

You're Reference:

Our Reference:

18 May 2017



Far West Coast Sea Claim – Federal Court of Australia Matter Number 71/2016
Native Title Claim Group members

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Dear Member

Far West Coast Sea Claim – SAD 71/2016: Important Native Title Claim Group meeting, Friday 23 June 2017 at Far West Coast Sporting Complex Ceduna, 11:00am

South Australian Native Title Services Limited will be facilitating a meeting of the native title claim group as indicated above, which is open to all members of the native title claim group.

Two applications have been filed in the Federal Court of Australia, seeking orders that the Far West Sea Claim be struck out of Court. One application has been received by Michael Alfred Laing on his own. A further application has also been received by Robert Lawrie, Dorcas Miller, Bunna Rupert Lawrie, Rose Miller, Meegan Sparrow, Robert Miller and Michael Laing. Michael Laing is not a member of the Far West Coast Sea Claim native title claim group. Mr Laing says he is a Mirning man with native title rights and interests in the sea claim area. As you would probably be aware, the other individuals named above are members of the native title claim group.

For your information, a map of the area covered by the sea claim is attached. The determination of native title made in December 2013 by the Federal Court of Australia covers the land adjacent to the sea claim, and also the areas of the sea between high and low mark ("the determination"). The sea claim extends from the low water mark out to sea to 3 nautical miles (roughly 5.5 kilometres) including around some of the off-shore islands near the coast. The sea claim is lodged on behalf of the same group of people recognised as native title holders on the land and intertidal zone in the determination.

Background

In February 2015 a meeting was held which resulted in the authorisation of the following seven persons as Applicant for the Far West Coast Sea Claim: Arthur Catsambalis, Alan Haseldine, Vernon Miller, James Peel, Clem Lawrie, Leonard Miller Senior and Oscar Richards Senior.

Strike Out Applications

The Strike Out applications allege that the February 2015 meeting was defective and that the Applicant was not properly authorised by the native title claim group, and should be struck-out.

The applications allege that the only group with native title rights to the area are the Mirning people, and that the individual respondents who have filed the strike outs hold the exclusive native title rights in the area of the sea claim pursuant to the traditional laws and customs of the Mirning people only. In particular, the affidavits in support of the applications allege that Kokatha, Yalata and Maralinga groups hold no native title over the area.

They say that no decision has been made to authorise the current applicant under the traditional laws and customs of the Mirning people. If they succeed in their arguments, the claim will be struck out of Court and no native title claim will remain over the areas covered in the sea claim.

Basis of the native title determination in Far West Coast Claim

As you may be aware, the 2013 determination included all Aboriginal people with traditional attachments to the Far West Coast claim area. That included Mirning, Wirangu and Kokatha people who under their traditional laws and customs, had a connection with the relevant land and waters. The native title claim group description for the sea claim is the same as the group that was determined to hold native title on the land and intertidal waters. The Court has found that those persons have a continuous connection through traditional laws and customs to the land and intertidal waters of the determination area, and that members of the group are part of a society of people who acknowledge those traditional laws and customs.

Need for a further meeting

In the face of opposition from members of the claim group (and Michael Laing), we need to hold this meeting to confirm that the persons who are the Applicant are authorised to make the claim and deal with all matters arising in relation to it.

This is because the Federal Court imposes very strict rules with how a meeting is notified to members of a native title claim group. We need to ensure that all persons have been notified of the meeting and provided with an opportunity to attend the meeting and be heard about the issues that will be discussed at the meeting. There have been recent Federal Court decisions since the authorisation meeting of February 2015, which have held that a listing of criteria for membership to the claim should be made explicit in the notification of the meeting. We attach the notice for the meeting, which describes the native title claim group in the same way as it appears on the native title claim document that was filed with the Court.

We maintain that the Applicant was duly authorised in February 2015 to make the claim. To be cautious, the holding of a further meeting will put the matter beyond doubt. If this does take place, new affidavits will be obtained from the Applicants and they will be provided to the Court in an application for leave to amend the current application. The persons named above who have filed strike-out applications will then be asked to withdraw/discontinue their applications for strike-out, or risk an order for costs against them personally for maintaining their action.

Decision making process for the meeting

The meeting will also need to decide whether there is a process of decision making under the traditional laws and customs of the native title claim group that must be complied with in relation to authorising an Applicant to make the claim and deal with all matters arising in relation to it.

In all decisions made in relation to Far West Coast native title claims, (for example, authorisation for the Applicant to bring the original combined native title application, authorisation of past Indigenous Land Use Agreements) the relevant native title claim group has used a decision-making process which has been agreed to and adopted by the group, which is based on traditional laws and customs, but which is confirmed by majority vote.

That decision making process has involved the same words and motions each time, which has been as follows:

Those persons present at the meeting:

– Agree that the ancestors are adequately represented through the family groups in attendance at this meeting. This meeting can make binding decisions about filing a new claim on behalf of the common law holders;

– Agree that the process that must be followed in relation to authorising applicants to [insert relevant decision] is based on traditional laws and customs and involves consultation with senior elders present before any decision is made. After this traditional consultation process has occurred, those present at the meeting can agree to adopt a decision making process based on a majority vote;

– Acknowledge that the process referred to above has been followed and that those elders present at the meeting have been consulted in relation to authorising applicants to make the claim and those present at the meeting agree that the appointment of applicants and other decisions will be by majority vote.

[Insert particular decisions and record votes for, against and any abstentions]

This is the process that was followed prior to a decision authorising the current Applicants for the Sea Claim and such decision was carried unanimously (with no votes against the decision). It is anticipated that the same process will be followed at this meeting.

Return fuel will be provided by South Australian Native Title Services for members of the native title claim group to attend the meeting, where relevant persons live out of Ceduna. Lunch will be provided to those who attend the meeting. This is an important meeting in the history of the Far West Coast people's native title rights and interests. It is important that you attend and have your say about decision making and confirm the authority of the current Applicants to make the Sea Claim and deal with all matters arising in relation to it.

Please contact Stephen Bromley on 1800 010 360 for assistance to attend the meeting or to seek any further information.

Regards and I hope to see you at the meeting.



OSKER LINDE

Deputy Principal Legal Officer

Phone: 08 8110 2807

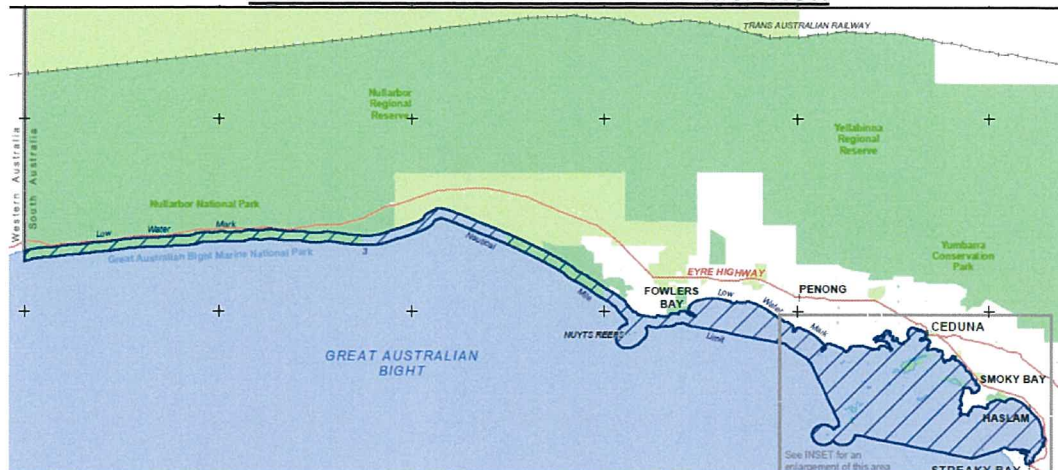
Email: oskerl@nativetitlesa.org

Annexure 1 Map of Far West Coast Sea Claim

Annexure 2 Notice of Native Title Claim Group Meeting

ANNEXURE 2 - NOTICE OF NATIVE TITLE CLAIM GROUP MEETING

FAR WEST COAST SEA NATIVE TITLE CLAIM SAD 71/2016 NOTICE OF NATIVE TITLE CLAIM GROUP MEETING TO AUTHORISE AMENDMENTS TO THE FORM 1 NATIVE TITLE APPLICATION



TAKE NOTE ON FRIDAY 23 JUNE 2017 at the Far West Sporting Complex commencing at 11am South Australian Native Title Services Limited will be facilitating a meeting of the Far West Coast Sea Native Title Claim Group. The meeting is open to all members of the Native Title Claim Group, being those living Aboriginal people who

A. are descendants, either through birth or adoption, from one or more of the following Kokatha, Mirning and Wirangu antecedents: Bingi; Eliza Ellen (Ware); Maggie, mother of Jimmy Scott; Yari Wagon Billy; Koigidi and Anbing; Kulbala; Eva and Pompey; Jinnie (Dunnett); Yabi Dinah; Siblings Nellie Gray, Dhubalgurda Frank Gray and Kwana Teddy Gray; Bobby Wandrooka; Wirangu mother of Jimmy and Arthur Richards; Wirangu mother of Ada Beagle; Tjabilja (Lawrie); Sally Broome; Mark Mirka Kelly; Tommy Munia; Peter and Nellie Tjubedie; Binilya and Kaltyna; Topsy (Miller); Harry Yari Miller, son of Maggie Burilya; Maggie Inyalonga (Miller); Billy Danba (Dunbar) and Topsy; Billy Benbolt and Fanny; Judy (Struthers); Nellie (Betts); Emma (Bilney); Jimmy Blueskin; Jack McCarthy; Eva Nudicurra (Modikari); Marangali Jim Young and Lucy Mundy; Betsy (affinal links to Tjuna family); Siblings, Milaga (affinal links to Tjuna family) and Munjinya; and Toby Ngampija Roberts, son of Moonlight Lightning; or

B. are recognised by the native title claim group under their traditional laws and customs as having native title rights and interests in the application area because they:

- a) were born within the application area and have gained knowledge of the land and waters of the application area in accordance with the traditional laws and customs of the native title claim group; or
- b) have mythical or ritual knowledge and experience of the application area and have responsibility for the sites and strings of sites within the application area that are associated with the Tjukurpa (Dreaming).

The purpose of the meeting is to ratify and confirm the authority of the Applicant being, James Peel, Clem Lawrie, Arthur Catsambalis, Penong (Vernon) Miller, Oscar Richards Snr, Alan Haseldine and Leonard Miller Snr to make the Far West Coast Sea Claim and deal with all matters arising in relation to it.

Limited assistance will be provided for costs associated with travel to and from the meeting. Lunch will be provided to those attending. Please contact Stephen Bromley on 1800010360 for assistance to attend or for further information about this meeting.