



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: NSD6034/1998
NNTT number: NC1996/016

Application Name: Bandjalang People #1

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 17/05/1996

Current status: Full Approved Determination - 02/12/2013

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Date claim entered on Register of Native Title Claims: 07/10/2009

Registration decision status: Accepted for registration

Registration history: Registered from 17/05/1996 to 21/04/2009, Registered from 7/10/2009 to 17/12/2013,

Date claim / part of claim determined: 02/12/2013

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Additional Information

Not applicable

Persons claiming to hold native title:

The Bandjalang People are the native title claim group on whose behalf the applicant makes this application. The Bandjalang People are all the descendents of the following apical ancestors:

- * King Harry (b. ca 1820s)
- * Jack Wilson (b. ca 1820s)
- * Susannah (b.ca 1830) mother of Frank Jock Jnr.
- * Michael 'Mundoon' Wilson (b. 1866, d. Coraki 1921)
- * George James (b.ca 1885 Woodburn)
- * Eliza Breckenridge (ca 1870)
- * Jack Breckenridge (b. Coraki 1870, d. Coraki 1944)
- * Frank Jock Jnr (b. Coraki 1879, d. Coraki 1930)
- * Ada Jock (b. circa 1872, d. Coraki 1922)
- * Gibson Robinson (b. Coraki circa 1871, d. Coraki 1947)
- * Grace Bond (b. ca 1880)

Descendants include persons who are descendants by incorporation and adoption according to traditional law and custom.,

Adoption and incorporation are not open-ended or casual processes; they are acknowledged and practiced in accordance with Bandjalang traditional law and custom.

If an objective test for adoption is required, it can be tested for by the following features based upon Bandjalang traditional laws and customs:

- Has the person been included in one of the Bandjalang descent groups by an adult member of that Bandjalang descent group who raised the child as one of their own? (This is commonly referred to as "growing up" or being "reared up" (by) that person).
- During the time the child was growing up, did they identify as a member of that descent group and were they commonly identified as such by the other members?
- Were they given the same rights within the descent group as other members? If so, this flows on to rights in land as well, since kin relations and relations in connection to country share a common structure - e.g. when one refers to "my father('s) land", the relationship to that land is seen as of a similar order to, and derived from one's relationship to one's father.
- As the child matured, did they become recognised as a member of the adopting adult's descent group and as Bandjalang by the other descent groups, and eventually by the senior people of the Bandjalang native title community?
- Has the adopted person closely associated with the applicant group throughout their life, and held an active association with, and knowledge of the traditional country of the applicant community, comparable to that of the rest of the applicant community, and prior to the native title application. ,

The membership of one of the Bandjalang descent groups also includes an incorporated person. "Incorporation" here applies where the person's biological parentage belongs to a descent group outside the applicant group. Incorporation is acknowledged by the Bandjalang under traditional law and custom. If an objective test for incorporation is required, it can be tested for by the following features based upon Bandjalang traditional laws and customs:

- Has the person been incorporated into one of the Bandjalang descent groups by an adult member of the group?
- Did they identify as a member of that descent group, and were they commonly identified as such by the other members?

- Were they given the same rights within the descent group as other members? If so, this flows on to rights in land as well, since kin relations and relation in connection to country share a common structure - e.g. when one refers to "my mother('s) land", the relationship to that land is seen as of a similar order to, and derived from one's relationship to one's mother.

- Were they recognised as a member of the incorporating adult's descent group and as Bandjalang by the other descent groups, and eventually by the senior people of the Bandjalang applicant group?

- Have the incorporated person's descendants closely associated with the applicant group throughout their life, and held an active association with, and knowledge of the traditional country of the applicant community, comparable to that of the rest of the applicant community, and prior to the native title application.

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), the Bandjalang People as defined in Schedule A of this application, claim the right to possess, occupy, use and enjoy the lands and waters of the area to the exclusion of all others subject to the valid laws of the Commonwealth and the State of New South Wales.

2. Over areas where a claim to exclusive possession cannot be recognised, the Bandjalang People claim the following non-exclusive rights and interests subject to the valid laws of the State of New South Wales and the Commonwealth (including the right to conduct activities necessary to give effect to them) to:

- a) Access, move about, use and enjoy the application area;
- b) Hunt and fish in the application area;
- c) Occupy, camp and live on the application area;
- d) Light camp fires on the application area;
- e) Construct shelters and other structures for that purpose on the application area;
- f) Protect and care for the natural and cultural resources of the application area;
- g) Maintain and protect sites and areas of significance to the Native Title Holders under traditional law and custom within the application area;
- h) Hold ceremonies on and concerning the land;
- i) Take natural resources from the application area;
- j) Manufacture materials, artefacts, objects and other products from the natural resources of the application area;
- k) Engage in customary barter, exchange or gift with other Aboriginal people with cultural resources and manufactured items derived from the natural resources of the application area;
- l) Engage in production, customary barter and other customary economic activities on the land as they relate to other Aboriginal people with respect to Bandjalang cultural resources;
- m) Care for the area for the benefit of the native title holders;
- n) Use the area covered by the application for social, customary, religious, spiritual and traditional purposes;
- o) Speak for, on behalf of and authoritatively amongst Aboriginal people about the application area;
- p) Speak for, on behalf of and authoritatively amongst Aboriginal people about the use of and access under traditional law and custom to the application area;
- q) Confer customary use and access rights on other Aboriginal people who seek to use and access the application area under the traditional law and customs of the native title claim group;
- r) Inherit and transmit the native title rights and interests;

s) Determine as between the native title claim group what are the particular native title rights and interests that are held by particular members of the native title claim group in relation to particular parts of the application area;

t) Uphold, regulate, monitor and enforce the customary laws of the native title claim group in relation to the use and access of the application area by other Aboriginal People;

u) Carry out traditional practices with respect to birth on the application area;

v) Be buried on, and to bury members of the native title claim group on, the application area.

3. The native title rights and interests claimed:

a) are pursuant to the traditional laws and customs of the native title holders;

b) are not exclusive rights and interests if they relate to tidal waters;

c) do not include ownership of any minerals, petroleum or gas wholly owned by the Crown;

d) over any areas covered by the application that are subject to a Previous Non-Exclusive Possession Act (PNEPA), as defined by s23F of the Native Title Act 1993 (Cth) do not confer possession, occupation, use and enjoyment of the area covered by the application to the exclusion of all others, except to the extent that they non-extinguishment principle as defined in section 238 of the Native Title Act 1993 (Cth) applies, including those areas to which any sections 47, 47A, or 47B of the Native Title Act 1993 (Cth) apply where one of those provisions means that the prior extinguishment of native title rights and interests for an area described must be disregarded;

e) that are subject to a validly granted PNEPA, as defined by s23F of the Native Title Act 1993 (Cth), do not include any native title rights or interests which were extinguished by that PNEPA, except to the extent that any of sections 47, 47A or 47B of the Native Title Act 1993 (Cth) apply where one of those provisions means that prior extinguishment of native title rights and interests for an area described must be disregarded of the non-extinguishment principle as defined in section 238 of the Native Title Act 1993 (Cth) may apply';

f) do not include rights and interests that have been extinguished by application of the common law.

For the purposes of this application "natural resources" include bush foods and medicinal plants and trees and foodstuffs, animal and plant products, timber, charcoal, ochre, vegetation, food stuffs, stone and wax and resin.

For the purposes of this application "cultural resources" include

- all bush foods and medicinal plants, trees and foodstuffs, animal and plant products, timber, charcoal, ochre, vegetation, stone, wax and resin necessary to maintain, protect, care for and preserve places and areas of importance on or in the land and waters within the claims area;

- preserving rock art engraving sites within the claim area;

- making ceremonial stone arrangements within the claim area;

- conducting ceremonies within the claim area;

- "cultural activities" within the claim area include activities in relation to the above and those related to birth and death and transmitting cultural knowledge.

For further examples of cultural activities see Schedules G and M.

See also the affidavits of:

- Anthony Edward Wilson sworn 19 October 1999 "Attachment F(1)";

- Anthony Edward Wilson sworn 15 December 2003 "Attachment F(2)";

- Simone Grace Barker sworn 21 January 2004 "Attachment F(3)";

- Jack Lawrence Wilson affirmed 9 August 2002 "Attachment F(4)"; and

- Alvina Kapeen Wilson affirmed 8 August 2002 "Attachment F(5)"

Attached for the purposes of Schedules E, F, G and M.

Application Area: **State/Territory:** New South Wales
Brief Location: Evans Head
Primary RATSIB Area: New South Wales
Approximate size: 129.4482 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):

(A) Area covered by the application:

The boundaries of the area covered by the application are described in the document at Attachment B entitled "Description of External Boundaries" and depicted in the map at Attachment C. The description and map have been prepared with the assistance of the Geospatial Unit of the National Native Title Tribunal. The area covered by the application does not include the area described in (B).

(B) Areas within the external boundaries not covered by application:

1. Subject to (3) below (which describes an exception to this exclusion), the areas within the boundaries in (A) that are not covered by the application are:

(a) any area that is or was subject to any of the following acts as these are defined in the Native Title Act 1993 (Cth) and the act was or is attributable to the Commonwealth or the State of New South Wales:

(i) a Category A past act;

(ii) a Category A intermediate period act;

(iii) a Category B past act that is wholly inconsistent with the continued existence, enjoyment or exercise or any native title rights and interests

(iv) a Category B intermediate period act that is wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests.

(b) any area in relation to which a 'previous exclusive possession act', as defined in section 23B of the Native Title Act, was done and the act was an act attributable to the Commonwealth or the State of New South Wales; and

(c) any area in relation to which native title rights and interests have otherwise been wholly extinguished.

2. The area covered by the application excludes:

(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 section 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 over particular land and waters.

3. Despite (1) and (2) above, an area within the boundaries in (A) is covered by the application if the area:

(a) is an area to which the non-extinguishment principle (as defined in section 238 of the Native Title Act) applies; or

(b) is an area to which any of sections 47, 47A or 47B of the Native Title Act apply meaning that any extinguishment of native title rights and interests for an area described in (1) and (2) must be disregarded.

4. Area that have been excluded from the claim area are identified in the Statement of Excluded Areas of Land and

Waters prepared on behalf of the Applicant in compliance with the Order of the Court made on 13 June 2003 that 'the Applicant identify the land and waters within the outer boundary of the claim that are excluded from the application by reference to the identification area numbers used in the historical and current tenure report filed in these proceedings on 20 May 2003 [by the State of New South Wales].'

A copy of the of that Statement is included in Attachment B(1).

5. On 29 December 2003 and in accordance with the Order of the Court made on 14 November 2003, the Applicant filed an 'Additional Statement of Excluded Areas of Land and Waters.' A copy of the 'Additional Statement' is included in Attachment B(2).

The description of the external boundaries of the determination area and excluded areas is provided and labelled as "Attachment B", "Attachment B(1)" and "Attachment B(2)".

Attachments:

1. Application Area Description, Attachment B of the Application, 6 pages - A4, 07/10/2008
2. Statement of Excluded Areas of Land and Waters, Attachment B(1) of the Application, 2 pages - A4, 07/10/2008
3. Additional Statement of Excluded Areas of Land and Waters, Attachment B(2) of the Application, 1 page - A4, 07/10/2008
4. Map of Application Area, Attachment C of the Application, 1 page - A4, 07/10/2008

End of Extract