



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD6004/2000
NNTT number: WC2000/006

Application Name: Jean Leyland & Ors v State of Western Australia & Ors (Balanggarra #3)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 03/07/2000

Current status: Full Approved Determination - 20/04/2020

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: 04/08/2000

Registration decision status: Accepted for registration

Registration history: Registered from 4/08/2000 to 22/04/2020,

Date claim / part of claim determined: 20/04/2020 , 07/08/2013

Applicants: Jean Leyland, Jeff Clark, Mary Teresa (Taylor), May Smith, Tom Birch, Vernon Gerrard

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Additional Information

A determination of native title over part of the application area was made by Justice Gilmour on 7 August 2013, pursuant to s. 87A and 94A of the NTA (see *Cheinmora v State of Western Australia (No 3)* [2013] FCA 769).

The application is taken to have been amended pursuant to s. 64(1B) of the NTA to reduce the area of land or waters to only relate to the matters of the application which have not been finalised, namely the balance of the land and waters subject to the Balanggarra application (WAD6004/2000) as in paragraph 3 and 3A in Attachment A of the determination (Attachment 3).

Further, the Federal Court issued an order on 27 November 2015 giving leave to the Applicant to discontinue the part of this application which comprises Lot 1702 and Lot 1709 as shown on Deposited Plan 182763, with such discontinuance to take effect as and from the date of this order.

Attachment 4 and 5 are an interpretation by the NNTT of the remaining application area that is yet to be determined. It is for general information only and persons should seek their own independent advice in relation to the correct description of the area.

Persons claiming to hold native title:

The claim is brought on behalf of:

(1) those Aboriginal people who hold in common the body of traditional law and culture governing the area the subject of the claim being those who -

(a) are descended from the occupants of the area at the time of the assertion of British sovereignty, being the descendants of Wundangana Waina, Wuju, Amburu, Djirlarmuru, Mitilber/Njorda, Jiani, Akingungka/Nakmara, Rugben, Moolpan/Kandarworl, Boongottor, Matilda Moorajayi, Joonpan/Moorajayi, Maraltadj, Miuron, Moongkama, Purwan, Waapa, Makumuku, Tortor/Yilimbiri, Nandjimara, Jalalarimiri/Kolorumari, Puraru, Nandjimara, Yarluwutj, Koolberi, Angela, Moongkama, Yoolyool, Mutumutu, Murungga, Bundamiri, Vernon Dah, Mayaltor, Malangnari, Dz^ngal, Naringa, Wolarmbar, Murlu, Zamin^elli, Mandomiri, G^nambul, Ng^Inari, W^gamiri, Waibela, ^Nuwija, Jidei-ida/Wugad^r, N^lamiri, Malnuben, Gootimurri, Junbabara, Linound^ri, Wungur^ru, Judu, Linound^ri, Jumbabera, Bo, Do^lu, Lau-uri, Wiju/Baluga, Wanguben, Mundjanggal, D^Inga, Mud^ta, Rebern, D^Inga, Med^rda, Aruwund^rdzera, Mal^ngu, Galamiri, Angular, Benmiri, Ziranim/Ganggu, M^labu, ^m]ra, Wulangan, Jura/Juradide, Njama, Dagi, Zunggalima, Weni, Njama, Charlie Plateman, Dickie Kooyoo, Baija, Jeduri, Zunggalima, Mandurga, W^nu, Nitil, Lura/Gurul, Birim, Ngari, Dumalbon/Tumelben, Merliman, Wangooloo, Wamblma, W^rga, Bangudenanga, Birra-rar-rra, Wanjuwila, Wungaruru, Wurawungedzi, Zuandi, Z^lubern, G^mura, W^mbu/Njurnji, Waneigera, J^wan, Z^Inga, Guri, Banmon, Warin.

Native title rights and interests claimed:

1. The native title rights and interests claimed are:

(i) Over those areas where section 47, 47A and 47B is relied on, or where there has been no act that extinguishes native title, or where, by operation of the Native Title Act or the common law, native title has not been extinguished, the right to the possession, occupation, use and enjoyment to the exclusion of all others (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) 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 manage the access to the claimed area by non-native title holders;
 - (e) the right to use and enjoy the resources of the area;
 - (f) the right to control the use and enjoyment of others of the resources of the area;
 - (f) the right to make decisions about the use and enjoyment of the claimed area;
 - (g) the right to trade in the resources of the area;
 - (h) the right to receive a portion of the benefit 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;
 - (j) own and control information comprising and concerning the traditional laws and customs of the native title holders in relation to the land, waters and resources; and
 - (k) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders' association with the area.
- (ii) Over the remaining area the right to possession, use, occupation, enjoyment of the area, these rights include:
- (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 use and enjoy the traditional resources of the area; and
 - (e) a right to maintain and protect places of importance under traditional laws, customs and practices in the area;

2. The claims made in paragraph 1 of this schedule are subject to the following:

- (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 23I NTA in relation to the act.
- (iv) 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, a law of the State or a law of the Commonwealth.
- (v) The Applicants acknowledge that the exercise of their native title rights and interests might be regulated, controlled, curtailed, restricted, suspended, or postponed by reason of the existence of valid concurrent rights and interests in others by or under such laws.
- (vi) The Applicants do not claim the right to take fauna where that right is otherwise extinguished.
- (vii) 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.

Application Area: **State/Territory:** Western Australia
Brief Location: Kimberley Region
Primary RATSIB Area: Kimberley
Approximate size: 0.0907 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):

The external boundaries of the claim are as set out in the map and description attached.

Internal boundaries:

(1) The Applicants exclude from the claim any areas covered by valid acts which occurred 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 Title (Validation) and Native Title (Effect of Past Acts) Act 1995, as amended, at the time of the Registrar's consideration:

(a) Category A past acts, as defined in the NTA s.228 and s.229;

(b) Category A intermediate period acts as defined in NTA s.232A and s.232B.

(2) The Applicants exclude from the claim any area 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 NTA in relation to the act.

(3) The Applicants exclude from the claim area any areas in relation to which native title rights and interests have otherwise been extinguished. To avoid any uncertainty, the Applicants particularly exclude from the claim area:

(a) any areas covered or previously covered by pastoral leases which are enclosed or improved where such enclosure or improvement extinguishes native title;

(b) any area covered by a mining or general purpose lease granted under the Mining Act 1904 (WA) and the Mining Act 1978 (WA) where such leases extinguish native title.

(4) Where section 47, 47A or 47B of the NTA applies to any part of the area covered by this application, that part of the area is not excluded from the claim. Particulars of such area will be provided prior to the hearing but include such areas as may be listed in Schedule L.

- Attachments:**
1. Map of remaining application area, 1 page - A4, 27/11/2015
 2. Technical description for the external boundary, Attachment B of the Application, 26 pages - A4, 04/08/2000
 3. Map of claim area, Attachment C of the Application, 1 page - A4, 04/08/2000
 4. Determination *Cheinmora v State of Western Australia* (No 3) [2013] FC 769, 88 pages - A4, 07/08/2013
 5. Description of Remaining Area, 1 page - A4, 27/11/2015

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