



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD181/2012
NNTT number: WC2012/007

Application Name: Victor Ashwin & Anor (Wiluna #3) v State of Western Australia

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 03/08/2012

Current status: Full Approved Determination - 23/01/2015

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: Not Accepted for registration

Registration history: -

Date claim / part of claim determined: 29/07/2013

Applicants: Victor Ashwin, Kelman James Patch

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Additional Information

Please note there is a conditional determination in relation to all of the area covered in WAD181/2012 (and in relation to part of the area covered by the WAD6164/98 and in relation to all of the area covered by WAD248/2007), as indicated on the attached map. This will become effective immediately upon the making of a determination as to the prescribed body corporate for the determination area.

Persons claiming to hold native title:

See Attachment A

Native title rights and interests claimed:

13. The nature of the native title rights and interests claimed is the right of possession, occupation, use and enjoyment to the exclusion of all others.

14. The rights and interests claimed are:

(a) Exercisable in accordance with the traditional laws and customs of the native title claim group; and

(b) Subject to the laws of the State and the Commonwealth including the common law.

15. The native title rights and interests claimed include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904 (WA), but do not include the right to take other minerals and petroleum where that right has been extinguished.

16. The applicants seek to apply section 47 of the Native Title Act to disregard any prior extinguishment by the creation of prior interests to the extent that this provision may be relied on.

Application Area:

State/Territory: Western Australia

Brief Location: Central Desert

Primary RATSIB Area: Central Desert

Approximate size: 3589.9905 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

6. The area covered by this application is within the Shire of Wiluna.

7. The boundaries of the application area covers all the land and waters within Pastoral Lease K601976 (known as the Windidda Pastoral Lease)

8. 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

9. Section 47 is claimed in relation to the claim area.

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

10. Subject to paragraph 10 above, areas of land and waters within the boundary 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 (Cth), 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:

(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 '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;

(c) 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;

(d) 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;

(e) any areas where native title rights and interests have otherwise been wholly extinguished; and

(f) specifically, any areas where there has been:

(i) any unqualified grant of an estate in fee simple;

(ii) 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.a 99 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.

(iii) 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;

(iv) 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;

(v) a perpetual lease currently in force under the War Service Land Settlement Scheme Act 1954;

(vi) a public work as defined in section 253 of the Native Title Act 1993; and

(vii) an existing dedicated public road.

- Attachments:**
1. Claim Group Description, Attachment A of the application, 2 pages - A4, 08/08/2012
 2. Map of claim area Attachment C, 2 pages - A4, 08/08/2012
 3. NNTT Map of remaining area after determination of 29 July 2013, 1 page - A3, 03/09/2013

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