



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD43/2019
NNTT number: WC1999/044

Application Name: Pearl Gordon & Ors on behalf of the Malarngowem Native Title Claim Group and State of Western Australia & Ors (Malarngowem)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 24/09/1999

Current status: Full Approved Determination - 08/06/2021

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: 04/02/2000

Registration decision status: Accepted for registration

Registration history: Registered from 4/02/2000 to 18/06/2021,

Date claim / part of claim determined: 08/06/2021

Applicants: Pearl Gordon, Paddy McGinty, Bernard Stretch, Shirley Purdie, Name withheld for cultural reasons, Mabel Peters, Gordon Barney, Mary Thomas, Queenie Malgil

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Additional Information

On 23 May 2019 the Federal Court of Australia made a determination that native title exists in parts of the determination area – see John on behalf of the Malarngowem Native Title Claim Group v State of Western Australia [2019] FCA 697. Order 2 of the determination provides that '[t]he determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the Native Title Act 1993 (Cth) as the case may be.' On 8 June 2021, the Malarngowem Native Title Claim Group nominated the Malarngowem Aboriginal Corporation to be the prescribed body corporate and to hold the native title on trust. The determination therefore came into effect on 8 June 2021.

Persons claiming to hold native title:

The names (including Aboriginal names) of the persons (the native title claim group) on whose behalf the application is made or a sufficiently clear description of the persons so that it can be ascertained whether any particular person is 1 of those persons.

The claim is bought on behalf of:

Those Aboriginal People who hold in common the body of traditional law and custom governing the area the subject of the claim.

Those people are-

(a) Descendants of the following people:

Davy (Madarning)

Biddy (Dirngorl)

Judy (Bilmaria)

Judy (Bilayil)

Joolmangool

Kitty Bligh (Jalburul)

Lola Budbaria

Dickie (Doolpany)

Paddy (Podawin)

Nellie (Janyngbal)

Nora

Lizzie (Grazi)

Manjilbain

Mary (Junpajil)

Jungubany

Muranning

Chinabi (Kargoyon)

Toby (Ngowaring)

Violet (Mailkgil/Malkbaria)

Rowaljl

Kitty Burul

Jungurangan (Old McCarthy)

Kneevil

and

b) persons adopted by those descendants in accordance with their traditional law and custom.

Native title rights and interests claimed:

Non-exclusive rights to use and enjoy the land and waters in accordance with traditional laws and customs as follows:-

- (a) The right of access to the land and waters;
- (b) The right to live on the land, to camp, to erect shelters and to move about the land;
- (c) The right to take flora and fauna from the land and waters;
- (d) The right to take other natural resources of the land such as ochre, stone, soils, wood and resin;
- (e) The right to take waters, including flowing and subterranean waters;
- (f) The right to engage in cultural activities on the land and waters, to conduct ceremonies, to hold meetings and to participate in cultural practices relating to birth and death;
- (g) The right to care for and maintain sites and areas that are of significance to the native title holders under their traditional laws and customs.

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 the right of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.
- ii) The claim area does not include any offshore places.
- iii) 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, or law of the State, or a law of the Commonwealth.

The claimants do not claim native title rights and interests that have been extinguished by operation of Law.

The native title claim group do not assert that they possess exclusive possession to any land or waters within the claim area.

Application Area:

State/Territory: Western Australia

Brief Location: Kimberley Region

Primary RATSIB Area: Kimberley

Approximate size: 7503.5818 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):

Information identifying the boundaries of:

- a) the area covered by the application; and
- b) any areas within those boundaries that are not covered by the application.

The external boundaries of the claim are as set out in the map attached as Attachment C and are described as

follows:

External Boundary Description

Area 1

All that portion of land commencing at the southernmost south western corner of Pastoral Lease 3114/963 (Springvale) and extending northerly, westerly, again northerly, again westerly, again northerly, easterly, again northerly, again easterly, again northerly, generally easterly, again northerly, again easterly, again northerly, again easterly along the western boundaries of that Pastoral Lease to Longitude 127.684594 degrees east; then generally northerly, generally easterly and generally southerly passing through the following co-ordinate positions;

Longitude East Latitude South

127.684594 17.331902

127.701261 17.331902

127.701261 17.315235

127.717928 17.315235

127.717928 17.298568

127.701261 17.298568

127.701261 17.281902

127.701260 17.265236

127.701260 17.248569

127.717926 17.248569

127.717926 17.231903

127.717926 17.215236

127.734593 17.215236

127.734593 17.198569

127.751259 17.198569

127.751259 17.215236

127.751259 17.231902

127.751260 17.248569

127.734593 17.248569

127.734593 17.265235

127.734594 17.281902

127.734594 17.298568

127.751261 17.298568

127.751261 17.315235

127.751261 17.331901

127.734594 17.331902

Then south to the northern boundary of Pastoral Lease 3114/963 (Springvale); then easterly and southerly along the north eastern boundaries of that pastoral lease to a north western corner of Pastoral Lease 3114/672 (Mabel Downs); then easterly, northerly, again easterly, again northerly, again easterly, again northerly, again easterly,

again northerly, again easterly, again northerly, again easterly, again northerly, again easterly, again northerly, again easterly, southerly, again easterly, again northerly, again easterly, again northerly, westerly and again northerly along the boundaries of that pastoral lease to the westernmost south western corner of Pastoral Lease 3114/1001 (Lissadell); then northerly, easterly, again northerly and generally easterly along the boundaries of that pastoral lease to the western boundary of Mining Lease M80/114; then south easterly, north easterly and north westerly along the southern boundaries of that Mining Lease to a northern boundary of Pastoral Lease 3114/1001 (Lissadell); then generally north easterly along the boundaries of that pastoral lease to a southern boundary of Mining Lease Special Agreement AM70/259 (M259SA); then easterly and northerly along the boundaries of that special agreement to a north western boundary of Pastoral Lease 3114/1001 (Lissadell); then north easterly along that pastoral lease boundary to a south eastern boundary of Mining Lease Special Agreement AM70/259 (M259SA); then easterly and generally northerly along the boundaries of that special agreement to a northern boundary of Pastoral Lease 3114/1001 (Lissadell); then generally south easterly, generally southerly and easterly along the boundaries of that pastoral lease to the westernmost north western corner of Pastoral Lease 3114/532 (Spring Creek); then easterly, northerly, again easterly, southerly and westerly along the boundaries of that pastoral lease, and generally south easterly along the boundaries of Pastoral Lease 3114/995 (Texas Downs) to the prolongation easterly of the northern boundary of the unallocated crown land within the boundary of the aforesaid pastoral lease; then westerly to and westerly and southerly along the boundaries of that unallocated crown land to its south western corner; then west to the prolongation northerly of the western boundary of Pastoral Lease 3114/859 (Osmond Valley); then southerly to and along that boundary and southerly, westerly and again southerly along the boundaries of Reserve 39898 (Purnululu Conservation Reserve) to the prolongation easterly of the northern boundary of Reserve 2263; then westerly to and westerly, southerly and easterly along the boundaries of that reserve to an eastern side of the Great Northern Highway; then generally southerly and generally south westerly along the eastern boundaries of that highway to the right bank of the Ord River; then generally easterly downwards along that bank to the prolongation northerly of the westernmost western boundary of Reserve 39898; then southerly along that prolongation to the northern boundary of Pastoral Lease 3114/1032 (Sophie Downs); then westerly along that boundary to the easternmost eastern boundary of the western severance of Pastoral Lease 3114/652 (Alice Downs); then southerly, westerly and again southerly along the boundaries of that pastoral lease to latitude 17.815236 degrees south; then east to Latitude 17.815237 degrees south, Longitude 127.984594 degrees east, south to Latitude 17.831903 degrees south, Longitude 127.984594 degrees east; then east to Latitude 17.831903 degrees south, Longitude 128.001261 degrees east, then south to Latitude 17.865235 degrees south, Longitude 128.001261 degrees east, then west to an eastern boundary of the western severance of Pastoral Lease 3114/652 (Alice Downs); then southerly, generally north westerly, again southerly, westerly, again southerly, again westerly, again southerly, easterly, again southerly, again westerly, northerly, again westerly, again southerly, again westerly, again northerly, again easterly, again northerly, again westerly and again northerly along the boundaries of that pastoral lease to the starting point.

Area 2

All that portion of land commencing at the north western corner of the eastern severance of Pastoral Lease 3114/652 (Alice Downs) and extending easterly, southerly, westerly and northerly along the boundaries of that pastoral lease to the starting point.

Note:

Reference Datum

Geographical co-ordinates have been provided by the NNTT Geospatial Unit and are referenced to the Geocentric Datum of Australia 1994 (GDA 1994), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Reference Data and Source:

Application boundary data sourced from and used with the permission of Dept of Land Information, modified by NNTT.

Non Freehold data sourced from the Dept of Land Information WA (June 2004).

Tenement/Licence/Permit data sourced from Dept of Industry and Resources, WA (July 2004).

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographic boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic positions of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by the Geospatial Analysis and Mapping Branch, National Native Title Tribunal, 03rd August 2004.

Internal boundaries:

(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 NTA, 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 interest 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.

(3) The applicant excludes from the claim any areas covered by Mineral Lease 259SA and Mining Lease M80/114.

To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions or tenures which have been validly granted, set out in Schedule B1.

Schedule B1

B1.1 Any former or current unqualified grant of an estate in fee simple and all other freehold land.

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 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.

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 and "the land or waters on which a public work is constructed, established or situated" within the meaning given to that phrase by the Native Title Act 1993 (Cth) s251D.

B1.7 A public road.

(5) The claim is a combination of the following claims: WAG 6190 of 1998, WAG 6246 of 1998 and W 6028 of 1999.

Combination Details

Date of order to combine: 22/10/1999

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
WAD6182/1998, WC1997/059	Maggie John & Ors and State of Western Australia & Ors (Malarngowem)	21/07/1997	N/A	Registered from 21/07/1997 to 04/02/2000
WAD6190/1998, WC1997/067	Springvale v State of Western Australia	04/08/1997	N/A	Registered from 04/08/1997 to 04/02/2000
WAD6246/1998, WC1998/030	Peters v State of Western Australia	15/06/1998	N/A	Registered from 15/06/1998 to 04/02/2000
WAD6028/1999, WC1999/028	Maggie John	24/09/1999	N/A	

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

Attachments:

1. Map of the Claim Area, Attachment C of the Application, 1 page - A4, 24/09/2004
2. Marlarngowem Native Title Determination, 38 pages - A4, 23/05/2019

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