



## Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD410/2012  
NNTT number: WC2012/013

**Application Name:** Helicopter Tjungarrayi & Ors (Ngurra Kayanta) v State of Western Australia & Ors

**Application Type:** Claimant

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

**Date application filed:** 21/12/2012

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**Current status:** Full Approved Determination - 18/10/2017

**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:** 21/02/2013

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 21/02/2013 to 23/10/2017,

**Date claim / part of claim determined:** 18/10/2017 , 02/06/2017

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**Applicants:** Helicopter Tjungarrayi, Sandra Brooking, Rita Minga, Bartholomew Baadjo, Darren Farmer, Frances Nanguri, Jane Bieundurry, Eugene Laurel, Richard Yugumbarri

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## Additional Information

On 10 August 2016 the Federal Court of Australia made a determination in respect of part of the application area that native title exists in the entire determination area – see *Helicopter Tjungarrayi on behalf of the Ngurra Kayanta People v State of Western Australia* [2016] FCA 910. Order 1 of the determination provided that ‘... The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the Native Title Act 1993 (Cth) as the case may be’ [i.e. determination of a prescribed body corporate]. The Ngurra Kayanta Aboriginal Corporation was determined as the Prescribed Body Corporate for this determination on 2 June 2017. The determination is now in effect and was registered on the National Native Title Register on 9 June 2017. Pursuant to s 190(4)(e), details of the claim made in relation to the determination area are removed from the Register of Native Title Claims as and from 9 June 2017. The attached NNTT external boundary description and map are an interpretation by the NNTT of the remaining application area that is yet to be determined. These attachments do not form part of the application and are provided for general information only. Persons should seek their own independent advice in relation to the correct description of the area. On 15 August 2017 the Federal Court of Australia made a determination in respect of the remaining application area that native title exists in the entire determination area – see *Helicopter Tjungarrayi on behalf of the Ngurra Kyanta People v State of Western Australia (No 3)* [2017] FCA 938. Order 2 of the determination provides that ‘... The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the Native Title Act 1993 (Cth) as the case may be.’ [i.e. determination of a prescribed body corporate]. Once in effect, the determination will be entered on the National Native Title Register.

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### Persons claiming to hold native title:

See Attachment A

### Native title rights and interests claimed:

12. The nature and extent of the native title rights and interests held by the native title claim group in the whole of the application area (including any areas where extinguishment must be disregarded pursuant to sections 47, 47A and 47B of the NTA) is the right to possess, occupy, use and enjoy the land and waters of the application area to the exclusion of all others.

13. The native title rights and interests are:

- (a) exercisable in accordance with the traditional laws and customs of the native title claim group; and
- (b) subject to the valid laws of the State of Western Australia and the Commonwealth of Australia, including the common law.

### Application Area:

**State/Territory:** Western Australia

**Brief Location:** In the Great Sandy Desert approx. 1000 km east of the town of Karratha.

**Primary RATSIB Area:** Central Desert

**Approximate size:** 5488.8671 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 of land and waters covered by the application are described in the document entitled ‘Identification of Boundaries’ which is annexed as ATTACHMENT B.

7. The external geographical boundaries of the area of land and waters covered by the application are clearly delineated and marked on the attached map at ATTACHMENT C.

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

8. For the purposes of the application of sections 61A(4), 47, 47A and 47B of the NTA, the application covers the

following areas:

- (a) part of Reserve 26399 for the purpose of "Use and Benefit of Aboriginal Inhabitants" vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 15 June 1973, which is subject to section 47A;
- (b) a significant portion of vacant Crown land which may be subject to s 47B of the NTA; and
- (c) any other areas to which the non-extinguishment principle as defined in section 228 of the NTA applies.

Part C. Areas within the external boundaries that are not covered by the application

9. Subject to paragraph 8 above, areas of land and waters within the external 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 NTA, 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 NTA 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 a valid grant of:

(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) a 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 (WA)* 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 (WA)*;

(vi) a public work as defined in section 253 of the NTA; or

(vii) an existing dedicated public road.

**Attachments:**

1. Attachment A - Claim Group Description, 2 pages - A4, 06/05/2015
2. Attachment B - Identification of Boundaries, 1 page - A4, 06/05/2015
3. Attachment C - Map of Claim Area, 1 page - A4, 06/05/2015
4. Remaining Area Description, 2 pages - A4, 10/08/2016
5. Remaining Area Map, 1 page - A4, 10/08/2016

**NNTT Contact Details**

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