



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD269/2020
NNTT number: WP2020/005

Application Name: Shirley Wonyabong & Ors on behalf of the Kapi Tjiwarl Compensation Claim Group and State of Western Australia (Kapi Tjiwarl Compensation Claim)

Application Type: Compensation

Application filed with: Federal Court of Australia

Date application filed: 26/11/2020

Current status: Discontinued - 04/07/2023

Applicants: Shirley Wonyabong, Allan James, Brett Lewis, Allan Ashwin, Lawrence Harris, Jennifer Narrier, Kado Muir, Michael Tullock

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Additional Information

Not applicable

Persons claiming compensation:

1. The persons on whose behalf the application is made (**Compensation Claim Group**) comprises those persons from time to time:

(a) who, in accordance with Western Desert traditional laws and customs, have (or but for the Compensable Acts referred to in Schedule I in the Claim Area referred to in Schedule B, had or would have had) a connection to part or all of the land and waters (**Tjiwarl Area**) within the external boundaries of Native Title Determination WAD 228 of 2011 and WAD 302 of 2015 *Narrier and State of Western Australia (Tjiwarl and Tjiwarl #2)* as determined by the Federal Court on 27 April 2017 and amended by order 2 of the Full Court of the Federal Court of Australia made on 1 February 2018

in WAD 217 of 2017, and by order 2 of the Full Court of the Federal Court of Australia made on 1 February 2018 in WAD 218 of 2017 (as itself amended by order 2 of the High Court of Australia made on 17 April 2019 in P38/2018) (**Tjiwarl Determination**) through conception, birth, growing up or initiation on the area, acquisition of knowledge through long association, or through descent from a person who has had such a connection;

and

(b) in respect of whom that claim is recognised according to Western Desert traditional laws and customs.

2. At the date of this application, the persons referred to in paragraph 1 above are those persons who:

(a) have a connection through:

(i) their own birth, or long association with part or all of the Tjiwarl Area; or

(ii) the birth, or long association with part or all of the Tjiwarl Area, of their ancestors by which they claim country; and

(b) in respect of whom that claim is recognised according to Western Desert traditional laws and customs, being such of the descendants of the following ancestors as are recognised, according to Western Desert traditional laws and customs, by the other native title holders under the Tjiwarl Determination as having rights in the Tjiwarl Area:

(a) Alfie Ashwin;

(b) Piman/Charlie Beaman;

(c) Tjampula/Jumbo Harris;

(d) Nampu/Scotty Lewis;

(e) Nimpurru/Spider Narrier;

(f) Tjulyitjutu/Rosie Jones;

(g) Kathleen Bingham;

(h) Kurri/Scotty/Ted/Packhorse Rennie Tullock;

(i) Pukungka/Dolly Walker;

(j) Manyila/Trilby; and

(k) Dempsey James.

Native title rights and interests for which compensation is claimed:

Compensation is claimed for the effects of the Compensable Acts on the existence, enjoyment and exercise of the following native title rights and interests which were extant in the Claim Area at the time of the Compensable Acts:

(a) the right to access, remain in and use the Claim Area;

(b) the right to access, take and use the resources of the Claim Area for any purpose;

(c) the right to engage in spiritual and cultural activities in the Claim Area;

(d) the right to maintain and protect places of significance on the Claim Area; and

(e) the right to receive a portion of any traditional resources (not including minerals or petroleum) taken from land or waters in the Claim Area by Aboriginal people who are also governed by Western Desert traditional laws and customs.

Details of acts claimed to have extinguished or affected native title:

1. Compensation is claimed for the following acts (**Compensable Acts**):

(a) the creation of Reserve 17675 under s 39 of the *Land Act 1898* (WA) as published in the Government Gazette on 18 March 1921 for the purpose of “water”; and

(b) the vesting of Reserve 17675 under s 42 of the *Land Act 1898* (WA) as published in the Government Gazette on 15 April 1921 for the purpose of “water supply”.

2. The Compensable Acts were attributable to the State of Western Australia.

3. The Compensable Acts are category D past acts which have been validated pursuant to sections 5 and 9 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (**TVA**).

4. The applicant has not conducted searches of official title registers (such as the title register of crown lands and the land title register of Western Australia) that identify existing or expired non native title rights and interests in relation to the land or waters covered by the compensation application.

5. The applicant has in its possession searches conducted by the State of Western Australia which identify existing or expired non-native title rights and interests in relation to the land or waters covered by the compensation application, and which were included in evidence in Native Title Determination applications WAD 228 of 2011 and WAD 302 of 2015 *Narrier and State of Western Australia (Tjiwarl and Tjiwarl #2)*. That includes tenure documents for each of the Compensable Acts, copies of which are included as Attachment I.

6. The tenure documents referred to in paragraph 5 included:

(a) expired non-native title rights and interests in relation to the Claim Area which preceded the Compensable Acts, being the grant of pastoral lease 1567/102 on 23 February 1904;

(b) expired non-native title rights and interests in relation to the Claim Area which post dated the Compensable Acts, being:

(i) the grant of OPA-36H on 14 November 1921;

(ii) the grant of OPA-101H on 29 November 1922;

(iii) temporary reserve 70/3719 under the *Mining Act 1904* gazetted 25 November 1966;

(iv) miscellaneous licence 36/120 granted on 25 February 2000 for the purpose of search for groundwater; and

(c) current interests, being:

(i) Road 16 resumed under the *Public Works Act 1902* (WA) as published in the Government Gazette on 24 January 1947 page 143;

(ii) Road 5 the subject of taking order I538883YA made on 3 June 2003 and road dedication I578441XE made on 4 August 2003;

(iii) miscellaneous licence L36/60 held by BHP Billiton Nickel West Pty Ltd and granted on 16 August 1990 for the purpose powerline, pipeline, water, road.

Those documents are contained in electronic form on the DVD which is Annexure PTG2 to Exhibit R9 in proceeding WAD 228 of 2011 and WAD 302 of 2015 *Narrier and State of Western Australia (Tjiwarl and Tjiwarl #2)*. A copy of that Annexure can be provided on request.

7. The applicant has also conducted searches of Mineral Titles Online maintained by the Department of Mines, Industry Regulation and Safety which indicates that the Claim Area is currently the subject of the current interest referred to in paragraph 6(c)(iii) above.

Application Area: **State/Territory:** Western Australia
Brief Location: Central Desert
Primary RATSIB Area: Goldfields
Approximate size: 6.4729 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 area covered by this application (**Claim Area**) is all the land and waters the subject of the Compensable Acts referred to in Schedule I, being all the land and waters within the external boundaries of former Reserve 17675, described as those portions of Lot 157 on Deposited Plan 26052, Unallocated Crown Land and Road subject to former Reserve 17675, further described as:

Commencing at the intersection of the south western corner of the westernmost severance of Mt Keith Pastoral Lease (N049448) with an eastern boundary of Reserve 9699 and extending easterly (crossing the Goldfields Highway) and southerly along boundaries of that pastoral lease to intersect the northern boundary of Yakabindie Pastoral Lease (N049476); then westerly (crossing again the Goldfields Highway) along northern boundaries of that pastoral lease to intersect an eastern boundary of Reserve 9699; then north westerly along the eastern boundary of that reserve back to the commencement point.

Note

Data Reference and source

- Application boundary compiled by the National Native Title Tribunal (NNTT) based on information or instructions provided by the Central Desert Native Title Services.
- Cadastre data sourced from Landgate (WA) Spatial Cadastral Database (SCDB), August 2020.
- Former Reserve 17675 as described in Government Gazette (WA) 18 March 1921, page 412.

Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 2020 (GDA2020), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, National Native Title Tribunal (24 November 2020)

2. For the avoidance of doubt, to the extent (if any) there is an existing determination of native title within the external boundaries of the Claim Area, an order for the payment of compensation is sought in relation to that area but no determination of native title is sought or required to be made in relation to that area.

Attachments:

1. WP2020/005 Map, attachment C of the application, 2 pages - A4, 26/11/2020
2. WP2020/005 Tenure Documents for Compensable Acts, attachment I of the application, 5 pages - A4, 26/11/2020

End of Extract