



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: SAD180/2017  
NNTT number: SC2017/001

**Application Name:** Andrew Birtwistle-Smith & Ors and the State of South Australia (First Nations of the South East #2 Native Title Claim)

**Application Type:** Claimant

**Application filed with:** Federal Court of Australia

**Date application filed:** 07/07/2017

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**Current stage(s):** Notification Complete

**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:** -

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**Applicants:** Andrew Birtwistle-Smith, Mark Lovett, Kinglsey A'Hang, Jean Pinkie, Darren Perry, Michelle Jacquelin-Furr, Gwenda Owen, Christopher Hartman, Myrtle Bonney, Bruce Hammond, Robyn Campbell, Cheryle Saunders

**Address(es) for Service:** Bianca Lena  
South Australian Native Title Services Ltd  
Level 4, 345 King William Street  
ADELAIDE SA 5000

## Additional Information

Not applicable

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## Persons claiming to hold native title:

The Native Title Claimants are those Aboriginal people who:

(a) Are the biological descendants of the following ancestors:

- Kitty Russell of Kingston (aka Queen Kitty)
- Ellen (#1) aka Elsie of Mount Gambier
- Ellen (#2) Baker of Mount Gambier
- Pinkie (male) of Bordertown
- Annie Brice of Mount Gambier
- Whympie (male) of Kingston
- Emily of Penola and her husband John Dunn
- Queen Catharine Gibson of Kingston
- Frank Owen of Kingston
- Harry Hewitt of Millicent
- Mount Gambier Tom of Mount Gambier; and

(b) Are identified and accepted as First Nations of the South East people under traditional law and custom on the basis of descent from a First Nations of the South East person; or

(c) Are accepted by those listed at (a) as being adopted into the First Nations of the South East community under traditional law and custom.

**Native title rights and interests claimed:**

1) Over areas where a claim to exclusive possession can be recognised (such as areas where there has been no prior extinguishment of native title or where s 238 and/or ss 47, 47A and 47B apply), members of the native title claim group claim the right to possess, occupy, use and enjoy the land and waters of the application area as against the whole world, pursuant to their traditional laws and customs.

2) Over areas where a claim to exclusive possession cannot be recognised, the nature and extent of the native title rights and interests claimed in relation to the application area are the non-exclusive rights to use and enjoy the land and waters in accordance with traditional laws and customs being:

a) The right to access and move the Application Area.

b) The right to live, to camp and, for the purpose of exercising the native title rights and interests, to erect shelters and other structures on the Application Area.

c) The right to hunt and fish on the land and waters of the Application Area without the limitation of what purpose.

d) The right to gather and use the natural resources of the Application Area such as food, medicinal plants, wild tobacco, timber, resin, rock, ochre and feathers.

e) The right to share and exchange the subsistence and other traditional resources of the Application Area.

f) The right to use and take the natural water resources of the Application Area.

g) The right to cook on the Application Area and to light fires for domestic purposes but not for the clearance of vegetation.

h) The right to engage and participate in cultural activities on the Application Area including those relating to births and deaths.

i) The right to conduct ceremonies and hold meetings on the Application Area.

j) The right to teach on the Application Area the physical and spiritual attributes of locations and sites within the Application Area.

k) The right to visit, maintain and protect sites and places of cultural and religious significance to Native Title Holders under their traditional laws and customs on the Application Area.

l) The right to be accompanied on the Application Area by those people who, though not native title holders are:

- a. Spouses of native title holders, or
- b. People required by traditional law and custom for the performance of ceremonies or cultural activities on the Application Area; or
- c. People who have rights in relation to the Application Area according to the traditional laws and customs acknowledged by native title holders or

d. People required by native title holders to assist in, observe, or record traditional activities on the Application Area.

3) The rights described in paragraphs 2(b), (c), (d), (e), (f) and (i) are traditional rights exercised in order to satisfy personal, domestic, or communal needs.

4) The native title rights and interests are subject to:

a) the valid laws of the State of South Australia and the Commonwealth of Australia, and

b) the rights (past or present) conferred upon persons pursuant to the laws of the Commonwealth and the laws of the State of South Australia.

And refer to pages 10 to 15 in "Attachment F"

**Application Area:**                    **State/Territory:** South Australia  
**Brief Location:** South East area of South Australia  
**Primary RATSIB Area:** Greater South Australia  
**Approximate size:** 2428.6086 sq km  
(Note: There may be areas within the external boundary of the application that are not claimed.)  
**Does Area Include Sea:** Yes

**Area covered by the claim (as detailed in the application):**

External boundary description

Refer to Attachment B

1. The application area excludes any land or waters that is or has been covered by:

- a) a Scheduled Interest
- b) a freehold estate
- c) a commercial lease that is neither an agricultural lease nor a pastoral lease
- d) an exclusive agricultural lease or an exclusive pastoral lease
- e) a residential lease
- f) a community purpose lease
- g) a lease dissected from a mining lease and referred to in s 23B(2)(c)(vii) of the Native Title Act 1993 (Cth)
- h) any lease (other than a mining lease) that confers a right of exclusive possession
- i) a "previous exclusive possession act" as defined in s 23B of the NTA which is attributable to the State of South Australia and is not an "excepted act" as defined in s 36F of the Native Title (South Australia) Act 1994 (SA)

over particular land or waters.

2. Subject to paragraphs 4 and 5, the area covered by the application excludes any land or waters covered by the valid construction or establishment of any public work, where the construction or establishment of the public work commenced on or before 23 December 1996.

3. Subject to paragraphs 4 and 5, exclusive possession is not claimed over areas which are subject to valid previous non-exclusive possession acts done by the Commonwealth or the State of South Australia.

4. Subject to paragraph 5 below, where the act specified in paragraphs 1, 2 and 3 falls within the provision of:  
a. s 23B(9) - Exclusion of acts benefitting Aboriginal Peoples or Torres Strait Islanders

b. s 23B(9A) - Establishment of a national park or state park  
c. s 23B(9B) - Acts where legislation provides for non-extinguishment  
d. s 23B(9C) - Exclusion of Crown to Crown grants, and  
e. s 23B(10) - Exclusion by regulation  
the area covered by the act is not excluded from the application.

5. Where an act specified in paragraph 1, 2 and 3 affects or affected land or waters referred to in:

a. s 47 - Pastoral leases etc covered by claimant application  
b. s 47A - Reserves etc covered by claimant application  
c. s 47B - Vacant Crown land covered by claimant application  
the area covered by the act is not excluded from the application.

6. The Area covered by the application excludes land or waters where the native title rights and interests claimed have been otherwise extinguished.

7. All the words and expressions used have the same meaning as they are given in the Native Title Act 1993 (Cth), unless otherwise specified.

**Attachments:**

1. Attachment B External boundary description, 2 pages - A4, 07/07/2017
2. Attachment C Map of the application area, 1 page - A4, 07/07/2017

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End of Extract