



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD327/2018
NNTT number: WC2018/013

Application Name: Malachy Hobbs & Ors and State of Western Australia (Ngurrara D1)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 19/07/2018

Current status: Full Approved Determination - 09/08/2019

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: 09/08/2019

Applicants: Malachy Hobbs, Hector Hobbs, Cynthia Winawarl, Mervyn Numbagardie, Richard Pindan, Tony Yanawana, Harry Yungabun, Percy Bulagardie, James Yanawana, Victor Woia, Helen Thomas

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Additional Information

On 7 August 2019, the Yanunijarra Aboriginal Corporation RNTBC was nominated to be the prescribed body corporate and trustee of the native title rights and interests for the common law holders, pursuant to section 56(1). On 9 August 2019, the Federal Court of Australia made a determination in respect of the application area that native title exists in parts of the determination area – see *Howbbs v State of Western Australia* [2019] FCA 1255 Order 3 provides that the determination is to take effect immediately upon the making of a determination under section 56(1) or 57(2) of the Native Title Act 1993 (Cth). Order 5 provides that if a prescribed body corporate is nominated in accordance with order 3, it will hold the native title rights and interests in trust or as agent (as the case may be), for the common law holders. As the prescribed body corporate had been nominated on 7 August 2019, the determination came into effect on 9 August 2019.

Persons claiming to hold native title:

The members of the native title claim group comprise the following:

Those Aboriginal people who are:

a) the biological descendants of the following apical ancestors: Barney Barnes, Bidy Tipultipul, Charcoal Waluparka, Charlie Wirramin; Hairpin Marna, Hector McClarty, Jack Butt, Jack Pindan, Jalal, Janyi, Jarlanyja, Jarraly, Jarralyi, Jijuru, Jiminalajarti, Jimmy Cherrabun, Jimmy Kuku, Jimmy Milmilinpiri, Jinakurji, Jinaparralyaparralya, Jiyapa, Jukajuka, Jutaji, Kakaji, Kakartuku, Kakural, Karljuwal, Kilankara, Kingkarraji, Kinkarraji, Kinki, Kipi, Kujiman, Kulurr, Kumparrngarla, Kungayi, Kunyu, Kurtinyja, Kurukuru, Kurumanyu, Liramilin, Lirra, Maggi Wipula, Manjankarri, Maramara, Maramimi, Marjorie Baldwin-Jones, Marra, Milal, Milimili, Mimi, Mitanga, Mukula, Napiya, Nat Beadell, Ngaramgarapungu, Ngarpitangky, Ngartaya, Nujnuj, Nyapita, Nyinganyiga, Nyintakura, Nyinyingka, Paju, Pampi, Papiiparri, Paralirl, Parnayi, Parrangali, Peter Francis, Pika, Piluwulu, Pingana, Piniarti, Possum Waja, Pukurli, Pulyukupulyuky, Puri, Purngurrkarraji, Roger Rakartu, Shovel, Tampitampi, Tiepin Forrest, Tommy Kampuranti, Ulayi, Upatatirri, Waji Karpipal, Walkarr, Wamakulangu, Wamukarraji, Wangala, Wangkarrkura, Warrapan, Warrmala, Wawajati, Wayanjarri, Wintiki, Witikirriny, Yalyayi, Yanji, Yanparr, Yijayi, Yita, Yungkurla, Yurrijarti, Yurungu;

Ngampupartu, Japarti, Mayaparna, Yirrajarti, Partaly, Jurnurinyja, Yakarla, Charlie Nyarnjarn, Jintabi, Ngurrujukurr, Wakunya, Pinanpali, Lilpala, Ngalpujukurr;

Jurniyaku, Kangkayi, Kilkatarri, Kiminy, Kuni, Pangkayi, Tarrungka, Wayinamaliny, Jurrkapitirra-Dicky Costaine, Tartiku-Frank Forrest, Minyarri, Pajinka, Jinanyili/Alec Laurel, Milaluwa Bob, Turljarri, Wanakara, Kirrirri and Warrkaya, Tjinamunturr, Pinkakarraji, Jerry Purungpurung, Toby Dickens; or
b) are acknowledged by the native title claimants in (a) as having rights and interests in the claim area through a direct relationship by birth/finding and growing up in places ("Ngurrara") within the application area.

Native title rights and interests claimed:

Native title where traditional rights are wholly recognisable

1. In every part of the claim area (if any) where there has been:

- no extinguishment to any extent of native title or where any extinguishment is required to be disregarded; and
- which is not subject to the public right to navigate or the public right to fish, 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 exclusive right of possession, occupation, use and enjoyment of land and waters as against all others.

Native title where traditional rights are partially recognisable

2. In all other parts of the claim area, the right possessed under traditional law and customs is properly interpreted as the right of possession, occupation, use and enjoyment of land and waters as against all others, 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 above, save for controlling the access to or the use of land or waters by others; being the (non-exclusive) rights to:

- have access to, remain on and use the land and waters;
- access and take for any purpose the resources of the land and waters; and
- protect places, areas and things of traditional significance on the land and waters.

Area covered by the native title and who holds the rights

3. Each of the native title rights referred to in paragraph 1 and 2 in this Schedule E 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 their traditional laws and customs.

Activities currently carried on

4. Activities in exercise of the native title rights referred to in this Schedule E are all such activities as are contemplated by those rights and interests and include the activities identified in Schedule G.

Rights subject to laws of Australia

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. In this Schedule E, "resources" does not include 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: Kimberley Region, Western Australia

Primary RATSIB Area: Kimberley

Approximate size: 1574.1318 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):

1. The external boundary of the area covered by the application is described at Attachment B.

2. The following areas within the claim area, if any, are not covered by the application, except where the non-extinguishment principle as defined in section 238 of the *Native Title Act 1993 (Cth)* applies to the area or any extinguishment by the acts mentioned is required by sections 47, 47A or 47B of the *Native Title Act 1993 (Cth)* 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 (Cth)*, as amended (where the act in question is attributable to the Commonwealth), or the *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 121 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 121 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 (Cth)* was done in relation to the area and the act was attributable to the Commonwealth; and

e) any areas where native title rights and interests have otherwise been wholly extinguished.

3. Where there is any discrepancy between the map provided at Attachment C and the written description contained in paragraph 1 of this Schedule B, this Schedule prevails.

Attachments:

1. Attachment B - External boundary description, 5 pages - A4, 19/07/2019

2. Attachment C - Map of the Claim Area, 1 page - A3, 19/07/2018

3. Ngurrara D1 Determination, 28 pages - A4, 09/08/2019

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