



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD483/2018
NNTT number: WC2018/022

Application Name: Kevin Stream & Ors v State of Western Australia & Ors (Palyku #2)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 29/10/2018

Current status: Full Approved Determination - 16/01/2024

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: 16/01/2024 , 06/09/2021 , 10/03/2021

Applicants: Kevin Stream, Tammy O'Connor, Peter Jaffrey, Cheryl Mackay, Walter Stream

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Additional Information

On 10 March 2021, the Federal Court made a determination that native title exists in parts of the application area - see O'Connor on behalf of the Palyku People v State of Western Australia (No 2) [2021] FCA 195 (Palyku and Palyku #2). On 6 September 2021, the Federal Court made a further determination that native title exists in part of the application area - see Stream v State of Western Australia (Palyku #2) [2021] FCA 1068. The balance of the application area remains to be determined. 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 is comprised of the Palyku People. Palyku People means:

1. those Aboriginal people who are the cognatic descendants of one or more of the following apical ancestors, or who have been culturally reared up (adopted) by a descendant of one or more of the following apical ancestors:

- i) Pitawanu;
- ii) Pupu;
- iii) Winnie;
- iv) Wilyarpirna;
- v) Puyungayi;
- vi) Yurramara;
- vii) Munjarnpirna & Jukukayi;
- viii) Jujuna;
- ix) Fannie, Annie Patawani & Chinaman Janjanamarlu;
- x) Pijipangu;
- xi) Kijiempa
- xii) Maggie Kuntuwarrpangu;
- xiii) Peter Long Wayalpa
- xiv) Julimanga;
- xv) Wantungu;
- xvi) Kalurru;
- xvii) Alec Weatherall;
- xviii) Major and Judy;
- xix) Mary Barrdi; or
- xx) Sophie Bunbry; and

2. who identify as Palyku and are recognised by a substantial number of the descendants of the above apical ancestors as Palyku; and

3. who have a connection with the land and waters of the application area in accordance with Palyku traditional law and customs.

Native title rights and interests claimed:

The following native title rights and interests are claimed which, for the avoidance of doubt, do not confer possession, occupation, use and enjoyment of any of the application area to the exclusion of all others:

1. the right to enter and remain on the land, camp, erect temporary shelters and travel over and visit any part of the land and waters;
2. the right to hunt, fish, gather, take and use traditional resources of the land;

3. the right to take and use water;
4. the right to engage in cultural activities and the transmission of cultural knowledge on the determination area including:
 - a. visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by carrying out activities to preserve their physical or spiritual integrity; and
 - b. conducting ceremony and ritual, including burial and burial rites;
5. the right to be accompanied on to the application area by those people who, though not Palyku People and who (for the avoidance of doubt) cannot themselves exercise any native title right or interest in the application area are:
 - a. the non-Palyku spouses, parents or children of the Palyku people; or
 - b. people entering in connection with, and subject to, traditional law and custom for the performance of ceremonies or cultural activities on the application area.

The above native title rights and interests are subject to and exercisable in accordance with:

- a) the common law, the laws of the State of Western Australia and the Commonwealth of Australia;
- b) valid rights and interests conferred under those laws; and
- c) the body of traditional laws and customs acknowledged and observed by the native title claim group.

Application Area:
State/Territory: Western Australia
Brief Location: Pilbara, Western Australia
Primary RATSIB Area: Pilbara
Approximate size: 9189.0292 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

A description of the external boundaries of the land and waters covered by the application are as set out in the document entitled "Palyku #2 external boundary description" which is annexed as **Attachment B**.

b) Areas within those boundaries not covered by the application

1. Subject to paragraph 4 below, the applicant excludes from the application area any areas that are covered by any of the following acts defined in either the *Native Title Act 1993* (Cth) (**the Act**), (where the act in question is attributable to the Commonwealth), or *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (**the WA Act**), (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 paragraph 4 below, the applicant excludes from the application area any areas in relation to which:

- a) A "previous exclusive possession act", as defined in section 23B of the Act, was done and the act was an act attributable to the Commonwealth; or
- b) A "relevant act" as that term is defined in section 12I of the WA Act was done and the act is attributable to the

State of Western Australia.

3. Subject to paragraph 4 below, the applicant also excludes from the application area areas in relation to which native title rights and interests have otherwise been wholly extinguished.

4. The application area includes any area in relation to which the non-extinguishment principle (as defined in section 238 of the Act) applies, including any areas to which sections 47, 47A and 47B of the Act apply, particulars of which will be provided prior to the hearing of tenure evidence.

Attachments:

1. External Boundary Description - attachment B of the application, 4 pages - A4, 29/10/2018
2. Map of the claim area, attachment C of the application, 1 page - A4, 29/10/2018
3. Description of the remaining area, 2 pages - A4, 06/09/2021
4. Map of remaining area, 1 page - A3, 06/09/2021

End of Extract