



Extract from the Register of Native Title Claims

Application Information

Application Reference:	Federal Court number: WAD258/2024 NNTT number: WC2024/005
Application name:	Ashley Bell & Ors on behalf of Badimia Barna Native Title Claim Group and State of Western Australia (Badimia Barna Native Title Claim)
Registration History:	Registered from 14/11/2024

Register Extract (pursuant to section 186 of the *Native Title Act 1993* (Cth))

Application filed with:	Federal Court of Australia
Date application filed:	12/09/2024
Date claim entered on Register:	14/11/2024
Additional Information:	Not Applicable

APPLICANT:

Person/s authorised as applicant: Ashley Bell, Michael Bynder, Darryl Fogarty, Gloria Fogarty, Jennifer Green, Adrian Lawson, Percy Lawson, Brett Little, Lionel O'Brien, Beverley Anne Slater, Warren Walsh

Condition/s on authority: (a) The Applicant is authorised to make day to day decisions about the Claim.

(b) There are conditions imposed on the authority of the Applicant such that the Applicant is not authorised to make decisions about the following matters related to the Claim except to the extent explicitly authorised or directed by the Claim Group in accordance with its decision making process at a Claim Group meeting (for the avoidance of doubt, the members of the Applicant may participate in the Claim Group decision making process as members of the Claim Group):

1. a change to the Claim Group description;
2. a change to the rights claimed which is inconsistent with Resolution D;
3. a change to the geographical boundaries of the Claim;
4. who forms part of the Applicant group, except as specifically allowed in Resolution H below; and
5. a change to the decision making process pursuant to sections [251A], 251B and 251BA of the NTA.

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DESCRIPTION OF THE AREA COVERED BY THE CLAIM:

a) The area covered by the Application

The external boundaries of the area of land and waters covered by the Application are as set out in the document entitled “**External Boundary Description**”, which is annexed and labelled as “**Attachment B**”.

For the avoidance of doubt, the Application excludes the area subject to the determination in *CG (deceased) on behalf of the Badimia People v State of Western Australia (No. 2)* [2015] FCA 507.

b) Any areas within those boundaries that are not covered by the Application are as follows:

1. Subject to Schedule B paragraph 5, the Applicant excludes from the Application Area any areas that are covered by any of the following acts, as defined in either the Act, as amended (where the act is attributable to the Commonwealth), or the *Titles (Validation) and Native Title (Effect of Past Acts) 1995 (WA)*, as amended, (where the act in question is attributable to the State of Western Australia) at the time of the Registrar’s consideration:

(a) Category A past acts;

(b) Category A intermediate period acts;

(c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests; and

(d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.

2. Subject to Schedule B paragraph 5 below, the Applicant excludes from the Application Area any areas in relation to which:

(a) A “previous exclusive possession act”, as defined in s 23B of the Act, was done and the act was an act attributable to the Commonwealth; or

(b) A “previous exclusive possession act”, as defined by s 23B(7) of the Act, was done and the act was an act attributable to the State of Western Australia; or

(c) A “relevant act”, as defined in s 121 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

3. Subject to Schedule B paragraph 5, the Applicant does not claim any native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others over areas in relation to which:

(a) A “previous non-exclusive possession act”, as defined in s 23F of the Act, was done and the act was an act attributable to the Commonwealth; or

(b) A “previous non-exclusive possession act”, as defined in s 23M of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

4. Subject to Schedule B paragraph 5, the Applicant excludes from the Application area any areas in relation to which native title rights and interests have otherwise been wholly extinguished.

5. Notwithstanding anything contained elsewhere in this Application, the area covered by this Application includes any area in relation to which the non-extinguishment principle (as defined in s 238 of the Act) applies, including any areas to which ss. 47, 47A, and 47B of the Act apply. Particulars of these areas 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.

PERSONS CLAIMING TO HOLD NATIVE TITLE:

(a) This claim is brought on behalf of Badimia Barna Native Title Claim Group, who are those Aboriginal persons who are descended from one or more of the following ancestors:

Eliza;	Nellie (mother of Billy Dick);
Frances Bynder;	Polly Little;
Galena;	Shilling;
Jack Comeagain (Snr);	Thallingaree (husband of Yalagoonja);
Joonby/Lizzy;	Timothy Benjamin;
Lisa Martin;	Topsy;
Looey (Louisa Doyle);	Uanda;
Melbin;	Wongaji/Eva Renie;
Minnie (Mary) Little;	Yilayajambin and Bilygwi.

where descent can be either by birth or adoption in accordance with the traditional laws and customs of the Yamatji regional society; AND

(b) who under the traditional laws and customs of the Yamatji regional society have a connection to the lands and waters within the external boundary of the Badimia Yamatji Recognition Area (“BYRA”) which includes the Application Area, as shown on the map annexed and labelled as “**Attachment C**”; AND

(c) whose connections are recognised by other members of the Yamatji regional society under the traditional laws and customs of the Yamatji regional society.

REGISTERED NATIVE TITLE RIGHTS AND INTERESTS:

The following Native Title Rights & Interests were entered on the Register on 14/11/2024

The native title rights and interests claimed in relation to the Application Area are set out below.

“**Area A**” means land and waters within the Application area that are landward of the high water mark and which comprises:

- (i) areas of unallocated Crown land (including islands) that have not been previously subject to any grant by the Crown;
- (ii) areas to which s. 47 of the Act applies;
- (iii) areas to which s. 47A of the Act applies;
- (iv) areas to which s. 47B of the Act applies; and
- (v) other areas to which the non-extinguishment principle, set out in s. 238 of the Act, applies and in relation to which there has not been any prior extinguishment of native title.

“Area B” means land and waters within the Application area that is not included in Area A above.

Rights in Area A

In relation to Area A, the Applicant claims the following native title rights and interests pertaining to exclusive possession:

- (a) The rights to possession, occupation, use and enjoyment of the Application Area as against the whole world and to the exclusion of all others.

Rights in Area A and Area B

The Applicant claims the following native title rights and interests in relation to:

- Area A if the claim to exclusive possession cannot be recognised; and
- Area B

(b) In relation to any area within the Application Area where the rights in (a) above do not exist, the following rights and interests:

- (i) The right to hunt, fish, gather, take and use resources (other than minerals, petroleum and gas) in the area for any purpose;
- (ii) The right to access, enter and to remain on or within the area and use the area for any purpose including to live, camp and erect shelters upon or within the area;
- (iii) The right to speak for and make decisions about the use of the area by members of the Aboriginal society to which the native title claim group belong;
- (iv) The right to invite and permit others to have access to and participate in or carry out activities in the area;
- (v) The right to travel over, visit, care for and maintain places and objects of significance within the area and protect and have them protected from harm;
- (vi) The right to light fires within the area;
- (vii) The right to engage in cultural activities in the area including conducting and participating in ceremony and ritual, and the transmission of cultural knowledge; and
- (viii) The right to bury people and be buried within the area including conducting burial rites.

The Native Title Rights and Interests are subject to the following qualifications:

- (i) To the extent that any minerals, petroleum or gas within the Application Area are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the Applicant.
- (ii) The Applicant does not make a claim to native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others 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 231 in relation to the act.
- (iii) Paragraph (ii) above is subject to such of the provisions of sections 47, 47A and 47B of the Act as apply to any part of the area contained within this application, particulars of which will be provided prior to the hearing.
- (iv) The said native title rights and interests are not claimed to the exclusion of any other rights or interests validly created by or pursuant to the common law, the law of the State or a law of the Commonwealth.

REGISTER ATTACHMENTS:

1. WC2024/005 External boundary description, attachment B of the application, 3 pages - A4, 12/09/2024
2. WC2024/005 Map, attachment C of the application, 1 page - A4, 12/09/2024

Note: The Register of Native Title Claims may, in accordance with section 188 of the Native Title Act 1993 (Cth), contain confidential information that will not appear on the Extract.