



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD6085/1998  
NNTT number: WC1996/041

**Application Name:** Minnie Edith Van Leeuwen & Ors v State of Western Australia & Ors (Harris Family)

**Application Type:** Claimant

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

**Date application filed:** 03/04/1996

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**Current status:** Full Approved Determination - 01/12/2021

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

**Date claim entered on Register of Native Title Claims:** 03/04/1996

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 3/04/1996 to 3/12/2021,

**Date claim / part of claim determined:** 01/12/2021

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**Applicants:** Minnie Edith Van Leeuwen on behalf of the Harris Family

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## Additional Information

Not applicable

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## Persons claiming to hold native title:

The claim is brought on behalf of:

Minnie Van Leeuwen,

Norman Harris,

Carrie Harris, and

Dorothy Blurton,

and their children as listed;

Wendy Harris,

Susan Peaker,

Stephen van Leeuwen,

Elizabeth Embry,

Joanne Downey,

Norman Harris,

Geary Harris,

Keith Harris,

Mathew Harris,

Timothy Harris,

Reiner Harris,

Wayne Blurton,

Mark Blurton,

Jenny Maher,

Delarna Harris,

and the biological descendants of their children.

**Native title rights and interests claimed:**

The native title rights and interests claimed are the rights together with other Noongar people who are native title holders to the possession, occupation, use and enjoyment as against the whole world (subject to any shared right of exclusivity) of the area and any right or interest included within the same, and in particular, comprise:

- (a) The right to possess, occupy, use and enjoy the area;
- (b) The right to make decisions about the use and enjoyment of the area;
- (c) The right of access to the area;
- (d) The right to control the access of others to the area;
- (e) The right to live on and erect residences and other infrastructure on the land and gather material necessary for the same;
- (f) The right to hold meetings and ceremonies on and concerning the land, water and resources of the area;
- (g) The right to use and enjoy resources of the area;
- (h) The right to control the use and enjoyment of others of resources of the area;

- (i) The right maintain and protect places of importance under traditional laws, customs and practices in the area;
- (j) The right to rear and teach children on the area; and
- (k) The right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

Subject to:

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in right of the Commonwealth or the State of Western Australia, they are not claimed by the applicant.
- (ii) To the extent that the native title rights and interests claimed may relate to waters in an offshore place, those rights and interests are not to the exclusion of other rights and interests validly created by a law of the Commonwealth or the State of Western Australia or accorded under international law in relation to the whole or any part of the offshore place.
- (iii) 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.) a previous non-exclusive possession act, as defined in section 23F of the Native Title Act 1993, 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 including the Titles Validation Act (WA) as amended by the Titles Validation Amendment Act (WA) 1999 has made provision as mentioned in section 23I in relation to the act;
  - (b.) a valid non-exclusive tenure exists which at common law permanently affects the rights or interests of native title holders to possess, occupy, use, or enjoy the area subject to that tenure to the exclusion of all others.
- (iv) Paragraph (iii) 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;
- (v) 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 of the State or a law of the Commonwealth.

**Application Area:**                      **State/Territory:** Western Australia  
**Brief Location:** Margaret River, Capel, Busselton,  
**Primary RATSIB Area:** South West  
**Approximate size:** 1771.5404 sq km  
(Note: There may be areas within the external boundary of the application that are not claimed.)  
**Does Area Include Sea:** Yes

**Area covered by the claim (as detailed in the application):**

- A) a map showing the external boundary of the area covered by the claim (Attached)
- B) a technical description of the external boundary (Attached)

Internal Boundaries:

- (1) The applicant excludes from the claim any areas covered by valid acts on or before 23 December 1996 comprising such of the following as are included as extinguishing acts within the Native Title Act 1993, as amended, or Titles Validation Act 1994, as amended, at the time of the Registrar's consideration:
  - . Category A past acts, as defined in s 228 and s 229 of the Native Title Act 1993.
  - . Category A intermediate period acts as defined in s 232A and s 232B of the Native Title Act 1993.
  - . Category A intermediate period acts as attributable to the State (s12A Titles Validation Amendment Act 1999 (WA)).
- (2) The applicant excludes from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the Native Title Act 1993, 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 23E in relation to the act.

(3) The applicants excludes from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:

(a) An act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or

(b) Actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.

To avoid any uncertainty, the applicant excludes from the claim areas the following tenures set out in Attachment B3:

#### Attachment B3

B3.1 An unqualified grant of an estate in fee simple.

B3.2 A lease which is currently in force, in respect of an area not exceeding 5,000 square metres; upon which a dwelling house, residence, building or work is constructed; and which comprises -

(1) a lease of a worker's dwelling under the Workers' Homes Act 1911 - 1928;

(2) a 999 year lease under the Land Act 1898;

(3) a lease of a Town Lot or Suburban Lot pursuant to the Land Act 1933 (WA), s.117; or

(4) a Special Lease under s. 117 of the Land Act 1933 (WA).

B3.3 A Conditional Purchase Lease currently in force in the Agricultural Areas of the South West Division under clauses 46 and 47 of the Land Regulations 1887 which includes a condition that the lessee reside on the area of the lease and upon which a residence has been constructed.

B3.4 A Conditional Purchase Lease of cultivable land currently in force under Part V, Division (1) of the Land Act 1933 (WA) in respect of which habitual residence by the lessee is a statutory condition in accordance with the Division and upon which a residence has been constructed.

B3.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B3.6 A permanent public work and the "land or waters on which a public work is constructed, established, or situated" within the meaning given to that phrase by section 251D of the Native Title Act 1993.

B3.7 An existing public road or street used by the public including any dedicated roads.

(4) Paragraphs (1) to (3) above are 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 but which include such areas as may be listed in Schedule L.

#### Attachments:

1. Map of Claim Area, Attachment B1 of the Application, 1 page - A4, 04/08/1999
2. Technical Description of Claim Area, Attachment B2 of the Application, 22 pages - A4, 04/08/1999

#### NNTT Contact Details

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