



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD16/2019
NNTT number: WC2011/003

Application Name: Timothy Carter & Ors v State of Western Australia (Warrwa Mawadjala Gadjidgar)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 07/04/2011

Current status: Full Approved Determination - 01/12/2020

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: 23/06/2011

Registration decision status: Accepted for registration

Registration history: Registered from 23/06/2011 to 4/12/2020,

Date claim / part of claim determined: 01/12/2020

Applicants: Timothy Carter, Stephen Hunter, Patricia Juboy, Elaine Laraia, Patrick Lawson, Nathan Lennard, Debra Ann Maher, Gail Williams, Thomas Williams, Barry Lennard, Herbert Marshall, Lawrence Tataya

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Additional Information

In Carter on behalf of the Warrwa Mawadjala Gadjidgar and Warrwa People Native Title Claim Groups v State of Western Australia [2020] FCA 1702, Justice Banks-Smith delivered a joint judgment in relation to two adjacent determinations of native title: WAD16/2019 Warrwa Mawadjala Gadjidgar and WAD33/2019 Warrwa Combined. Separate orders were published with the judgment for each determination and accordingly, the two determinations have separate entries on the National Native Title Register.

Persons claiming to hold native title:

Lawrence Tataya
Herbert Marshall
Patricia Juboy
Elaine Laraia
Patrick Lawson
Nathan Lennard
Debra Ann Maher
Gail Williams
Thomas Williams
Barry Lennard
Herbert Marshall
Lawrence Tataya

1. The native title claim group consists of people known as the Warrwa people, being those Aboriginal people whose traditional land and waters are situated generally in the district of Derby in the State of Western Australia.

2. The individuals who comprise the Warrwa people's native title claim group are the descendants of the following apical ancestors, including those people adopted in accordance with Warrwa traditional law and custom, see below.

Warlayakurdang

Galera

Topsy Mouwudjala

Gudayi

Bobby AhChoo

Milngangurru

Djabilangurul (Djabilangurru)

Bararangudu (Bararangurru)

Rimarrangudu (Rimarrangurru)

Binjangudu (Binjangurru)

Lanjangudu (Lanjangurru)

Walgananudu (Walganangurru)

3. A child is adopted in accordance with Warrwa traditional law and custom if they are 'grown up' by a person who is or was a descendant of one of the apical ancestors named above. Under Warrwa traditional law and custom that child must have been under 2 years old when they started being 'grown up'.

Native title rights and interests claimed:

1. Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s238, ss47, 47A or 47B apply), the Warrwa People claim the right to possess, occupy, use and enjoy the lands and waters of the application area as against the whole world.

2. Over areas where a claim to exclusive possession cannot be recognized, the Warrwa People claim the following rights and interests:

- (a) the right to access the application area;
- (b) the right to travel across the application area;
- (c) the right to camp on the application area;
- (d) the right to erect shelters on the application area;
- (e) the right to live on the application area;
- (f) the right to move about on the application area;
- (g) the right to hold meetings on the application area;
- (h) the right to hunt on the application area;
- (i) the right to fish on the application area;
- (j) the right to take flora and fauna from the application area;
- (k) the right to use and maintain the natural water resources of the application area including the beds and bank of watercourses;
- (l) the right to gather the natural products of the application area (including food, medicinal plants, timber, stone, ochre and resin) according to traditional laws and customs;
- (m) the right to use the application area for social religious, cultural and spiritual customary and/or traditional purposes;
- (n) the right to conduct ceremony on the application area;
- (o) the right to participate in cultural activities on the application area;
- (p) the right to maintain places of importance under traditional laws, customs and practices in the application area;
- (q) the right to protect places of importance under traditional laws, customs and practices in the application area;
- (r) the right to conduct burials on the application area;
- (s) the right to speak for and make non-exclusive decisions about the application area;
- (t) the right to cultivate and harvest native flora according to traditional laws and customs;

- (u) the right to cook and light fires for that purpose, on the application area;
- (v) the right to light fires for domestic purposes but not for the clearance of vegetation;
- (w) the right to uphold, regulate, monitor and enforce customary law;
- (x) the right to maintain and transmit cultural knowledge of the application area; and
- (y) the right to regulate among and resolve disputes among the native title holders of the application area.

3. The native title rights and interests are subject to:

- (a) The valid laws of the State of Western Australia and the Commonwealth of Australia;
- (b) The rights (past or present) conferred upon persons pursuant to the laws of the Commonwealth and the laws of the State.
- (c) the traditional laws and customs of the native title claim group.

Application Area:

State/Territory: Western Australia

Brief Location: Kimberley region of Western Australia

Primary RATSIB Area: Kimberley

Approximate size: 1244.4800 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):

1. The boundaries of the area covered by the application are described in the document annexed as "Attachment B".
2. Subject to (3) and (4), the area of land and waters within the boundaries described in Attachment B that are not covered by the application are;
 - a. Any area that is or was subject to any of the following acts as these are defined in either the Native Title Act, 1993 (Cwlth), as amended (where the act in question is attributable to the Commonwealth), the 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);
 - i. Category A past acts;
 - ii. Category A intermediate period acts;
 - iii. Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
 - iv. Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;

b. Any area in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, was done and the act was an act attributable to the Commonwealth;

c. Any area in relation to which 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;

d. Any area in relation to which a previous exclusive possession act under s23B(7) of the Native Title Act 1993 (Cwlth), as amended, was done in relation to the area and the act was attributable to the State of Western Australia;

e. Any area in relation to which native title rights and interests have otherwise been wholly extinguished.

3. Notwithstanding (2), the area of land and water covered by the application includes any area within the boundaries in relation to which the non-extinguishment principle as defined in section 238 of the Native Title Act 1993 (Cwlth) applies, particulars of which will be provided prior to the hearing but any area as may be listed in Schedule L is included in the area covered by the application.

4. Where there is any discrepancy between the map provided at Attachment C and the written description contained in this schedule and in Attachment B the latter prevail.

Attachments:

1. Attachment B - External Boundary Description, 2 pages - A4, 07/04/2011
2. Attachment C - Map of Claim Area, 1 page - A4, 07/04/2011

NNTT Contact Details

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