



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD30/2019
NNTT number: WC2000/013

Application Name: Violet Drury & Ors on behalf of the Nanda People and State of Western Australia & Ors (Nanda)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 19/06/2000

Current stage(s): Notification Complete, Part Determination

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: 01/03/2001

Registration decision status: Accepted for registration

Registration history: Registered from 1/03/2001

Date claim / part of claim determined: 04/11/2019 , 28/11/2018

Applicants: Colleen Drage, John Stephen Drage, Violet Drury, Steven Kelly (Father of Marrick Kelly), Steven Kelly (Grandson of Cornelius Kelly), William Mallard Jr, William Mallard Sr, Nora Mallard, Gwen Mitchell, Helen Nutter, Annette Pepper, June Ruffin, Mary Tullock, Gerald John Whitby, Lorraine Whitby, Janet Wilton

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Additional Information

A consent determination of native title in respect of part of the application area was made by Justice Mortimer on 28 November 2018 – see *Drury on behalf of the Nanda People v State of Western Australia* [2018] FCA 1849 (Nanda Part A). That determination was registered on the National Native Title Register (NNTR) on 14 December 2018. Order 1 of the determination provides that “In so far as native title determination application WAD 6136 of 1998 [now WAD30/2019] relates to land and waters also overlapped by native title determination application WAD 286 of 2018, it is dismissed”. A consent determination of native title in respect of part of the application area was made by Justice Colvin on 4 November 2019 – see *Drury on behalf of the Nanda People v State of Western Australia* [2019] FCA 1812 (Nanda Part B, Malgana 2 and Malgana 3). That determination was registered on the NNTR on 7 November 2019. On 21 April 2020, the Full Court of the Federal Court of Australia determined the Prescribed Bodies Corporate for the determination area – see *Drury on behalf of the Nanda People v State of Western Australia* [2020] FCAFC 69. Pursuant to s 190(4)(e) of the Native Title Act 1993 (Cth) the undetermined area of the Nanda application, being the area which is geographically overlapped by native title application WAD21/2019 Mullewa Wadjari Community, is the only part of the application area that remains on the Register of Native Title Claims (RNTC). 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 claim is brought on behalf of the biological descendants of four apical ancestors, namely Jilba, Mary Jane Batt, Sara Feast and Alice McMurry.

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 of:

- (a) Rights 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 the 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.

Subject to:

- (1) 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.
- (2) 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
- (3) 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 to the act.
- (4) Paragraph (3) 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.
- (5) 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.

Application Area: **State/Territory:** Western Australia
Brief Location: Surrounding Kalbarri, WA
Primary RATSIB Area: Geraldton
Approximate size: 1831.0794 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 showing the external boundaries of the area covered by the claim and the technical description of the external boundary attached as Attachment B.

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

1. The applicants excluded 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:
 - a. Category A past acts, as defined in NTA s228 and s229;
 - b. Category A intermediate period acts as defined in NTA s232A and 232B.
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.
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.
5. To avoid any uncertainty, the Applicants exclude from the claim area any of the areas contained within the following descriptions of tenures, set out in schedule B1

Schedule B1

- B1.1 Any unqualified grant of an estate in fee simple currently in force
B1.2 Any former unqualified grant of an estate in fee simple which has been validly granted and any other freehold land which has been validly granted
B1.3 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 a Suburban Lot pursuant to the Land Act 1933 (WA), s117; or
 - (4) A Special Lease under s117 of the Land Act 1933 (WA)
- B1.4 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.
- B1.5 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.
- B1.6 A Perpetual Lease currently in force under the War Service Land Settlement Scheme Act 1954
B1.7 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 (Cth) s251D.
B1.8 An existing public road or street used by the public or dedicated road.

Combination Details

Date of order to combine: 29/09/2000

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
WAD6004/1998, WC1994/007	Mallard (Snr & Jnr) on behalf of the Nanda People v State of Western Australia	18/08/1994	N/A	Registered from 18/08/1994 to 01/07/1999
WAD6136/1998, WC1996/111	Violet Drury & Ors and State of Western Australia (Nanda)	28/11/1996	N/A	Registered from 28/11/1996 to 18/04/2002

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

Attachments:

1. Map of Undetermined Area, 1 page - A3, 04/11/2019
2. External boundary description of Undetermined Area, 5 pages - A4, 04/11/2019
3. Attachment B External boundary description, 4 pages - A4, 02/07/2018
4. Attachment C Map, 1 page - A4, 02/07/2018

End of Extract