corporation - the lessee and manager of the 99 year lease from the State Minister for Indigenous Affairs and the Aboriginal Lands Trust.

23. The area covered by the application may also be described by reference to four 1:250 000 topographic maps, Series 1501, Edition I, of the National Topographic Map Series issued by the Australian Surveying Land Information Group (AUSLIG). These maps are:

Rason SH51-3

Laverton SH51-2

Throssell SG51-15

Duketon SG51-14

24. The external geographical boundaries of the area covered by this application are clearly delineated and marked on the attached map at Attachment C.

Part B. Applicability of Sections 61A(4), s47, 47A and s47B

25. For the purposes of the application of sections 61A (4), 47A and 47B of the Native Title Act 1993, the application covers the entirety of the following areas:

26. Aboriginal Reserves 22032, 25050, 20396, 25051, which are subject to section 47A;

27. unallocated Crown land areas 2,3,5 and 14 as identified by the Land Claims Mapping Unit of the Department of Land Administration, State of Western Australia for the purposes of the proceedings in WAD144/98, which are subject to section 47B; and

27. any other areas to which the non-extinguishment principle as defined by section 228 of the Native Title Act 1993 applies.

Part C. Areas Within the External Boundaries That are not Covered by the Application

29. Subject to paragraph 25 above, areas of land and waters within the boundary that are not covered by the application are:

30. any area that is or was subject to any of the following acts as these are defined in either the Native Title Act 1993, as amended (where the act in question is attributable to the Commonwealth), or Titles (Validation) and Native Title (Effect of 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:

31. Category A past acts;

32. Category A intermediate period acts;

33. Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;

34. Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;

35. any area in relation to which a 'relevant act' as that term is defined in section 12I 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;

36. any area in relation to which a previous exclusive possession act under section 12J of the Titles (Validation) and Native Title (effect of Past Acts) Act 1995 (WA) was done and that act is attributable to the State of Western Australia;

37. any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B(7)) of the Native Title Act 1993 was done in relation to the area and the act was attributable to the Commonwealth;

38. any areas where native title rights and interests have otherwise been wholly extinguished; and

39. specifically, any areas where there has been:

40. any unqualified grant of an estate in fee simple;

41 a lease which is currently in force, in respect of an area not exceeding 5000 square metres, upon which a dwelling house, residence, building or work is constructed, and which comprises:

(A) a lease of a worker's dwelling under the Worker's Homes Act 1911-1928;

(B) 999 year lease under the Land Act 1898 (WA);

(C) a Lease of a town lot or Suburban lot pursuant to section 117 of the Land Act 1933 (WA);

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

(E) any Reserves vested pursuant to section 33 of the Land Act 1933 (WA) that are not for the benefit of Aboriginal People.

42. conditional purchase lease currently in force in the Agricultural areas of the South west Division under regulations 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;

43 a conditional purchase lease of cultivatable 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;

44. a perpetual lease currently in force under the War Service Land Settlement Scheme Act 1954;

45. a public work as defined in section 253 of the Native Title Act 1993; or

46. an existing dedicated public road.

15A For the particular areas not covered by the application, see Determination Sought, Schedule 1, Part 2

Determination Sought, Schedule 1, Part 2 - excluded areas

[Areas not included because they are not covered by the native title determination application]

The areas within the external boundaries described in Part 1 that are not included in the Determination Area are (subject to confirmation following the filing and service of the tenure evidence contemplated by the Orders):

Area	Title	Location
Area 7	Water Reserve 18594	Within Reserve 22032 as shown on the map
Area 8	Water Reserve 18595	Within Reserve 22032 as shown on the map
Area 9	Water Reserve 18596	Within Reserve 22032 as shown on the map
Area 10	Water Reserve 18597	Within Reserve 22032 as shown on the map.

- Attachments:**
1. Map of Claim Area, Attachment C of the Application, 1 page - A3, 10/07/2011
 2. WCD2017/005 Yilka and Sullivan Family determination, 30 pages - A4, 27/09/2017

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