



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD24/2019
NNTT number: WC2013/005

Application Name: Rona Charles & Anor v State of Western Australia & Ors (Mount Jowlaenga)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 08/08/2013

Current status: Pre-combination - 22/05/2020

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: 06/09/2013

Registration decision status: Accepted for registration

Registration history: Registered from 6/09/2013 to 22/05/2020,

Applicants: Rona Charles, Laurie Charles

Address(es) for Service: Justine Toohey, Principal Legal Officer
Kimberley Land Council
11 Gregory Street (PO Box 2145)
BROOME WA 6725
Phone: (08) 9194 0100
Fax: (08) 9193 6279

Additional Information

Not applicable

Persons claiming to hold native title:

The native title claim group comprises the descendants of a man named Tjarlumbun.

Native title rights and interests claimed:

The Qualifications

The applicant claims in relation to the claim area, including land and waters, the native title rights and interests set out below ("the Rights and Interests") subject to the following qualifications.

(i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.

(ii) To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.

(iii) The applicants do not make a claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others (being the rights listed below under the heading "*The Rights and Interests*") in respect of any areas in relation to which a previous non-exclusive possession act, as defined in section 23F of the *NTA*, was done in relation to an area, and, either the act was an act attributable to the Commonwealth, or the act was attributable to the State of Western Australia, and a law of that State has made provision as mentioned in section 23I in relation to the act.

(iv) Paragraph (iii) above is subject to such of the provisions of sections 47, 47A and 47B of the *NTA* as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

(v) The native title rights and interests claimed are subject to any valid rights created under the common law or a law of the State or the Commonwealth.

The Rights and Interests

The particular native title claimed in this application is the title held by those Nyikina people whose *buru* includes the application area, being the members of the native title claim group as described in Schedule A. Other people whose *burus* are located in other areas (including other Nyikina people) have secondary rights which permit them to undertake certain of the activities covered by rights (b) to (i) below within the application area, but must "*come behind*" the members of the native title claim group.* The rights and interests claimed, subject to the above qualifications, are the following:

(a) the right to speak for the application area;

(b) the right to live, being to enter and remain on, camp and erect shelters and other structures for those purposes on the application area;

(c) the right to hunt and gather for personal, domestic, cultural and *non-commercial communal purposes*;

(d) the right to take and use flora and fauna for personal, domestic, cultural and non-commercial communal

purposes;

(e) the right to take, use, share and exchange the natural resources of the application area including soil, sand, clay, gravel, ochre, timber, charcoal, resin and stone for personal, domestic, cultural and non-commercial communal purposes;

(f) the right to engage in cultural activities in the area, including the transmission of cultural heritage knowledge;

(g) the right to conduct and participate in ceremonies;

(h) the right to hold meetings; and

(i) the right to visit, maintain and protect from physical harm, areas, places and sites of importance in the application area.

*Attachment F at [31]

31. The *internal* distribution of rights in relation to a country area amongst those persons who hold rights in an area is discussed by Dr Palmer at [462] to [464]:

"In my view the manner whereby rights are pressed depends upon a number of factors. These include social status derived from age, ritual knowledge and experience and, to some extent, sex. Knowledge and familiarity of the country wherein the rights are pressed is also important. This may be considered to be a reflection of place of residence, since familiarity with country implies at least a degree of physical presence. Together I call the social effect of these factors 'standing'. Thus a person's 'standing' in relation to a *buru* or *ngura* is a significant factor in the operationalising of his or her rights to that country. These views are supported by the following data.

Amongst those with whom I worked, recognition of standing is a concomitant of status derived from spiritual seniority. ... Conversely, lack of ritual experience, perhaps as a consequence of wrong action, prevents achievement of authority and status. While ritual status yields recognition of standing it does not over-ride the privileges of those with rights to *buru* gained through descent or spiritual imbuelement. Senior claimant John Watson told me of an area that we visited that it was Nyikina country. He named those who could exercise rights in it. While he acknowledged that Law men had a role to play in this regard, he stated that they would 'have to come behind'.

"Others with whom I worked recognised that their own lack of knowledge and experience in the customary religious life meant that they did not press rights with respect to religious practice. Senior claimant [I.M.] (now deceased) stated that he was able to exercise his rights to his FFF country but that his claims to that country, which is south of the application area [for WAD 6099 of 1998], might 'come behind' claims to his country of residence with which he has both ancestral as well as a personal spiritual connection. The data I collected also demonstrates that claimants recognised areas adjacent to those which they regarded as being their *buru* or *ngura* as ones in which they might exercise limited rights which would be subject to the command of others. In such cases they would 'help them out' but 'come behind' and support them."

Application Area:
State/Territory: Western Australia
Brief Location: Approx 100 km north east of Broome, Western Australia
Primary RATSIB Area: Kimberley
Approximate size: 0.0698 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 the application is an area of approximately 6.97 HA, located approximately 65km W'ly of

Derby. The external boundaries of the area covered by the application are as follow:

The application commences at a point 123.055198 E, -17.505171 S; thence north-east in a straight line to a point 123.058052 E, -17.50359 S; thence south-east in a straight line to a point 123.058858 E, -17.505223 S; thence south-west in a straight line to a point 123.056004, -17.506804 S; and finally north-west in a straight line to the starting point of 123.055198 E, -17.505171 S.

2. Subject to (3), the area of land and waters within the boundaries described in Attachment B that are not covered by the application are;

1. Any area that is or was subject to any of the following acts as these are defined in either the Native Title Act 1993 (Cwlth), as amended (where the act in question is attributable to the Commonwealth), *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)*, as amended, (where the act in question is attributable to the State of Western Australia);
 - i. Category A past acts;
 - ii. Category A intermediate period acts;
 - iii. Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
 - iv. Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
1. Any area in relation to which a previous exclusive possession act, as defined in section 23B of the NTA was done and the act was an act attributable to the Commonwealth;
2. Any area in relation to which a "relevant act" as that term is defined in section 121 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* was done and the act is attributable to the State of Western Australia;
3. Any area in relation to which a previous exclusive possession act under s23B(7) of the *Native Title Act 1993 (Cwlth)*, as amended, was done in relation to the area and the act was attributable to the State of Western Australia;
4. Any area in relation to which native title rights and interests have otherwise been wholly extinguished.

3. Notwithstanding (2), the area of land and waters covered by the application includes any area within the boundaries in relation to which the non-extinguishment principle as defined in section 238 of the Native Title Act 1993 (Cwlth) applies, including any area to which section 47, 47A and 47B of the Native Title Act 1993 (Cwlth) applies, particulars of which will be provided prior to the hearing but any area as may be listed in Schedule L is included in the area covered by the application.

4. Where there is any discrepancy between the map provided at Attachment C and the written description contained in this schedule and in Attachment B the latter prevail.

Attachments: 1. Attachment C - Map of Claim Area, 2 pages - A4, 08/08/2013

End of Extract