



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD298/2019
NNTT number: WR2019/001

Application Name: Wakamurru (Aboriginal Corporation) RNTBC v State of Western Australia

Application Type: Revised Native Title Determination

Application filed with: Federal Court of Australia

Date application filed: 28/05/2019

Current status: Full Approved Determination - 24/04/2020

Applicants: Wakamurru (Aboriginal Corporation) RNTBC

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Additional Information

This is an application by the Wakamurru (Aboriginal Corporation) RNTBC, a registered native title body corporate, which is asking the Federal Court of Australia (Federal Court) to vary the determination of native title in *Muir on behalf of the Manta Rirrintya People v State of Western Australia* [2018] FCA 1388 (Federal Court File No: WAD453/2017, NNTT File No: WCD2018/007) made on 13 September 2018.

Grounds for Varying/Revoking Determination:

Alternatively, the applicant makes this application for a varied determination of native title pursuant to section 13(5) (b) of the Native Title Act on the following grounds:

(a) Insofar as the determination orders and [sic] determines the extent of the native title rights and interests as being non-exclusive in relation to those areas of unallocated Crown land which were covered by exploration licences at the time the claimant application was made on 13 September 2017 (which are recorded in paragraph 2 of both

Schedules 3 and 5 of the determination) (**Licences**), the determination is based on an incorrect legal ruling and / or is otherwise incorrect as a matter of law.

(b) Contrary to the determination, the native title rights and interests that exist in those parts of the determination area covered by the Licences is the right to possess, occupy, use and enjoy those parts to the exclusion of all others, which, but for paragraph 2 of both Schedules 3 and 5, would otherwise be provided by the determination.

(c) The determination was made in accordance with a Minute of Proposed Consent Orders and Determination of Native Title (**Minute**), which contemplated a variation application being brought by the common law holders or the registered native title body corporate. The Minute was signed by all parties to the Manta Rirrtinya native title determination application on 6 August 2018, and records in its recitals, and it is the case, that at the time the determination was made, the parties agreed that:

E. [...] one or more members of the native title claim group occupied (within the meaning of s 47B(1)(c) of the Native Title Act) the areas referred to in recital [F(a)] below as at the date that the Manta Rirrtinya application was made, and that, but for the prior extinguishment of the right to possess, occupy, use and enjoy, to the exclusion of all others, the native title rights in those areas would be those in [3] of the Determination, but that on the basis of the decisions of the Full Court of the Federal Court of Australia in *Tjiwarl and Ngurra Kayanta*, s 47B(2) cannot apply to those areas because the area was at the relevant time covered by those exploration licences.

F. As a consequence of this controversy, the parties to these proceedings have agreed that, in the event the High Court decides the exploration licence in *Tjiwarl* or the exploration permits in *Ngurra Kayanta* are not a "lease" within the meaning of that term in s 47B(1)(b)(i) of the Native Title Act and do not prevent the disregarding of extinguishment under s 47B(2) of the Native Title Act in respect of the land or waters covered by the licence or permits, then:

(a) the common law holders or the registered native title body corporate may seek a variation of the Determination of native title in this matter, as it relates to the application of s 47B of the Native Title Act, to the areas the subject of the exploration licences referred to in para 2 of Sch 5, in accordance with s 13(1)(b) of the Native Title Act;

(b) if the variation application is made within 12 months of the delivery of the High Court's decision, each of the parties to this proceeding will, if party to the variation application, consent to that application being argued on its merits; and

(c) nothing in recitals [F(a)] or [F(b)] above prevents any party from opposing a variation to the Determination on the basis of the merits of that application.

(d) The applicant repeats paragraph [11] – [12] in Schedule F above.

Application Area:
State/Territory: Western Australia
Brief Location: Goldfields Region, Western Australia
Primary RATSIB Area: Central Desert
Approximate size: 23543.8369 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):

Part 1 - Information identifying the external boundaries of the area covered by the application

4. Subject to paragraph [5] below, the area of land and waters covered by the application is described in the document entitled "Identification of Boundaries" which is attached as ATTACHMENT A.

Part 2 - Information identifying any areas within those boundaries that are not covered by the application

5. Any areas of land or waters where a public work as defined in the *Native Title Act 1993* (Cth) (**Native Title Act**) and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (**TVA**) including the land and waters on which a public work is constructed, established or situated as described in s 251D of the Native Title Act) and to which s 12J of the TVA or s 23C(2) of the Native Title Act applies.

See Attachment A and Attachment B.

- Attachments:**
1. Application Area Boundaries, Attachment A of the application, 12 pages - A4, 14/04/2020
 2. Mpa of the Application Area, Attachment B of the Application, 1 page - A4, 14/04/2020

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