



GOLDFIELDS LAND & SEA COUNCIL

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WONGATHA NEWS

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What's happened since the judgement

There are two matters proceeding in the Federal Court following Justice Lindgren's decision handed down last February. First, the Commonwealth has re-activated its non-claimant application. Second, the Cosmo Newbery claim group has lodged an appeal.

The GLSC is hopeful that with only one appeal there is now stronger acceptance by most parties that native title is best resolved through negotiated agreements (as the GLSC has always advocated), rather than through the Federal Court system. Risking more years of uncertainty and more high legal costs is something that most of the 400 respondents to the Wongatha trial appear to have rejected.

It is noteworthy that the State Government did not appeal the judgment, despite Justice Lindgren having rejected requests from the State and Federal Governments for him to rule that native title does not exist. This means that it is now possible to lodge new claims. Unfortunately, the Cosmo Newbery appeal and the re-listing of the Commonwealth non-claimant application have required that GLSC resources also go into the consideration of how best to protect GLSC-represented claimants' rights and interests in those proceedings.

Commonwealth non-claimant application

In its non-claimant application the Commonwealth Government is arguing that the judge should have taken the final step to make a determination that there is no native title anywhere in the Wongatha trial area. At the recent directions hearing on this matter Justice Lindgren gave all parties the opportunity to put in papers as to how they think this non-claimant application should be dealt with.

The GLSC has engaged a highly regarded Sydney barrister, Bret Walker SC, to appear on behalf of GLSC-represented claimants. It will be strongly argued that the Commonwealth's application should be rejected by the court.



Sydney barrister Bret Walker SC (centre) is assisting GLSC's Manager Legal and Native Title, Ambrose Cummins and Wongatha claim lawyer Wendy Gong in mounting a challenge to the Commonwealth Government's non-claimant application.

Cosmo Newbery appeal

In the Cosmo Newbery appeal, the claim group is saying that Justice Lindgren was wrong to say that their claim was not properly authorised, and also wrong to say that the claim did not hold group rights and interests under traditional laws and customs. The GLSC is keeping a close eye on developments with the Cosmo Newbery appeal to ensure GLSC-represented claimants' interests are protected.

The GLSC and Ngaanyatjarra Council (the land council representing the Cosmo Newbery claim group) are in discussions about including particular Wongatha individuals' interests in the Cosmo Newbery claim area.

Land initiatives

Lake Ballard

Leo Thomas and Ivan Forrest have been nominated to represent Wongatha claimants on Lake Ballard Association Management Committee, the body which will have day-to-day management control over the lake and facilities associated with the famous Gormley sculptures. They will join two Wutha people on the 8-member committee, which will also

have four representatives from the Menzies Shire.

Agreement has been reached with Department of Planning and Infrastructure (DPI) for establishment of a jointly managed reserve covering the lake, in return for the extinguishment of native title over the same area. The involvement of the traditional owners in the management body will ensure that Aboriginal cultural values will be respected and that the land is managed in an appropriate way.

When operational, the Lake Ballard Association Management Committee will take *Continued ...*

New claims and unbroken protection for heritage

Immediately after the Wongatha judgment, the GLSC began consulting widely with claimants and received legal advice from Bret Walker SC, on the issue of a possible appeal. In the end, everyone agreed that the best approach was not to appeal, but instead focus on looking at new claims – keeping in mind that Justice Lindgren’s decision provides guidance on the formulation of new claim applications. Smaller new claims are being considered.

GLSC-represented claimants are currently being consulted about forming working parties over sub-areas for two purposes: firstly, to look at new claims within a smaller area and secondly, to look at heritage and future act issues that affect a smaller area. These working parties would be set up for the interim period, until the time when potential new claims are registered.

New claims

New claims should only be lodged if they have a sound anthropological and legal basis. The GLSC is encouraging avoidance of overlapping claims: un-overlapped, anthropologically-supported claims will have the best chance of becoming registered and achieving consent determinations.

The GLSC is conducting research to consider new claims and has been negotiating with the WA Government’s Office of Native Title and State Solicitor’s Office to agree a process for considering negotiated settlements (consent determinations) for new claims. An MOU between the ONT and the GLSC regarding the process for negotiating consent determinations is currently being drafted.

The key to convincing the State to enter a consent determination for a given area will be to demonstrate strong connection to the new claim area by the new claim group. The evidence already given at the Wongatha trial will be taken into account, as well as any new information provided.

Heritage protection

A major problem that came out of the February judgment was that it left a legal vacuum in heritage protection for the Wongatha trial area. The dismissal of the claims meant that Wongatha and Wutha (to the extent of its overlap with Wongatha) were removed from the Register of Native Title Claims. The way was clear for Government to approve future acts, such as exploration and mining tenements and new land tenures, without any requirement to conduct heritage surveys in the Wongatha trial area.

To overcome this problem, the GLSC quickly began negotiating with the relevant State Government departments and making representations to their ministers. A commitment has now been obtained from Government to suspend the issue of new tenements and future act notices in the Wongatha trial area until such time as interim heritage protection measures are agreed upon and in place. Deputy Premier and Minister with responsibility for native title, Eric Ripper, has given his full support for adopting such a process.

The State Government has agreed that the new heritage protection arrangements will operate until registered claims are in place. The details of the heritage arrangements are still being finalised. The Goldfields Regional Standard Heritage Agreement (GRSHA) will continue, with some adaptations. Given that there are no registered claims in the area, the Government has agreed that the parties to heritage agreements in the interim period will be the native title representative body (GLSC for most of the Wongatha trial area; Ngaanyatjarra Council for the eastern part) and the miners. It is anticipated that working parties of traditional owners will be established to look after the heritage and future act issues for each sub-area. The GLSC will arrange regular meetings with these working parties.

This interim process means that during the period when new claims are being considered and prepared, people can be assured that the mining companies and other developers will be required to conduct heritage surveys before they start ground-disturbing activities.

The GLSC will be explaining the new claims process and heritage protection arrangements in more detail at upcoming meetings.

Land initiatives

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advice from the Lake Ballard Advisory Committee, which will include representatives from Tourism WA, Goldfields Esperance Development Commission, Department of Conservation and Environment (formerly CALM) and others.

More reserves on the way

The GLSC is pursuing with DPI and Department of Industry and Resources several applications for the creation of more reserves for the use and benefit of Aboriginal people in the north-east Goldfields.

These include the old townsite at Kurralong and the northern section of the old Arcoona pastoral lease. Once secured, management plans that will address future land use options for each reserve will be developed.

As well, the conversion of Goon-garrie Station to a conservation park, to be jointly managed by Aboriginal people and Department of Conservation and Environment (formerly CALM), is progressing well. After two field trips, the structure for a park steering committee and regular meetings are expected to commence shortly.