



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD62/2016
NNTT number: WC2016/001

Application Name: Ivan Smirke & Ors v State of Western Australia (Jurruru People #3)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 04/02/2016

Current status: Full Approved Determination - 20/12/2018

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: 04/08/2016

Registration decision status: Accepted for registration

Registration history: Registered from 4/08/2016 to 10/01/2019,

Date claim / part of claim determined: 20/12/2018

Applicants: Ivan Smirke, Brenda Smirke, Nathaniel Tommy, Kellman Limerick

Address(es) for Service: Gregory Young
Yamatji Marlpa Aboriginal Corporation
Level 8, 12-14 The Esplanade
PERTH WA 6000
Phone: (08) 9268 7000
Fax: (08) 9225 4633

Additional Information

Not applicable

Persons claiming to hold native title:

The persons who comprise the Jurruru People's native title claim group are those persons who:

- (a) are descended from Kantitharra or Punartu or are adopted by such biological descendants in accordance with traditional laws acknowledged and the traditional customs observed by the Jurruru People;
- (b) identify themselves as Jurruru under traditional law and custom and are so identified by other Jurruru People as Jurruru; and
- (c) have a connection with the land and waters in the Determination Area, in accordance with the traditional laws acknowledged and the traditional customs observed by the Jurruru People.

Native title rights and interests claimed:

Subject to laws and customs

The native title rights and interests claimed in this Application are subject to and exercisable in accordance with:

1. The common law and the laws of the State of Western Australia and the Commonwealth of Australia;
2. Valid interests conferred pursuant to the laws of the State of Western Australia and the Commonwealth; and
3. The body of traditional laws and customs of the Aboriginal society under which rights and interests are possessed and by which the native title claim group have a connection to the land and waters the subject of this Application.

Rights in Area A

In relation to Area A, the Applicant claims the following native title rights and interests pertaining to exclusive possession:

1. The right to possession, occupation, use and enjoyment of that area as against the whole world.

Rights in Area A and Area B

The Applicant claims the following native title rights and interests in relation to:

- Area A if the claim to exclusive possession cannot be recognised; and
 - Area B
2. The right to access and to take resources (other than minerals, petroleum and gas) in the area for any purpose;
 3. The right to access the area, to remain on or within the area and use the area for any purpose including to live, camp and erect shelters upon or within the area;
 4. The right to speak for and make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;
 5. The right to invite and permit others to have access to and participate in or carry out activities in the area; and
 6. The right to visit, care for and maintain places and objects of significance within the area and protect and have them protected from harm;

Area A means land and waters within the Application area that are landward of the high water mark and which comprises:

- (i) areas of unallocated Crown land (including islands) that have not been previously subject to any grant by the Crown;
- (ii) areas to which s. 47 of the Act applies;
- (iii) areas to which s. 47A of the Act applies;
- (iv) areas to which s. 47B of the Act applies; and
- (v) other areas to which the non-extinguishment principle, set out in s. 238 of the Act, applies and in relation to which there has not been any prior extinguishment of native title.

Area B means land and waters within the Application area that is not included in Area A above.

Application Area:
State/Territory: Western Australia
Brief Location: Pilbara Region, Western Australia
Primary RATSIB Area: Pilbara
Approximate size: 466.5053 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):

a) The area covered by the Application

The external boundaries of the area of land and waters covered by the Application are as set out in the document entitled "External Boundary Description", which is annexed as **Attachment 'B'**.

b) Any areas within those boundaries that are not covered by the Application

1. Subject to Schedule B paragraph 5, the Applicant excludes from the Application area any areas that are covered by any of the following acts, as defined in either the Act, as amended (where the act is attributable to the Commonwealth), or the *Titles (Validation) and Native Title (Effect of Past Acts) 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:

- (a) Category A past acts;
- (b) Category A intermediate period acts;
- (c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests; and
- (d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.

2. Subject to Schedule B paragraph 5 below, the Applicant excludes from the Application area any areas in relation to which:

- (a) A "previous exclusive possession act", as defined in s 23B of the Act, was done and the act was an act attributable to the Commonwealth; or
- (b) A "previous exclusive possession act", as defined by s 23B(7) of the Act, was done and the act was an act attributable to the State of Western Australia; or
- (c) A "relevant act", as defined in s 121 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

3. Subject to Schedule B paragraph 5, the Applicant does not claim any native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others over areas in relation to which:

(a) A "previous non-exclusive possession act", as defined in s 23F of the Act, was done and the act was an act attributable to the Commonwealth; or

(b) A "previous non-exclusive possession act", as defined in s 23M of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

4. Subject to Schedule B paragraph 5, the Applicant excludes from the Application area any areas in relation to which native title rights and interests have otherwise been wholly extinguished.

5. Notwithstanding anything contained elsewhere in this Application, the area covered by this Application includes any area in relation to which the non-extinguishment principle (as defined in s 238 of the Act) applies, including any areas to which ss. 47, 47A and 47B of the Act apply. Particulars of these areas 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.

Schedule L

The Applicant does not yet have details of:

1. any area for which a pastoral lease is held by or on behalf of the members of the native title claim group;
2. any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders and occupied by or on behalf of the members of the native title claim group;
3. any vacant Crown land occupied by the members of the native title claim group; and
4. any area mentioned in paragraph (1), (2) or (3) which attracts the protection of sections 47, 47A or 47B of the Act, and hence prior extinguishment is to be disregarded.

Attachments:

1. Attachment B External Boundary Description, 3 pages - A4, 04/02/2016
2. Attachment C Map of claim area, 1 page - A4, 04/02/2016

NNTT Contact Details	Address:	National Native Title Tribunal Perth Office Level 5, Commonwealth Law Courts 1 Victoria Avenue PERTH WA 6000 GPO Box 9973 PERTH WA 6848
	Telephone:	+61 8 9425 1000
	Freecall:	1800 640 501
	Fax:	+61 8 9425 1193
	Web Page:	www.nntt.gov.au

End of Extract