



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD23/2019
NNTT number: WC1999/016

Application Name: Tammy O'Connor & Ors on behalf of the Palyku People v State of Western Australia & Ors (Palyku)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 30/03/1999

Current status: Full Approved Determination - 16/01/2024

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: 02/08/1999

Registration decision status: Accepted for registration

Registration history: Registered from 2/08/1999 to 22/01/2024,

Date claim / part of claim determined: 16/01/2024 , 10/03/2021 , 05/03/2020

Applicants: Tammy O'Connor, Peter Jaffrey, Cheryl McKay, Kevin Stream

Address(es) for Service: Sophie Kilpatrick
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Additional Information

On 12 March 2019, the Federal Court made a determination that native title exists in parts of the application area - see O'Connor on behalf of the Palyku People v State of Western Australia [2019] FCA 330 (Palyku Part A). On 5 March 2020 the Palyku-Jartayi Aboriginal Corporation was nominated to be the prescribed body corporate for this determination, and therefore this determination is in effect from 5 March 2020. On 10 March 2021, the Federal Court made a determination that native title exists in parts of the application area - see O'Connor on behalf of the Palyku People v State of Western Australia (No 2) [2021] FCA 195 (Palyku and Palyku #2). 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. 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:

Mr Dudley Wabbie

Mrs Cheryl Yuline

Mr Pixie Christian (Dec)

Mrs Florrie Sam

Mr Albert Brockman (Brian)

Mr Claude Brockman

Mr David Brockman

Mr Murray Brockman

Mr William Brockman

Ms Marilyn Cabalas

Mr Gavin Cabalas

Mr Leo Cabalas

Ms Imelda Cole

Mr Brian Derschow

Mr Damien Derschow

Ms Elsa Derschow

Ms Gillian Derschow

Ms Margaret Derschow (Brockman)

Mr Robert Derschow

Ms Tracey Geesv (Stream)

Ms Claire Gesah (Stream)

Ms Diane Jaffrey

Mr Gary Jaffrey

Ms Jean Jaffrey

Mr Peter Jaffrey

Mr Terry Jaffrey

Ms Cheryl Mackay

Mr Dion Mackay

Mr Steven Mackay

Ms Christine McCan

Ms Susan McCan

Ms Georgina Monaghan

Ms Suzie Monaghan
Ms Rebecca O'Connor
Ms Tamara O'Connor
Ms Linda Ruittanen
Ms Tarishe Ruittanen
Mr Ashley Sam
Mr David Sam
Ms Sonya Sam
Ms Susan Sam
Ms Anne Smith
Ms Annabelle Stream
Ms Beverley Stream
Mr Charlie Stream
Ms Cheryl Stream
Ms Carol Stream
Mr Dwayne Stream
Mr Frederick Stream
Mr Kelvin Stream
Mr Kevin Stream
Mr Lennie Stream
Ms Lorraine Stream
Mr Michael Stream
Ms Natalie Stream
Mr Paul Stream
Ms Reneen Stream
Ms Samantha Stream
Ms Tanya Stream
Mr Thomas Stream
Mr Walter Stream
Mr Douglas Yuline
Mr Lindsay Yuline
Ms Margaret Yuline

Native title rights and interests claimed:

The applicant claim group under the common law of Australia and based on customary law, traditions and practices coming down from their ancestors, the predecessors in title, claim rights and interests to following activities carried out in the past, and which are practiced and performed without interruption to this day and time. Wherefore these applicants seek in respect of the determination area:-

i) to ingress and exist, occupy, possess, use, enjoy and live upon the land of their ancestors upholding custom and Aboriginal law

ii) to manage and maintain the fauna and flora together with the land and waters according to traditions and complying with Aboriginal law and culture which has been passed down from generation to generation to sustain existence and the environment upon their traditional lands;

iii) to forage for food, medicine and such other items used for customary practices including fauna and flora on or

under the land and waters, and the right to protect them from degradation

iv) to participate at meetings for social and cultural gatherings within the group or with other groups to enforce customary laws and practices and hold traditional ceremonies, arrange marriages organise ceremonies, mediate and carry out punishments, barter for food, tools, materials, equipment, utensils, access to water, hunting and burial grounds on the land;

v) to lay away the dead upon their land and the right to bring the dead of the claim group for traditional ceremonies;

vi) to camp, hunt, fish, gather traditional foods, and building materials, utensils, tools, equipment and weapons;

vii) to use, manage, maintain and care for the water resources on the land;

viii) to extract and collect flints, clays, salts, soils, sand gravel, stones, ochres and such other substances in, on or under the land for use or trade as it was done by their ancestors in title;

ix) to use such resources and materials (animate and inanimate) growing, living and occurring in, on or under the land and waters together with the right to receive a portion of any such resources taken by others, as it was done by their ancestors in title, for use or barter;

x) to manage and protect their sites, their secret societies and lodges or fraternities to ensure that rituals of religious significance, mystery and solemnity relating to the Dreamtime can continue which gives authority to the survival instruction or activities that have evolved over centuries and will allow for the gathering of people to come together to carry out ceremonies and activities required under customary law and culture;

xi) to freely move upon their land to teach their young about their country, culture and traditions, how to look after the fauna and flora for both sustenance and to protect the land, waters, the environment and the natural habitat;

xii) to construct camps, dwellings and other structures.

The native title claim group do not make a claim for exclusive possession of an offshore place.

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 State of Western Australia, these are not claimed by the native title claim group.

Application Area: **State/Territory:** Western Australia
Brief Location: Pilbara region of WA
Primary RATSIB Area: Pilbara
Approximate size: 49.2228 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 external boundaries of the area of land and waters covered by the combined claim are described in the attached documents:

A map showing the external boundaries of the area covered by the claim; and

A technical description of the external boundaries.

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

A. The internal boundaries of the claim area are varied to the extent necessary to exclude from the claim 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 1993-98 or Title Validation Act 1994 as amended and relevant to the time of the Registrar's consideration.

Category A past acts, as defined in s.228, s.229 and any other relevant provisions of NTA 93-98

Category A intermediate period acts as defined in s.232A, s.232B and any other relevant provisions of NTA 93-98 and includes the following:-

B. The applicants exclude from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including but not limited to 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.

C. To avoid any uncertainty, the Applicants exclude from the claim areas the tenures set out below:

1. all unqualified grant of an estates in fee simple;
2. all freehold estates;
3. all residential leases;
4. all permanent public work;
5. all existing public roads or streets used by the public or dedicated roads;
6. leases which grant exclusive possession as stated and defined in the Native Title Act 1993-98, together with other areas of exclusive possession recognised under the common law and statute law of the Commonwealth of Australia and the State of Western Australia; and
7. "Scheduled Interests" expressly defined and identified under the Native Title Act 1993-98 (NTA 98) and only such Scheduled Interest as are stated in Schedule 1 of the NTA 98 applicable at the time of this application to the State of Western Australia.

Combination Details

Date of order to combine: 31/03/1999

This application is a combination of the following applications:

Application number(s)	Application name	Date application lodged/filed	Date claim entered on Register*	Registration History
WAD6250/1998, WC1998/034	Yuline v State of Western Australia	15/06/1998	N/A	Registered from 15/06/1998 to 02/08/1999
WAD6287/1998, WC1998/071	Cheryl Yuline & Ors & State of Western Australia (Palyku)	29/09/1998	N/A	Registered from 29/09/1998 to 02/08/1999

*For further information on pre-combined applications, see the Schedule extract for each pre-combined application.

Attachments:

1. Technical Description, Attachment B, 5 pages - A4, 21/04/1999
2. Map of Claim Area, Attachment C, 1 page - A4, 21/04/1999
3. Description of Undetermined Area, 2 pages - A4, 10/03/2021
4. Map of Undetermined Area, 1 page - A3, 10/03/2021

End of Extract