



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD278/2018
NNTT number: WC2018/008

Application Name: Elvie Dann & Ors and State of Western Australia (Wajarri Yamatji (Byro Plains))

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 25/06/2018

Current status: Full Approved Determination - 29/07/2021

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: 29/07/2021

Applicants: Elvie Dann, Coralie Dann, Gwen Rakabula, Arthur Ryan, Michelle McIntosh, Dennis Franklin, Roberta Hicks, Julie Kelly

Address(es) for Service: Glenn Archer
Yamatji Marlpa Aboriginal Corporation
L8, 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 Wajarri Yamatji (Byro Plains) claim is brought on behalf of the descendants of:

National Native Title Tribunal

Extract from Schedule of Native Title Applications

WAD278/2018

Page 1 of 4

- *Kia Murgoo Fred, Innie Annie, Jungudji Rosie English, Badja, Kadjba* (siblings)
- *Baljarba* Jim Crow
- *Mogagee* Daniel Dann
- *Jinatharra* Bobby Clark
- Tommy Glass
- *Wannanu* Waurene Porter
- Nellie (mother of Fred Simpson)
- *Bundadee* English Edwards and *Munoberrie* Mary Jane
- *Yanbaree*
- Kitty Gilbert
- *Tigher* Dija
- Mary from Twin Peaks (mother of Wandy Boddington and Eva Boddington)
- Emily (mother of *Cunnie* Elizabeth Worth and Fred Worth)
- Ivy Walgar, Robby Walgar, Simon Walgar (siblings)
- Tommy Jones and Fanny Jones
- Tiger Ryan, Frances/Fanny Ryan, Boomer Ryan, unnamed Ryan (siblings)
- Molly
- Caroline (mother of Lena Sullivan)
- Budjeeyona and Jinny
- Jinty Cindy Tyson (nee Sullivan)
- Amy Porter and *Jigaroo*
- Polly Parker
- Frank/Bubadee Franklin/Punch
- Charlie Dongara
- *Eniwani* Jimmy and Jenny/Jinnie
- Grace Jones
- Julia (mother of Cecil Lane)
- Jimmy and Judy
- *Bunnabuddy* Daisy, *Ngambulu* Molly (siblings);
- *Jibija* Rosie Jones
- *Moweramarra* Caroline (mother of Ruby Nairn)

Native title rights and interests claimed:

Application area means the area of land and waters covered by this application as described in Schedule B.

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

- (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.

Subject to laws and customs

The native title rights and interests claimed in the 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 of Australia; 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:

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 to Area B:

1. The right to access and to take resources (other than minerals, petroleum and gas) in the area for any purpose;
2. 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;
3. 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;
4. The right to invite and permit others to have access to and participate in or carry out activities in the area; and
5. The right to visit, care for and maintain places and objects of significance within the area and protect and have them protected from harm.

Application Area:

State/Territory: Western Australia

Brief Location: Geraldton region

Primary RATSIB Area: Geraldton

Approximate size: 967.6492 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):

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

Areas of land and waters 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 these are defined in either the *Native Title Act 1993* (Cth) (**the Act**), as amended (where the act in question is attributable to the Commonwealth of Australia), or the *Titles (Validation) and Native Title (Effect of Past Act) 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:

- (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, the applicant excludes from the application area any areas in relation to which:

- (e) 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 of Australia; or
- (f) A previous exclusive possession act under s 23B(7) of the Act was done in relation to the area and the act was attributable to the State of Western Australia.
- (g) A "relevant act" as that term is defined in s 121 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) was done and the act is attributable to State of Western Australia; or

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:

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

4. Subject to Schedule B paragraph 5, the applicant also 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 the application, the area covered by the application includes any area in relation to which the non-extinguishment principle (as defined in s 238 of the Act) applies, including any area to which ss 47, 47A and 47B of the Act apply, particulars of which will be provided prior to the hearing but which 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 ss 47, 47A or 47B of the Act, and hence prior extinguishment is to be disregarded.

Attachments:

1. Attachment B - External Boundary Description, 2 pages - A4, 25/06/2018
2. Attachment C - Map, 1 page - A3, 25/06/2018

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