



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD466/2018  
NNTT number: WC2018/020

**Application Name:** Frank Davey & Ors v State of Western Australia (Mayala #2)

**Application Type:** Claimant

**Application filed with:** Federal Court of Australia

**Date application filed:** 11/10/2018

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**Current status:** Full Approved Determination - 25/07/2019

**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:** 29/10/2018

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 29/10/2018 to 13/08/2019,

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**Applicants:** Frank Davey, Max Ejai, Jodi Humphries, Janella Isaac, Vincent McKenzie

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## Additional Information

Not applicable

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## Persons claiming to hold native title:

The members of the native title claim group are the descendants (including such people descended

by adoption as are recognised and accepted in accordance with traditional law and custom) of the following persons:

1. Kudumili
2. Galawa
3. Ngalgarrgard
4. Jabadayim, including his adopted son, Jacob Sesar
5. Ulgirr/Oolgir

#### **Native title rights and interests claimed:**

##### **Native title where traditional rights are wholly recognisable**

(1) Paragraph (2) applies to every part of the claim area:

(a) where there has been no extinguishment to any extent of native title or where any extinguishment is required to be disregarded; and

(b) which is not subject to the public right to navigate or the public right to fish.

(2) Where this paragraph (2) applies, the right possessed under traditional law and custom is properly interpreted as, and the native title right recognised by the common law of Australia is, the right of possession, occupation, use and enjoyment of land and waters as against all others.

##### **Native title where traditional rights are partially recognisable**

(3) Paragraph (4) applies to every part of the claim area to which paragraph (2) does not apply.

(4) Where this paragraph (4) applies, the right possessed under traditional law and custom is properly interpreted as the right of possession, occupation, use and enjoyment of land and waters as against all others, but the native title rights and interests recognised by the common law of Australia are the rights to do all such things as may be done under the right referred to in paragraph (2) save for controlling the access to or the use of land or waters by others; being the (nonexclusive) rights to:

(a) have access to, remain on and use the land and waters;

(b) access and take the resources of the land and waters; and

(c) protect places, areas and things of traditional significance on the land and waters.

##### **Rights subject to laws of Australia**

(5) The members of the native title claim group acknowledge that their native title rights and interests are subject to and exercisable in accordance with valid and current laws of the Commonwealth and the State of Western Australia including the common law.

(6) In this Schedule E, “resources” does not include such minerals, petroleum, geothermal energy or geothermal energy resources, if any, as are, under the laws of the Commonwealth and the State of Western Australia including the common law as at the date of this application, wholly owned by the Crown.

#### **Application Area:**

**State/Territory:** Western Australia

**Brief Location:** Kimberley Region, Western Australia

**Primary RATSIB Area:** Kimberley

**Approximate size:** 0.0343 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):**

##### **External Boundaries**

The external boundaries of the claim are set out at **Attachment “B”**.

##### **Internal boundaries – (Description of any areas within those boundaries that are not covered by the application)**

(1) Subject to (2), the areas of land and waters within the boundary that are not covered by the application are:

(a) areas that are or were subject to any of the following acts as these are defined in either the *Native Title Act 1993* (Cth) (NTA) as amended (where the act in question is attributable to the Commonwealth), or *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (TVA) as amended (where the act in question is attributable to the State of Western Australia):

(i) Category A past acts;

- (ii) Category A intermediate period acts;
  - (iii) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
  - (iv) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
  - (v) a 'previous exclusive possession act', as defined in section 23B of the NTA;
  - (vi) a 'relevant act' as that term is defined in section 12I of the TVA;
  - (vii) a 'previous exclusive possession act' under section 23B(7) of the NTA;
  - (b) areas where native title rights and interests are otherwise wholly extinguished.
- (2) Notwithstanding anything contained elsewhere in this application, including any attachments to it, the area of land and waters covered by the application includes any area within the boundaries described in Attachment B in relation to which either section 47, 47A or 47B of the NTA apply, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

**Schedule L**

1. In relation to any areas to which paragraphs (a), (b) or (c) apply, the native title claim group claims the benefit of sections 47, 47A or 47B of the Act respectively.
2. As of the date of filing this application, the applicant is not aware of any areas to which paragraphs (a) or (b) apply. The applicant asserts that paragraph (c) applies to all parts of the claim area.

- Attachments:**
1. External boundary description, attachment B of the application, 1 page - A4, 11/10/2018
  2. Map, attachment C of the application, 1 page - A4, 11/10/2018

**NNTT Contact Details**

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End of Extract