



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD18/2019
NNTT number: WC2013/007

Application Name: Rita Augustine & Ors v State of Western Australia (Jabirr Jabirr)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 23/09/2013

Current status: Full Approved Determination - 23/03/2020

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: 14/11/2013

Registration decision status: Accepted for registration

Registration history: Registered from 14/11/2013 to 25/03/2020,

Date claim / part of claim determined: 23/03/2020 , 02/05/2018

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Additional Information

On 2 May 2018, the Federal Court made a determination that native title exists in parts of the application area - see Rita Augustine & Ors and State of Western Australia & Ors (Jabirr Jabirr) (unreported, FCA, 2 May 2018, North J). That determination is attached to this Extract. The determination of native title was entered on the National Native Title Register (NNTR) on 15 May 2018. Pursuant to s 190(4)(da) of the Native Title Act 1993 (Cth) those areas where it has been determined that native title exists remained on the Register of Native Title Claims (RNTC) until a Prescribed Body Corporate is determined in relation to those areas and registered on the NNTR. The native title holders had 12 months from the determination date to nominate a Prescribed Body Corporate (or such further time as the Court may allow): see Order 3 of the determination. Those areas where native title has been determined not to exist were removed from the RNTC as and from 2 May 2018. On 29 January 2019, the Federal Court ordered that Attachment A to the orders made on 2 May 2018 be amended to give effect to the Full Court's reasons for judgment published on 20 December 2018 in Manado on behalf of the Bindunbur Native Title Claim Group v State of Western Australia [2018] FCAFC 238. On 21 August 2019 Justice Robertson ordered that the Gogolanyngor Aboriginal Corporation RNTBC be the prescribed body corporate for this determination, and therefore this determination is finalised as at 21 August 2019. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

Persons claiming to hold native title:

1. The native title claim group consists of people known as the Jabirr Jabirr people, being those Aboriginal people whose traditional land and waters are situated generally in the district north of Broome and south of Beagle Bay in the state of Western Australia.
2. The individuals who comprise the Jabirr Jabirr people's native title claim group are the biological descendants of the following persons and one couple:
 1. Gardarlagan
 2. Frank Dinghi, aka Jimmy Bulingi
 3. Appolonia, mother of Gerard, Theresa, Josephine and Ester
 4. Nabi
 5. Dorothy, sister of Senanus and mother of Elsie, Bill, Bardu and Rosie
 6. Jacky and Deborah
 7. Mary Nelagumia
 8. Appolonia, sister of Mary Nelagumia
 9. Wallai William
 10. Agnes Imbarr
 11. Fred/Friday Walmadang
 12. Murjal, sister of Senanus
 13. Sophie, mother of Kay McKenzie and others
 14. Frank Walmandu, brother of Senanus
 15. Flora, sister of Matilda
 16. Louisa, aka Djauradjaura, sister of Matilda
 17. Madeline, sister of Matilda
 18. Matilda, mother of Josephine Torres and others
 19. Bornal

20. Liddy
21. Dorothy Kelly
22. Walamandjin
23. Alice Darada

Native title rights and interests claimed:

Native title where traditional rights are wholly recognisable

1. Paragraph [2] applies to every part of the claim area:

(a) where there has been no extinguishment to any extent of native title or where any extinguishment is required to be disregarded; and

(b) which is not subject to the public right to navigate or the public right to fish.

2. Where this paragraph [2] applies the right possessed under traditional law and customs is properly interpreted as, and the native title right recognised by the common law of Australia is, the right of possession, occupation, use and enjoyment of land and waters as against the whole world.

Native title where traditional rights are partially recognisable

3. Paragraph [4] applies to every part of the claim area to which paragraph [2] does not apply.

4. Where this paragraph [4] applies, the rights and interests possessed under traditional law and customs are properly interpreted as the rights of possession, occupation, use and enjoyment of land and waters as against the whole world, but the native title rights and interests recognised by the common law of Australia are the rights to do all such things as may be done under the right referred to in paragraph [2] save for controlling access to or the use of land or waters by others; being the (non-exclusive) rights to:

(a) have access to, remain on and use the land and waters;

(b) access and take the resources of the land and waters; and

(c) protect places, areas and things of traditional significance on the land and waters.

5. The members of the native title claim group acknowledge that their native title rights and interests are subject to and exercisable in accordance with valid and current laws of the Commonwealth and the State of Western Australia including the common law.

6. For the purposes of paragraph 4(b) above, "resources" means anything that has utility or potential utility, excluding such minerals, petroleum, geothermal energy or geothermal energy resources, if any, as are, under the laws of the Commonwealth and the State of Western Australia including the common law as at the date of this application, wholly owned by the Crown

Application Area:

State/Territory: Western Australia

Brief Location: North of Broome, Kimberley

Primary RATSIB Area: Kimberley

Approximate size: 68.4257 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) below, 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, when the application is made, was subject to any of the following kinds of acts as these are defined in either the Native Title Act 1993, 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 of any native title rights or interests;

iv. Category B intermediate period acts that are wholly inconsistent with the continued existence 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 under section 23B (including section 23B(7)) of the Native Title Act, 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 area where there has been:

i. an unqualified grant of an estate in fee simple;

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

iii. an existing dedicated public road.

3. To be clear, nothing in this Form 1 or the map which is Attachment C to this application (in particular any reference to or depiction of any place, area or alignment as a "road") is to be taken as an admission on the part of the Applicant as to the status of that place, area or alignment, and in particular is not to be taken as an admission of the doing of any act affecting native title so as to extinguish it wholly or to any other extent.

4. 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 Native Title Act 1993 (Cwlth) applies, including any area to which section 47, 47A and 47B 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.

5. 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.
Schedule L

For the area covered by the application, details of:

a) any area for which a pastoral lease is held by or on behalf of the members of the native title claim group; and

b) any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders that is occupied by or on behalf of the members of the native title claim group; and

c) any vacant Crown land occupied by the members of the native title claim group; and

d) any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded.

The native title claim group claims the benefit of sections 47, 47A and 47B in relation to any areas of land that fall within the categories provided for in paragraphs (a), (b) or (c) above.

Attachments:

1. Remaining Area Map, 1 page - A4, 29/01/2019
2. Remaining Area Description, 1 page - A4, 29/01/2019
3. Attachment B - External Boundary Description, 5 pages - A4, 13/10/2015
4. Attachment C - Map of Claim Area, 2 pages - A4, 13/10/2015
5. Jabirr Jabirr Native Title Determination, 38 pages - A4, 02/05/2018

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