



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD242/2011  
NNTT number: WC2011/009

**Application Name:** Clive Davis & Ors v State of Western Australia (Whadjuk People)

**Application Type:** Claimant

**Application filed with:** Federal Court of Australia

**Date application filed:** 23/06/2011

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**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:** 12/10/2011

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 12/10/2011 to 3/12/2021,

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

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**Applicants:** Clive Davis, Noel Morich, Nigel Wilkes, Trevor Nettle, Dianne Wynne

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## Additional Information

Not applicable

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## Persons claiming to hold native title:

The native title claim group comprises all those persons who are:

1. biological or adopted descendants of the union between the following couples:

\* Boolabung and Weetang

\* Alice Taylor (Berijan) and Tommy Nettle; or

2. biological or adopted descendants of any of the following persons:

\* Wanetan

\* Doornong

\* Fanny Moderan, the mother of Cecilia Wilkes

\* Tulbak; and

\* John "Jack" Mungar Bennell.

3. Paragraphs 1 and 2 above include the biological descendants of persons adopted in any intervening generation.

4. A person has been "adopted" by another person or persons for the purpose of paragraphs 1 to 3 above if they have been reared from childhood by ("grown up by") that person or persons.

#### **Native title rights and interests claimed:**

##### The Qualifications

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 Native Title Act 1993 (Cwlth) ("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 live within the area;

(c) the right to make decisions about the use and enjoyment of the area;

(d) the right of access to the area;

- (e) the right to control the access of others to the area;
- (f) the right to use and enjoy resources of the area;
- (g) the right to control the use and enjoyment of others of resources of the area;
- (h) the right to conduct ceremonies within the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area;
- (j) the right to teach and pass on knowledge of the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area;
- (k) the right to learn about and acquire knowledge concerning, the claimant group's traditional laws and customs pertaining to the area and knowledge of places in the area;
- (l) the right to manage, conserve and look after the land, waters and resources
- (m) the right to manage, conserve and look after the land, waters and resources by way of removing carbon dioxide from the atmosphere surrounding the land and waters; and
- (n) the right to manage, conserve and look after the land, waters and resources by way of avoiding the emission of methane or nitrous oxide.

**Application Area:**

**State/Territory:** Western Australia  
**Brief Location:** South West Region inc Perth metro area  
**Primary RATSIB Area:** South West  
**Approximate size:** 5579.2268 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):**

1. The external boundaries of the area covered by the application are identified in Attachment B.
2. Subject to (3), 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) ("the NTA"), as amended (where the act in question is attributable to the Commonwealth), 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 section 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 NTA, 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 waters 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 NTA applies, including any area to which section 47, 47A and 47B of the NTA 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. External Boundary Description, Attachment B of the Application, 2 pages - A4, 23/06/2011
2. Map of Claim Area, Attachment C of the Application, 1 page - A3, 23/06/2011

**NNTT Contact Details**

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End of Extract