



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD541/2018
NNTT number: WC2019/007

Application Name: Mervyn Mulardy & Ors on behalf of the Birriman-gan Native Title Claim Group and State of Western Australia (Birriman-gan)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 06/06/2019

Current status: Full Approved Determination - 02/07/2022

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: 07/08/2019

Registration decision status: Accepted for registration

Registration history: Registered from 7/08/2019 to 21/03/2022, Registered from 21/03/2022 to 12/07/2022,

Date claim / part of claim determined: 02/07/2022

Applicants: Mervyn Mulardy, Trent Marshall, Shirley Spratt, Rene Hopiga, Del Roe, Brendan Charles, Linda Nardea, Deborah Shadforth, Thomas Edgar, Neil McKenzie, Roslyn Dixon, Dianne Appleby

Address(es) for Service: Justine Toohey, Principal Legal Officer
Kimberley Land Council
11 Gregory Street (PO Box 2145)
BROOME WA 6725
Phone: (08) 9194 0100
Fax: (08) 9193 6279

Additional Information

On 19 December 2019, the Federal Court made a determination that native title exists in the entire application area - see Mulardy on behalf of the Birriman-gan Native Title Claim Group v State of Western Australia [2019] FCA 2119. On 16 March 2022, the Federal Court determined that the rights and interests comprising the native title of the Karajarri people, the Yawuru people and the Nyikina people set out in the Court's orders of 19 December 2019 be held, pursuant to s 56(2)(c) of the Native Title Act 1993 (Cth) (Act), by the common law holders described in Schedule 4 of those orders. The determination of native title has been entered on the National Native Title Register (NNTR). The Indigenous Land and Sea Council were appointed as the PBC pursuant to FCA orders made 16 March and 2 May 2022. The determination is now in effect and finalised.

Persons claiming to hold native title:

The members of the native title claim group comprise the Karajarri people, the Yawuru people and the Nyikina people, defined as follows:

Karajarri people:

Those people who refer to themselves as Karajarri, being persons who:

- (a) are of Karajarri descent;
- (b) identify as Karajarri and are accepted as such by the Karajarri;
- (c) adhere to Karajarri customs and traditions; and
- (d) are by Karajarri laws and customs entitled to the use or occupation of the Karajarri lands irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons having native title thereto under common law.

Yawuru people:

- (a) the descendants of Nyobing Babere, Chimbere Sitocay, Aloysius Louis Dolby, Jirawina, Jack and Pollyanna Mangain, Lija (wife of Phillip O'Brien Taylor), Nyilandin, Joseph Mary, Paddy Djiagween, Lucy Marcella Roe, Mary Minyal, Cecilia Ngangon, Nyingula, Annie Mawunga, Milangka, Lena Charlie, Lucia "Lija" (daughter of Bornal and Gurdan), Minbal Ester, Philomena Carter, Aubrey Kelly Edar, John Two fingers, Mary Budjinka, Yungula (first wife of George Harriot Roe), Yungula (second wife of George Harriot Roe), Tommy Roe "Guminy", Dorothy Kelly, Lydia Kanagai, Solong Archill, Jiriny, Dockan Harry Minbal, Maggie Kanado (Kangode), Lucy Warrdarr and Philomena "Polly" Vincent (nee Pedro) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru; and
- (b) Aboriginal persons who have been adopted as children or been grown up by a Yawuru person as members of the Yawuru community under the traditional laws and customs of the community and who self-identify and are generally accepted by other members of the community, as Yawuru persons; and
- (c) Aboriginal persons who possess high cultural knowledge and responsibilities in relation to the claim area and: (i) were born in; or (ii) have a long term physical association with, that area under the traditional laws and customs of the Yawuru community and who self identify and are generally accepted by other members of the community, as Yawuru persons; and
- (d) the descendants of persons referred to in (b) or (c) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru.

Nyikina people:

The descendants of Karlmurl; Ngurkwan, Yayika and Minyang; Polly Wurrayin and Charlie Djawali, Bundangurra and Jambo; Kitty Kujaja and Charlie Mangurl; Lucy Muninga and Edward Yedawarra and unnamed mother of Fulgentius Fraser; Maggie Nimbanirli; Dim and the mother of Bobby Ah Choo; Bundangurra and Mabel Ah Chee; Jimgula; Niyna Philomena; Ngamariny; Gurupirin; Nani; Jinangkal and Nyuntunga; Andy Marunjari and Marjory Spratt and her unnamed mother; Bulu; and Joe Nangan.

Native title rights and interests claimed:

Native title where traditional rights are wholly recognisable

1. In every part of the claim area (if any) where there has been:

- (a) 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,

the right possessed under traditional law and customs 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

2. In all other parts of the claim area, the right possessed under traditional law and customs 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 above, save for controlling the access to or the use of land or waters by others; being the (non-exclusive) 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.

Area covered by the native title and who holds the rights

3. Each of the native title rights referred to in paragraph 1 and 2 in this Schedule E exist in relation to the whole of each part of the claim area to which those paragraphs respectively apply and is held by the members of the native title claim group subject to and in accordance with their traditional laws and customs.

Activities currently carried on

4. Activities in exercise of the native title rights referred to in this Schedule E are all such activities as are contemplated by those rights and interests and include the activities identified in Schedule G.

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: Western Kimberley region, WA

Primary RATSIB Area: Kimberley

Approximate size: 2191.7091 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):

1. The area covered by the application is (subject to the following paragraph), all of the area located between the following native title determinations, but not so as to overlap with any of those determinations:

- a. Native title determination WAD6006/98 Rubibi Community, as determined by the Federal Court on 28 April 2006;
- b. Native title determination WAD6100/1998 Karajarri People (Area A), as determined by the Federal Court on 12 February 2002; and
- c. Native title determination WAD6099/1998 Nyikina Mangala as determined by the Federal Court on 29 May 2014.

2. The following areas within the claim area, if any, are not covered by the application, except where the non-extinguishment principle as defined in section 238 of the *Native Title Act 1993* applies to the area or any extinguishment by the acts mentioned is required by sections 47, 47A or 47B of the *Native Title Act 1993* to be disregarded:

- a. any area that, when the application is made, is subject to any of the following kinds of acts as they are defined in either the *Native Title Act 1993*, as amended (where the act in question is attributable to the Commonwealth), or the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA), 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 of any native title rights or interests;
 - iv. Category B intermediate period acts that are wholly inconsistent with the continued existence of any native title rights or interests;

- b. any area in relation to which a 'relevant act' as that term is defined in section 12I of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* was done and the act is attributable to the State of Western Australia;
- c. any area in relation to which a previous exclusive possession act under section 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* was done and that act is attributable to the State of Western Australia;
- d. any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B (7)) of the *Native Title Act 1993* was done in relation to the area and the act was attributable to the Commonwealth; and
- e. any areas where native title rights and interests have otherwise been wholly extinguished.

3. Where there is any discrepancy between the map provided at Attachment C and the written description contained in paragraph 1 of this Schedule B, this Schedule prevails.

Combination Details

Date of order to combine: 24/05/2019

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
WAD17/2019,W C2012/011	LH & Ors v State of Western Australia & Anor (Karajarri People)	24/10/2012	N/A	Registered from 22/11/2012 to 7/08/2019
WAD541/2018, WC2018/024	Mervyn Mulardy & Ors on behalf of the Birriman-gan Native Title Claim Group and State of Western Australia (Birriman-gan)	22/11/2018	N/A	

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

- Attachments:**
1. Mulardy on behalf of the Birriman-gan Native Title Determination, 11 pages - A4, 19/12/2019
 2. Map of the claim area, attachment C of the application, 1 page - A3, 06/06/2019

NNTT Contact Details

Address: National Native Title Tribunal
Perth Office
Level 5, Commonwealth Law Courts
1 Victoria Avenue
PERTH WA 6000
GPO Box 9973
PERTH WA 6848

Telephone: +61 8 9425 1000
Freecall: 1800 640 501
Fax: +61 8 9425 1193
Web Page: www.nntt.gov.au

End of Extract