

Focus

Native Title

Notification of Plains Clans Wonnarua People's native title determination application

2 April 2015

WHO SHOULD READ THIS

Any person who has an interest which may be affected by the Plains Clans of the Wonnarua People's native title claim which covers 9,500 square kilometres of the Hunter Valley region in New South Wales.

THINGS YOU NEED TO KNOW

If you have an interest that is affected by the Plains Clans of the Wonnarua People's native title claim you may apply to the Federal Court to become a party to the proceedings.

WHAT YOU NEED TO DO

Contact us to determine whether you have a valid interest that is affected by the native title claim and to work out which of our three recommended options is the best way forward for you.

Background on the PCWP's claimant application

As McCullough Robertson has previously covered in one of its alerts, the native title claim that Scott Franks and Anor had filed on behalf of the Plains Clans of the Wonnarua People (PCWP) was registered on the National Native Title Tribunal (NNTT) register on 16 January 2015. Stemming from the registration of this claim, letters titled 'Claimant Application – NC2013/006 Scott Franks & Anor on behalf of the Plains Clans of the Wonnarua People NSD1680/2013' were sent out from the NNTT as a requirement under the *Native Title Act 1993* (Cth) (NTA) to provide notice to persons or bodies who hold an interest in an area of Crown land or waters covered by the application.¹ The letter provides that the notification period for the PCWP native title application is 25 March to 24 June 2015. **This notification period has now commenced.** During this period, a person or organisation with an interest in the PCWP native title claimant application area can seek to become a respondent party to the application in the Federal Court. This means that such persons that would like to be joined as parties to the proceedings must apply to do so, in writing, on or before **24 June 2015**.

What does it mean to claim native title?

The NTA allows native title parties to lodge an application with the Federal Court for a determination that native title exists over a particular area.

The native title claim will only be accepted for registration if it satisfies requirements under the NTA in respect of both the merits² and the procedural aspect of the claim³ (**Preliminary Requirements**). Of relevance, the PCWP claim has satisfied the Preliminary Requirements to be registered on the NNTT register. Following from this, the PCWP application will then progress through the Federal Court until a determination is made that native title exists over the claimed area or the application is dismissed or struck out for not meeting other NTA requirements.

If the Federal Court determines that native title exists over the claimed area, the actual rights and interests that the native title group will depend on their traditional laws and the capacity to recognise those rights alongside existing rights and interests under Australian law. These rights and interests may either be exclusive or non-exclusive rights.

¹ Section 66(3)(a) *Native Title Act 1993* (Cth).

² Section 190B *Native Title Act 1993* (Cth).

³ Section 190C *Native Title Act 1993* (Cth).

What follows from the PCWP's registered native title claim?

The New South Wales Government, as the manager of Crown land in the State, will be the primary respondent to the native title proceedings. This means that the State will have the primary conduct of the response to the PCWP's native title claim. Other parties that submit Form 5s for the purposes of being joined as a party to the proceedings during the three month notification period may also be joined as respondents if they can establish an interest in the claimed area.

The PCWP must provide evidence to establish that they have the continuity of traditional connection to the land. If this is proved, the State's primary role will then be to demonstrate the extent to which native title has been extinguished within the claimed area.

If the Federal Court makes a determination that native title exists in the claimed area, the determination will be subject to any validly granted rights or interests already existing under law *at the time of the determination*. This means that the native title rights granted will be non-exclusive rights. To provide comfort to persons or organisations that already have existing rights over the land to, for example, mine under a Mining Lease or drill under an Exploration Permit, these existing rights will not be affected.

What are your options?

Regardless of whether you seek to be joined as a respondent to the proceedings, your mining interests that exist *at the time of the determination of the native title claim* will be protected. We hence do not consider any increase in risk by not joining as a party to the proceedings.

However, we set out three options that are open to any person or organisation whose interests are affected by the PCWP native title claim below.

OPTION ONE – JOIN AS A RESPONDENT TO THE NATIVE TITLE PROCEEDINGS

This requires you to complete a Form 5, which we are able to assist with. Your role will be limited to the extent that the court asks a party to provide your views on how certain elements of the native title claim will affect your particular interest in the claim area.

The Federal Court has recently moved towards encouraging respondents to be 'active' respondents. Being an active respondent involves occasional court appearances/directions hearings and occasional mediation conferences which will ensure that the native title claim proceeds in an orderly fashion. You should be aware that if the court considers that you are not being an 'active' participant, it may remove you as a party from the proceedings.

OPTION TWO – INACTIVE MONITORING

You may instead choose to request us to assist with the monitoring of the progress of the PCWP claim through public searches and other Federal Court updates to keep apprised of the progress of the proceedings.

You will not be joined as a party to the proceedings and this will simply involve frequent correspondence with us on relevant matters that are published publicly from the PCWP proceedings.

OPTION THREE – DO NOTHING

Alternatively, you may decide not to do anything but instead, rely upon the State to act in a manner consistent with your interests.

There are benefits and risks relating to each of these options that we would be happy to discuss with you.

Please do not hesitate to contact us if you would like advice on whether your interests are affected and what the best option for you is.

For further information on any of the issues raised in this alert please contact:

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