



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD6236/1998
NNTT number: WC1998/017

Application Name: John Thomas Oxenham & Ors and State of Western Australia & Ors (Malgana)

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 30/03/1998

Current status: Dismissed - 04/11/2019

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: 30/03/1998

Registration decision status: Accepted for registration

Registration history: Registered from 30/03/1998 to 7/11/2019,

Date claim / part of claim determined: 04/12/2018

Applicants: John Thomas Oxenham, Sarah Louise Bellottie, Terrence Gordon McKie, Bianca Elise McNeair, Denise Charmaine Mitchell, Leslie Anthony O'Neill, Albert Darby Winder

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Additional Information

A consent determination of native title in respect of part of the application area was made by Justice Murphy on 4 December 2018 – see *Oxenham on behalf of the Malgana People v State of Western Australia* [2018] FCA 1929. That determination was registered on the National Native Title Register on 19 December 2018. Order 2 of the determination provides that “[e]xcept to the extent that WAD 6236 of 1998 overlaps with WAD 402 of 2018, in so far as WAD 6236 of 1998 relates to land and waters outside the Determination Area, WAD 6236 of 1998 is dismissed. For the avoidance of doubt, to the extent that WAD 6236 of 1998 overlaps with WAD 402 of 2018 no determination is to be made at present”. Pursuant to s 190(4)(e) the application remains on the Register of Native Title Claims only to the extent that it relates to the undetermined area, being the area which overlaps with native title determination application WAD 402 of 2018 (Malgana #3). A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

Persons claiming to hold native title:

The Malgana People are those Aboriginal persons who are descended, from one or more of the following ancestors:

- i. Julia Sappie O'Dene (also known as Julia Thompson);
- ii. Hookey (also known as Angelick);
- iii. Withia; or
- iv. Nellie Peters;

where descent can be by birth or adoption under traditional laws acknowledged and traditional customs observed by the Malgana People.

Native title rights and interests claimed:

The native title rights and interests claimed are the rights to the possession, occupation, use and enjoyment as against the whole world (subject to any native title rights and interests which may be shared with any others who establish that they are native title holders) of the area, and in particular comprise:

- (a) rights and interests 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 use and enjoy resources of the area;
- (f) the right to control the use and enjoyment of others of resources of the area;
- (g) the right to trade in resources of the area;
- (h) the right to receive a portion of any resources taken by others from the area;
- (i) the right to maintain and protect places of importance under traditional laws, customs and practices in the area; and
- (j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area.

The Native Title Rights and Interests are subject to the following qualifications:

- (i) To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
- (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 applicants do 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 previous non-exclusive possession act, as defined in section 23F of the NTA, 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 231 in relation to the act;
(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, the law of the State or a law of the Commonwealth.

Application Area:

State/Territory: Western Australia

Brief Location: Western Gascoyne region of WA

Primary RATSIB Area: Geraldton

Approximate size: 0.1020 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):

Area covered by the application

The external boundaries of the area of land and waters covered by the Application are as set out in the document entitled "The Malgana Shark Bay People's Application External Boundary Description" which is annexed as "Attachment B".

Areas within those boundaries that are not covered by the application

The areas within the external boundaries that are excluded from the claim area are as follows:

1. The applicants exclude 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 NTA s228 and s229;
- Category A intermediate period acts as defined in NTA s232A and s232B.

2. The applicants exclude from the claim any areas in relation to which a previous exclusive possession act, as defined in section 23B of the NTA, 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 exclude 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 Applicants exclude from the claim areas the tenures set out in Schedule B1.

Schedule B1

B1.1 An unqualified grant of an estate in fee simple; or

B1.2 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), s117; or
- (4) a Special Lease under s 117 of the Land Act 1933 (WA).

B1.3 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.

B1.4 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.

B1.5 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954.

B1.6 A Permanent public work.

B1.7 An existing public road or street used by the public.

Attachments:

1. Attachment B External boundary description, 2 pages - A4, 01/10/2018
2. Attachment C Map, 1 page - A4, 01/10/2018
3. Description of Remaining Area, 1 page - A4, 04/12/2018
4. Map of Remaining Area, 1 page - A4, 04/12/2018

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