



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD598/2016
NNTT number: WC2016/005

Application Name: Rosita Shaw & Ors and State of Western Australia & Ors (Boorroola Moorrool Moorrool)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 23/12/2016

Current stage(s): Notification Complete, Part Determination

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: 09/05/2017

Registration decision status: Accepted for registration

Registration history: Registered from 9/05/2017

Date claim / part of claim determined: 02/08/2021

Applicants: Rosita Shaw, Charles (Rocky) Prouse, Gary Ozies, Anne Poelina, Linda Nardea, Katherine Ningella, Jonathan Rickerby

Address(es) for Service: Hema Hariharan
Arma Legal
Suite 24
Level 3
1060 Hay Street
West Perth WA 6005
Phone: (08) 9480 0465

Additional Information

On 30 November 2020, the Federal Court made a determination that native title exists in parts of the application area – see Shaw on behalf of the Boorroola Moorrool Moorrool Native Title Claim Group v State of Western Australia [2020] FCA 1700 (Boorroola Moorrool Moorrool Part A). That determination is attached to this Extract. Order 2 of the determination provides that '[t]he 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). On 23 December 2020, the Federal Court made further orders which stated the following: 1. The orders of the Court made on 30 November 2020 are varied by amending Schedule 1 to: (a) delete the words 'the southern boundary of Reserve 1834' and substitute the words 'a southwestern boundary of Reserve 51146'; (b) delete the words 'Then easterly to the easternmost northeastern corner of the westernmost severance of Pastoral Lease N049743 (Mowanjum), being the easternmost northwestern corner of again Native Title Determination WAD6099/1998 Nyikina Mangala (WCD2014/003)' and substitute the words 'Then easterly along a line joining coordinate points Latitude 17.415268 South, Longitude 123.667955 East and Latitude 17.415267 South, Longitude 123.751288 East to a northwestern corner of Native Title Determination WAD6099/1998 Nyikina Mangala (WCD2014/003);', so that the orders be now in the form annexed hereto and marked Attachment A - see Shaw on behalf of the Boorroola Moorrool Moorrool Native Title Claim Group v State of Western Australia (No 2) [2020] FCA 1860. That determination is attached to this Extract. Pursuant to Order 2 of the determination, on 2 August 2021, the Boorroola Moorrool Moorrool Native Title Claim Group nominated the Walalakoo Aboriginal Corporation RNTBC to be the prescribed body corporate and to hold the native title on trust. The determination therefore came into effect on 2 August 2021. Pursuant to s 190(4)(e) of the Native Title Act 1993 (Cth) the application remains on the Register of Native Title Claims to the extent that it relates to the undetermined areas. 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:

The native title claim group consists of people known as the Nyikina people, being those Aboriginal people whose traditional lands are situated generally in the north west of the Kimberley region in the State of Western Australia.

The individuals who comprise the Nyikina People's Boorroola Moorrool Moorrool native title claim are the descendants of the following Apical Ancestors, including those people adopted in accordance with Nyikina traditional law and custom, see below:

1. Nani
2. Bundangurra and Mabel Ah Chee
3. Jambo, Polly Wurrayin and Charlie Djawali
4. Dim
5. Gadjigar
6. Ngurkwan, Yayika and Minyang
7. Lucy Muninga, Edward Yedawarra and Wadadarl mother of Fulgentius Fraser
8. Gurupirin
9. Kitty Kujaja
10. Maggie Nimbanirl
11. Kudij and Marrkal
12. Kalmoorrd and Jumbang
13. Magalanyka and Balkiny
14. Bidarn
15. Jarji
16. Balbarra

A child is adopted in accordance with Nyikina tradition if they are or have been "grown up" by a person who is or was a descendant of one of the Apical Ancestors named above. According to this law and tradition to become a Nyikina person the child must be 2 years of age or under when they first commenced to be "grown up" by a Nyikina person.

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 rights and interests or where any such extinguishment is required to be disregarded pursuant to sections 47, 47A or 47B of the Native Title Act 1993 (Cth); and

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

2. Where this paragraph applies, the native title rights and interests possessed under traditional laws and customs confer possession, occupation, use and enjoyment of the land and waters as against all others.

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 applies, the customary rights and interests possessed under traditional laws and customs that are able to be and should be recognised by the common law of Australia 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. Each of the native title rights and interests referred to in each of paragraphs 2 and 4 exist in relation to the whole of each part of the Claim Area to which those paragraphs respectively apply and is held by the members of the native title claim group subject to and in accordance with traditional laws and customs.

Application Area:

State/Territory: Western Australia

Brief Location: Kimberley Region, Western Australia

Primary RATSIB Area: Kimberley

Approximate size: 378.2356 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):

Area covered by the Application:

1. The area covered by the application (claim area), is all the parcels of land and waters which are within the area described in Attachment B and shown in the map attached at Attachment C and which are not excluded by paragraph 2.

Areas not covered by the application:

2. The following areas are not covered by the application, except where any extinguishment by the acts mentioned is required by sections 47, 47A or 47B of the Native Title Act to be disregarded:

(a) any area that, when the application is made, is subject to any of the following kinds of acts as they are defined in either the Native Title Act 1993, as amended (where the act in question is attributable to the Commonwealth), or Titles (Validation) and Native Title (Effects 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 as defined by section 23B (including section 23B (7)) of the Native Title Act 1993 was done in relations [sic] to the area and the act was attributable to the Commonwealth;

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

(f) specifically, except for where the non-extinguishment principle as defined in section 238 of the Native Title Act 1993 applies, 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.

See "Attachment B"

Attachments:

1. External boundary description, attachment B of the application, 3 pages - A4, 23/12/2016
2. Map, attachment C of the application, 2 pages - A4, 23/12/2016
3. Boorroola Moorrool Moorrool Part A determination, 24 pages - A4, 30/11/2020
4. Boorroola Moorrool Moorrool Part A amended determination, 22 pages - A4, 23/12/2020
5. Description of Undetermined Area, 2 pages - A4, 02/08/2021
6. Map of Undetermined Area, 1 page - A3, 02/08/2021

End of Extract