



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: QUD6150/1998  
NNTT number: QC1997/043

**Application Name:** Wuthathi (Gordon Pablo) v State of Queensland & Ors

**Application Type:** Claimant

**Application filed with:** National Native Title Tribunal

**Date application filed:** 09/10/1997

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**Current status:** Discontinued - 22/08/2002

**Registration information:** Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 09/10/1997 to 02/10/2002

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**Applicants:** Johnson Chippendale, Gordon Pablo, Jean Mosby, Douglas Wilson, Phillip Wallis, Cecil Macumboy

**Address(es) for Service:** Principal Legal Officer  
Cape York Land Council  
PO Box 2496  
CAIRNS QLD 4870  
**Phone:** 07 4053 9222

## Additional Information

Not applicable

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## Persons claiming to hold native title:

The native title claim group is the Wuthathi people. Wuthathi is the name by which they identify themselves as a group, and by which other Aboriginal people and groups in the Northeast Cape York

Peninsula region identify them. The group is continuous both in terms of biological descent and of continuous transmission of the Wuthathi identity from the group of the same name recorded in and around the claim area in various written forms (e.g. "Otattie"; "Otati"; "Wutati") from late last century and in various written sources since (e.g. Meston 1896; 1897; Seligman 1904; Haddon 1913). It is noted here that the Wuthathi group in 1996-7 have successfully prosecuted a number of land claims to off-shore Islands in the vicinity of Cape Grenville and Round Point, under the Aboriginal Land Act (Qld) 1991; and in 1995, the QLD Government transferred to Wuthathi under the ALA, the Home Islands. Documents of relevance include the following: Wuthathi Claim to Ten Islands Claim Book (1996), the Land Tribunal transcript of proceedings for this claim, and the Land Tribunal's subsequent report. In this hearing considerable evidence was received and tested on the nature of the Wuthathi group.

#### Membership of the group

The current membership of the group is primarily determined in recruitment by the principle of cognatic descent (i.e. descent traced through both male and female ancestors; it is sometimes also called "ambilineal descent"). Members trace descent from a limited set of persons recognised in the regional Aboriginal community as associated with Wuthathi identity, and with the claim area soon after the European occupation of the area. By this decent principle, the current membership of the Wuthathi people consists of the descent groups listed below (comprehensively but not necessarily exhaustively) by their main surnames, together with the apical ancestors from whom they trace their descent cognatically:

- a) The Pablo family, the Wallis and Wallace families, the Mosby families, the Aklan families, the Savage family, the Billy family, being descendants of the female Pintharra (dec'd) and her husbands Kakarus, Captain Pym and Pading, or Peter Pablo Whitesand (all deceased);
- b) The Macumboy family, the Pascoe family, the Moses family; being descendants of Johnson Moreton (deceased) and two wives, one of whom was Maggie (deceased);
- c) The Wilson family, the Chippendale family, the Convent family: being descendants of Frank Wilson (deceased);
- d) The Temple family; being descendants of Ida Temple (deceased) and Hughie Temple (deceased);
- e) The Warren family, the Clark family, the Tranby family, the Saunders family, the Hansen family, the Bender family, the Mosby family; being descendants of Tyityil Tom Warren (deceased) and his wives, Lily Enright (deceased) and Topsy Savage (deceased);
- f) Any descendants of Innis Pascoe (deceased), Dinah (deceased), and Ada Lancaster (deceased)
- g) The Pascoe family, being descendants of Annie Athanamu Punda.

Membership of the group includes recruitment by adoption into the group, in accordance with traditional laws and customs.

#### ADOPTION

The members of some of the current Wuthathi cognatic descent groups include adopted persons. The incidence of adoption among them is low, and it is not an open-ended or casual process, but rather it arises by similar means, and has much the same meaning and status as it does in the general Australian community. If an objective test for adoption is required, it can be tested for the following features based upon practice under Wuthathi traditional law and custom and that of the wider Northeastern Cape York Peninsula region:

, - Was the person taken as a child into one of the Wuthathi descent groups by an adult who raised the child as one of their own? This is commonly described as "growing up" that person.

- During the time the child was growing up, did they come to identify as a member of that family, and were they commonly identified as such by the other members?

- Were they given the same rights within the family as other members? If so, this would be expected to flow on to rights in land as well, since kin relations and relations in connection to country share a common structure - e.g. when one speaks of "my mother('s) land", the relationship to that land is seen as of a similar order to, and derived from, one's relationship to one's mother.

- As the child matured, did they become recognised as a member of the adopting adult's descent group and as a Wuthathi person by a significant number of other descent groups (especially by those most closely related to the family involved), and eventually by a majority of the senior people of the wider Wuthathi community?

- Has the person closely associated with the applicants' community throughout their life, and held an active association with, knowledge of, etc. the traditional country of the applicants' community, comparable to that of others in the community, and prior to the native title application?

An adopted child is sometimes originally a step-child of the adopting adult, and often the child's biological parentage is within the applicants' group in any case, but not necessarily so. But the term "adoption" as used here does not include cases where a child has been "grown up" by its grandparents or other close biological kin.

Importantly, cases of adoption do not alter the fact that descent is the primary principle for recruitment to the Wuthathi people and their several cognatic descent groups, nor do they complicate significantly the identification of either the descent group into which a child is adopted, nor the larger Wuthathi identity.

Considerable sworn evidence on the Wuthathi group has been given and tested in an Aboriginal Land Act (Qld) 1991 Claim for Ten Islands off Cape Grenville, which has subsequently been recommended for grant by the Queensland government (see Land Tribunal Report 1998).

### **Native title rights and interests claimed:**

The common law native title and its qualifications

The native title in the land and waters covered by the application ('the claim area') is equivalent to the fullest beneficial ownership, including possession, occupation, use and enjoyment to the exclusion of all others subject to:

(a) the valid laws of the State of Queensland and the Commonwealth of Australia; and

(b) any valid rights and interests conferred upon non-native title holders, or the subject of an agreement made under the Native Title Act 1998 (Cth), or by the principles of Aboriginal law and custom.

**Application Area:**                    **State/Territory:** Queensland  
**Brief Location:** Shelburne Bay, north east Cape York  
**Primary RATSIB Area:** Cape York Region  
**Approximate size:** 1168.8881 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):**

The area covered by the application is the land and waters contained within the defined boundaries consisting of:

- Lot 5117 on Plan CP857658 being a pastoral holding No. PH43/5117 in the County of Shelburne, Parish of Shelburne with an area of about 49,987 hectares;

- Lot 73 on Plan OL343 being an area of about 66,560 hectares of land covered by an Occupation Licence in the County of Shelburne, Parishes of Grenville and Shelburne;

- The area covered by the application extends from the coastal boundary of Lot 5117 on CP857658 and Lot 73 on OL343 to the low water mark. This area includes the Esplanade adjacent to Lot 5117 on Plan PH576 and Lot 73 on Plan OL343. The esplanade commences at the northwest corner of the coastal boundary of Lot 5117 on Plan CP857658 and follows the coastal boundary of Lot 5117 on Plan CP857658 and follows the coastal boundary of Lot 5117 on Plan CP857658 and Lot 73 on Plan OL343, east. The esplanade ends at the southern corner of the coastal boundary of Lot 73 on Plan OL343.

The claimed area includes no claim to land that has been or is now freehold land to the best of the applicant's

knowledge.

A. The claim area does not include any land or waters subject to validly granted Previous Exclusive Possession Acts (PEPAs), as defined by s23B of the Native Title Act, except to the extent that sections 47, 47A or 47B of the Native Title Act may apply.

B. To the extent that any area of the claimed area is or has been the subject of a Previous Non-Exclusive Possession Act, as defined by s23F of the Native Title Act, the native title claim group do not claim possession, occupation, use and enjoyment of the area to the exclusion of all others.

C. For any land or waters in the claim area subject to a validly granted Previous Non-Exclusive Possession Act, as defined by s23G of the Native Title Act, then the native title rights and interests claimed in relation to such land and or waters do not include any native title rights or interests which were extinguished by that validly granted Previous Non-Exclusive Possession Act, except to the extent that sections 47, 47A or 47B may apply.

D. In respect of the areas listed in Attachment B, the validity of any grants that, if valid, would constitute Previous Exclusive Possession Acts as defined by s23B of the Native Title Act is contested. If those grants were valid, then the claimed area does not include those areas subject to those validly granted Previous Exclusive Possession Acts, in accordance with A above.

E. No tenure history searches have been undertaken (see Schedule D). The applicants are not aware of any land or waters which may have been subject to PEPAs (in accordance with paragraph (A) above) within the area covered by this application. One possible exception to this is the esplanade described in paragraph (3) of Attachment B, however, the validity of that esplanade is not conceded.

- Attachments:**
1. Map of Claim Area , 1 page - A4, 23/08/2000
  2. Map of Lot 5117 on CP 857658 , 1 page - A4, 23/08/2000
  3. Map of Lot 73 on Plan OL343, 1 page - A4, 23/08/2000

<b>NNTT Contact Details</b>	<b>Address:</b>	National Native Title Tribunal Cairns Office Level 14, Cairns Corporate Tower 15 Lake Street CAIRNS QLD 4870  PO Box 9973 CAIRNS QLD 4870
	<b>Telephone:</b>	+61 7 4046 9000
	<b>Freecall:</b>	1800 640 501
	<b>Fax:</b>	+61 7 4046 9050
	<b>Web Page:</b>	<a href="http://www.nntt.gov.au">www.nntt.gov.au</a>

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End of Extract