



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: QUD12/2019
NNTT number: QC2013/007

Application Name: Gary Theodore Mooney & Ors on behalf of the Yuwibara People and State of Queensland & Ors (Yuwibara People)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 29/10/2013

Current status: Full Approved Determination - 02/07/2020

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: 09/01/2014

Registration decision status: Accepted for registration

Registration history: Registered from 9/01/2014 to 2/07/2020,

Date claim / part of claim determined: 02/07/2020 , 25/02/2020

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Additional Information

On 25 February 2020, the Federal Court made a determination that native title exists in the entire application area - see Mooney on behalf of the Yuwibara People and State of Queensland [2020] FCA 170. That determination is attached to this Extract. Order 2 of the determination provides that the determination of certain parcels of land will take effect upon the agreement referred to in paragraph 1 of Schedule 2 being registered on the Register of Indigenous Land Use Agreements. The relevant parcels are listed in Order 2. On 2 July 2020, the agreement referred to in paragraph 1 of Schedule 2 was registered on the Register of Indigenous Land Use Agreements, and therefore this determination is in effect as from 2 July 2020.

Persons claiming to hold native title:

The Yuwibara native title claim group is comprised of all those persons who are the bloodline descendants of one or more of the following ancestors:

1. Peter Nolan
2. Jane Morris, mother of Peter Smith and Frank Morris
3. Molly, mother of Bill Bargo (aka Bill Tonga) and Annie Bargo (aka Annie Tonga)
4. Johanna Hazeldean
5. Mungo, King of Hamilton, father of Spoonbill
6. Jerry McDonald; or
7. Janie (McDonald).

Native title rights and interests claimed:

The kind of rights and interest claimed are as follows:

1. Exclusive rights and interests

Land and waters where there has been no prior extinguishment of native title or where section 238 of the *Native Title Act 1993* (non-extinguishment principle) applies, the native title rights claimed are the right to possession, occupation, use and enjoyment to the exclusion of all others.

2. Non-exclusive rights and interests

Where exclusive possession native title cannot be recognised the following non-exclusive rights and interests are claimed including the right to conduct activities necessary to give effect to them:

- (a) the right to hunt and fish, to gather and use the resources of the land such as food and medicinal plants and trees, tubers, charcoal, ochre, stone and wax and to have access to and use of water on or in the land;
- (b) the right to live on the land, to camp, erect shelters and other structures, and to travel over and visit any part of the land and waters;
- (c) the right to do the following activities on the land:
 - a. engage in cultural activities
 - b. conduct ceremonies;
 - c. hold meetings;
 - d. teach the physical and spiritual attributes of places and areas of importance on or in the land and waters; and
 - e. participate in cultural practices relating to birth and death, including burial rights;
- (d) the right to have access to, maintain and protect places and areas of importance on or in the land and waters, including rock art, engraving sites and stone arrangements;

(e) the right to make decisions about access to the land and waters by people who acknowledge the traditional laws and customs of the native title claimants other than those exercising a right conferred by or arising under a law of the State or the Commonwealth in relation to the use of the land and waters;

(f) the right to make decisions about the use and enjoyment of the land and waters and the subsistence and other traditional resources thereof, by people who acknowledge the traditional laws and customs of the native title claimants other than those exercising a right conferred by or arising under a law of the State or the Commonwealth in relation to the use of the land and waters; and

(g) the right to share or exchange subsistence and other traditional resources obtained on or from the land and waters.

Application Area: **State/Territory:** Queensland
Brief Location: Near Mackay, Far North Queensland
Primary RATSIB Area: Northern Queensland Region
Approximate size: 0.2911 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) Area covered by application:

The area covered by this Application includes all land and waters inside the external boundary of the Application Area. The external boundary of the Application Area is shown on the map and marked as "**Attachment C**", and is also described by reference to the external boundary description set out in "**Attachment 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 Queensland:

(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 of 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 Queensland; and

(c) any area in relation to which native title rights and interest [*sic*] 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;

(g) a lease dissected from a mining lease and referred to in s 23B(2) (c) (vii) of the *Native Act [sic]*;

(h) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters.

3. Despite (1) and (2) above, an area within the boundaries described 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.

Attachments:

1. Yuwibara People Determination, 187 pages - A4, 25/02/2020

2. External Boundary Description, Attachment B of the application, 8 pages - A4, 29/01/2020

3. Map of application area, Attachment C of the application, 1 page - A4, 29/01/2020

End of Extract