



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD339/2018
NNTT number: WC2018/014

Application Name: John Thomas Oxenham & Ors and State of Western Australia (Malgana 2)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 30/07/2018

Current status: Full Approved Determination - 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.

Registration decision status: Not Accepted for registration

Registration history: -

Date claim / part of claim determined: 04/11/2019

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

On 4 November 2019, the Federal Court made a determination that native title exists in parts of the application area - 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 is attached to this Extract. The determination of native title was entered on the National Native Title Register (NNTR) on 7 November 2019. Those areas within the 'Shared Area' (as defined in paragraph 12 of the determination) where it has been determined that native title exists will remain on the Schedule of Native Title Applications until a Prescribed Body Corporate is determined in relation to those areas and registered on the NNTR. Those areas within the 'Malgana Area' (as defined in paragraph 12 of the determination) where it has been determined that native title exists have been removed from the Schedule of Native Title Applications. Those areas where native title has been determined not to exist are removed from the Schedule of Native Title Applications from 7 November 2019.

Persons claiming to hold native title:

The Malgana People are those Aboriginal persons who are descended (where descent can be by birth or adoption under traditional laws and customs) 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

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;
- (j) the right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the area; and
- (k) the right to invite or be accompanied by those people who, though not Malgana people, are:
 - i. spouses, parents or children of Malgana people; or
 - ii. people required by or entering in connection with traditional law and custom for the performance of ceremonies or cultural activities on the application 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: Shark Bay, Western Australia
Primary RATSIB Area: Geraldton
Approximate size: 393.2492 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):

a) The 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 "**External Boundary Description**", which is annexed and labelled as "**Attachment B**".

b) Any areas within those boundaries that are not covered by the Application

1. Subject to Schedule B paragraph 5, the Applicant excludes from the Application area any areas that are covered by any of the following acts, as defined in either the Act, as amended (where the act is attributable to the Commonwealth), or the *Titles (Validation) and Native Title (Effect of Past Acts) 1995* (WA), as amended, (where the act in question is attributable to the State of Western Australia) at the time of the Registrar's consideration:

- (a) Category A past acts;
- (b) Category A intermediate period acts;
- (c) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests; and
- (d) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests.

2. Subject to Schedule B paragraph 5 below, the Applicant excludes from the Application area any areas in relation to which:

- (a) A "previous exclusive possession act", as defined in s 23B of the Act, was done and the act was an act attributable to the Commonwealth; or
- (b) A "previous exclusive possession act", as defined by s 23B(7) of the Act, was done and the act was an act attributable to the State of Western Australia; or
- (c) A "relevant act", as defined in s 12I of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

3. Subject to Schedule B paragraph 5, the Applicant does not claim any native title rights and interests which confer possession, occupation, use and enjoyment to the exclusion of all others over areas in relation to which:

- (a) A "previous non-exclusive possession act", as defined in s 23F of the Act, was done and the act was an act attributable to the Commonwealth; or
- (b) A "previous non-exclusive possession act", as defined in s 23M of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995*, was done and the act was an act attributable to the State of Western Australia.

4. Subject to Schedule B paragraph 5, the Applicant excludes from the Application area any areas in relation to which native title rights and interests have otherwise been wholly extinguished.

5. Notwithstanding anything contained elsewhere in this Application, the area covered by this Application includes any area in relation to which the non-extinguishment principle (as defined in s 238 of the Act) applies, including any areas to which ss. 47, 47A and 47B of the Act apply. Particulars of these areas will be provided prior to the hearing, but any area as may be listed in Schedule L is included in the area covered by the Application.

Schedule L

For the area covered by the application, the Applicant does not yet have details of:

- a) any area for which a pastoral lease is held by or on behalf of the members of the native title claim group; and
- b) any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders that is occupied by or on behalf of the members of the native title claim group; and
- c) any vacant Crown land occupied by the members of the native title claim group; and
- d) any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded.

Attachments:

1. Malgana 2 determination, 18 pages - A4, 04/11/2019
2. Attachment B - External Boundary Description, 1 page - A4, 30/07/2018
3. Attachment C - Map, 1 page - A3, 30/07/2018

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