



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: QUD38/2008  
NNTT number: QC2008/002

**Application Name:** Eve Fesl on behalf of The Gubbi Gubbi People (Gubbi Gubbi People #3)

**Application Type:** Claimant

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

**Date application filed:** 18/02/2008

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**Current status:** Discontinued - 11/04/2008

**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:** Currently identified for Reg. Decision

**Registration history:** -

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**Applicants:** Eve Doreen Fesl, Nurdon Serico, Tex Chapman

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## Additional Information

Not applicable

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## Persons claiming to hold native title:

The descendants through matrification, of the Gubbi Gubbi man, James Crowe, born circa 1840 and the Gubbi Gubbi woman, Maggie Palmer, born circa 1850.

**Native title rights and interests claimed:**

1. The Gubbi Gubbi People claim the following non-exclusive native title rights and interests in accordance with their traditional laws and customs. These rights are claimed jointly and severally:

- a. The right to occupy and /or use the application area;
- b. The right to access and traverse the application area in accordance with and for the purposes allowed under their traditional laws and customs;
- c. The right to hunt and / or gather living and plant resources on the application area;
- d. The right to fish in the application area;
- e. The right to camp on the application area;
- f. The right to live on the land, to erect shelters and other structures on the application area;
- g. The right to light fires on the application area;
- h. The right to conduct burials on the application area;
- i. The right to use natural resources, other than minerals and petroleum \*1
- j. The right to:
  - i. take water;
  - ii. take fish;
  - iii. take plants and animals;
  - iv. take ochre, clay and salt;
  - v. take sand, gravel and rock;
  - vi. take shells; and
  - vii. take grass, resin and wood.
- k. The right to manufacture or produce traditional items from resources found on or in the application area;
- l. The right to carry out economic pursuits on the application area including the barter and / or exchange of natural resources and the products of those resources;
- m. A right to receive a part of any living, mineral or other natural resources taken by others on or from the application area;
- n. The right to enjoy the amenity of the application area;
- o. The right to protect the land and waters and the resources of the land and waters by taking steps to prevent acts which are not carried out in the exercise of statutory rights or any common law rights and which acts may cause damage, spoliation or destruction of the land and waters or the animals, plants or fish on or in the land and waters.
- p. An interest in the management and /or use of the application area;
- q. The right to make decisions about the use and enjoyment of the land and waters and the subsistence and other traditional resources thereof, by people other than those exercising a right conferred by or arising under a law of the State of Queensland or the Commonwealth in relation to the use of the land and waters;
- r. The right to protect the application area from physical damage;
- s. The right to maintain, protect and preserve the physical state of sites and areas within the application area that are of significance to the native title holders;
- t. The right to maintain, protect and preserve sites and areas within the application area that are of significance to the native title holders from inappropriate behaviour;

u. The right to maintain, protect and conserve the natural values and resources of the application area; in the alternative an interest in the maintenance, protection and preservation of the natural values and resources of the application area;

v. The right to protect and look after cultural artefacts from on and within the application area, including rock art;

w. The right to conduct and take part in ceremonial activities on the application area;

x. The right to maintain proper and appropriate custodianship of the application area and the special and sacred sites within and on it, including through ceremonies, to ensure the continued vitality of traditional law and culture.

y. The right to use minerals not wholly owned by the Crown.

2. The rights and interests in 1 (above) are claimed to the extent that the exercise of them is consistent with the rights and interests below:

a. With respect to those parts of the application area, other than land or waters to which s47A Native Title Act 1993 applies, which are, or have been, the subject of a previous non-exclusive possession act within the meaning of s23F, NTA, the applicants claim the native title rights and interests set out above subject to the rights and interests created in the "non-exclusive possession act" which are not inconsistent with the rights and interests claimed and, in the case of rights granted which are inconsistent with the rights and interests claimed, subject to any suspension or regulation of the native title rights and interests which those inconsistent rights and interests cause.

b. With respect to those parts of the application area, other than land or waters to which s47A Native Title Act 1993 applies, which are, or have been, the subject to:

i. a Category B intermediate period act within the meaning of s232C, NTA;

ii. a Category C intermediate period act within the meaning of s232D, NTA; or

iii. a Category D intermediate period act within the meaning of s232E, NTA;

the applicants claim the native title rights and interests set out above subject to the rights and interests created in the "non-exclusive possession act" which are not inconsistent with the rights and interests claimed and, in the case of rights granted which are inconsistent with the rights and interests claimed, subject to any suspension or regulation of the native title rights and interests which those inconsistent rights and interests cause.

c. With respect to those parts of the application area, other than land or waters to which s47A Native Title Act 1993 applies, which are, or have been, the subject of:

i. a Category B past act within the meaning of s230, NTA;

ii. a Category C past act within the meaning of s231, NTA; or

iii. a Category D past act within the meaning of s232, NTA;

the applicants claim the native title rights and interests set out above subject to the rights and interests created in the "non-exclusive possession act" which are not inconsistent with the rights and interests claimed and, in the case of rights granted which are inconsistent with the rights and interests claimed, subject to any extinguishment or suspension of the native title rights and interests which those inconsistent rights and interests cause.

\*1 "Minerals" has the meaning attributed to it in the Mineral Resources Act 1989 (Qld) as in force at the date of this application. "Petroleum" has the meaning attributed to it in the Petroleum Act 1923 (Qld) as in force at the date of this application.

**Application Area:**  
**State/Territory:** Queensland  
**Brief Location:** South east Queensland  
**Primary RATSIB Area:** Southern and Western Queensland Region  
**Approximate size:** 15005.4613 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):**

A map shows the external boundaries of the area of the claim (Attachment C).

A description of the area is appended as Attachment B.

Within the external boundary described above, native title rights are claimed only in relation to the land and waters within

1. Unallocated State Land
2. State Forest
3. Reserves, including timber reserves
4. National Parks

Excluded from the claim are freehold and all scheduled interests under Schedule 1 Part 3 - Qld, except where Section 47 applies. Where a cultural heritage or sacred site was concerned we would seek the benefit of Section 47.

Other areas excluded from the external boundaries are: Glasshouse Mountains - QG6083/98

Section 23B defines previous exclusive possession act as follows:

1. grant of freehold estate or certain leases etc on or before 23.12.1996
2. an act is a previous exclusive possession act if:
  - (a) it is valid (including because of Division 2 or 2A of Part 2); and
  - (b) it took place on or before 23 December 1996; and
  - (c) it consists of the grant or vesting of any of the following:
    - i. a schedule interest
    - ii. a freehold estate
    - iii. a commercial lease that is neither an agricultural lease nor a pastoral lease
    - iv. an exclusive agricultural lease or an exclusive pastoral
    - v. a residential lease
    - vi. a community purpose lease, except for those leased to, or for the benefit of Aboriginal peoples and Torres Strait Islanders
    - vii. What is taken by Subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to "1 January 1994" were instead a reference to "24 December 1996"
    - viii. Any lease (other than a mining lease) that confers a right of exclusive possession over particular lands and waters.
3. If
  - (a) By or under legislation of a State or Territory, particular land or waters are vested in any persons and;
  - (b) A right to exclusive possession of the land or waters is expressly or impliedly conferred on the person or by under the legislation

The vesting is taken for the purposes of paragraph (2) (c) to be vesting of a freehold estate over the land or waters.

We claim only legal rights under this legislation, within this definition this means that within our boundaries only Unallocated State land, State Forest, Reserves, including timber reserves and National Parks are claimable by us.

#### Attachment B

The external boundary of the application area commences at the mouth of the Pine River on the high water mark at the intersection of the northern bank of the Pine River with the coastline of the South Pacific Ocean (see Point 310 of Attachment B2 [the map]).

From this point, the boundary follows the high water mark in a westerly direction along the northern bank of the Pine River, the North Pine River, and the North Pine Reservoir to Point number 906. In doing so the boundary passes through Points 311 to 905.

From this point, the boundary traverses in a north-westerly direction across country to Point 964 on the Brisbane-Woodford Road, where the road intersects with Terrors Creek. This traverse passes through Points 907 to 963 and runs to the east of Dayboro.

From this point, the boundary heads north along the centreline of Brisbane-Woodford Road to Point 1055 at this intersection of roads. Along the way the boundary traverses through Points 965 to 1054.

From this point, the boundary heads north along the centreline of the existing unnamed road to Point 1104, passing through Points 1056 to 1103.

From this point, the boundary traverses north-west across country, passing through Points 1105 to 1155, and arriving at Point 1156 on the Brisbane-Woodford Road. In doing so, the boundary passes close to Mount Mee (Bonnie Knob) and east of the village of Mt Mee.

From this point, the boundary follows the centreline of the Brisbane-Woodford Road northwards to Point 1208 at the intersection of this road with the D'Aguiar Highway, passing through Points 1157 to 1207.

From this point, the boundary heads north-west along the centreline of the D'Aguiar Highway to the intersection with Kilcoy-Beerwah Road at Point 1236. It passes through Points 1209 to 1235 as well as the town of Woodford.

From this point, the boundary follows the centreline of the Kilcoy-Beerwah Road in a north-east direction to the intersection of roads at Point 1265, passing through Points 1237 to 1264.

From this point, the boundary heads north along the centreline of Bellthorpe Road to the intersection of roads near Point 1272. It passes through Points 1266 to 1271.

From this point, the boundary heads north-west then south-west along the top of Connondale Range passing through Points 1273 to 1579, arriving at Point 1580.

From this point, the boundary traverses south-west across the eastern branch of Sheep Station Creek to Point 1592 on the top of the Jimna Range. Along the way it passes through Points 1581 to 1591.

From this point, the boundary heads north along the top of the Jimna Range to the intersection of roads at Point 1676, passing through Points 1593 to 1675.

From this point, the boundary follows the centreline of the Kilcoy-Murgon Road to the intersection of roads at Point 1798. Along the way it passes through Points 1677 to 1797 and passes just to the west of the town of Jimna.

From this point, the boundary heads west then north along the top of the Jimna Range till it intersects with the Kilcoy-Murgon Road at Point 1855, passing through Points 1799 to 1854.

From this point, the boundary follows the centreline of the Kilcoy-Murgon Road northwards to the intersection with Kandanga Creek Road at Point 1925. It passes through Points 1856 to 1924 along the way.

At this point, the boundary follows the centreline of Kandanga Creek Road in a north-easterly direction to the intersection of roads at Point 2027. Along the way it passes through Points 1926 to 2026.

From this point, the boundary heads north and north-west along the top of the Coast Range to the township of Kilkivan at Point 2435. It passes through Points 2028 to 2434.

From this point, the boundary traverses north-east across country to intersect with the centreline of Wide Bay Creek at Point 2453. The boundary passes through Points 2436 to 2452.

From this point, the boundary heads east along the centreline of Wide Bay Creek to the intersection with the Kingaroy Branch Railway at Point 2562 near Woolooga township. It passes through Points 2454 to 2561.

From this point, the boundary heads north-east along the centreline of the Kingaroy Branch Railway to Point 2622, and passing through Points 2563 to 2621.

From this point, the boundary traverses north across country to Point 2649 at the centreline of the existing road (which ultimately runs past the village of Miva to Munna Creek School), passing through Points 2623 to 2648.

From this point, the boundary follows the centreline of the road north to the intersection of roads at Point 2662, passing through Points 2650 to 2661.

From this point, the boundary traverses north-west along the centreline of the side road to Point 2668. It passes through Points 2663 to 2667.

From this point, the boundary traverses westward to intersect with the centreline of Munna Creek at Point 2681. The traverse passes through Points 2669 to 2680.

From this point, the boundary follows the centreline of Munna Creek in a north-west direction to the junction with Teebar Creek (at Point 3006) thence, north-west along the centreline of Teebar Creek to the head of that creek and thence across country to intersect with the centreline of the existing road at Point 3092. The boundary passes through Points 2682 to 3091.

From this point, the boundary traverses the centreline of the existing road to Point 3106. It passes through Points 3093 to 3105.

From this point the boundary crosses the the centreline of Spring Creek then heads north along the centreline of that creek past Hayesmere Bridge to the head of the creek at Point 3178. Along the way it passes through Points 3107 to 3177.

From this point, the boundary heads north-west along the top of Woowoonga Range to intersect with the upper reaches of the Gregory River at Point 3450 (on the northern bank of the river). This section of boundary passes through Points 3179 to 3449 and intersects with the Isis and Bruce Highways.

From this point, the boundary heads north-east and east along the northern high water mark of the Gregory River to intersect with the coastline at the mouth of the river at Point 3933. It passes through Points 3451 to 3932.

From this point, the boundary heads south on the high water mark along the coastline to the point of commencement at Point 310.

The boundary passes through Points 3934 to 5692 and 1 to 309, and includes New Island, Turkey Island, Bray Rock, Munjimba Island and Bribie Island, as well as islands contained within river estuaries.

Australian Map Grid Co-ordinates are referenced to Australian Geodetic Datum 1966 (AGD 66) and are based on 1:100,000 Series Topographic Maps produced by the Division of National Mapping.

Maps used for the preparation of Claim Mapping are:

"Brisbane" 9543

"Caboolture" 9443

"Nambour" 9444

"Nanango" 9344

"Goomeri" 9345

"Biggenden" 9346

"Childers" 9347

"Pialba" 9447

"Maryborough" 9446

"Wide Bay" 9546

"Laguna Bay" 9545

"Caloundra" 9544

**Attachments:** 1. Map of Application Area , 1 page - A3, 20/02/2008

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