



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: QUD6032/2001
NNTT number: QC2001/034

Application Name: Layne Malthouse & Ors on behalf of the Bar Barrum People #6 v State of Queensland & Ors (Bar Barrum People #6)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 28/09/2001

Current status: Full Approved Determination - 26/08/2016

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: 03/12/2002

Registration decision status: Accepted for registration

Registration history: Registered from 3/12/2002 to 1/09/2016,

Date claim / part of claim determined: 10/06/2016

Applicants: Layne Malthouse, Tennyson Kynuna, Lynette Burke

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Additional Information

On 10/06/2016, the Federal Court of Australia made a determination that native title exists in the entire determination area - see Malthouse on behalf of the Bar Barrum People #6 v State of Queensland (No 2) [2016] FCA 696. The determination of native title was entered on the National Native Title Register (NNTR) on 29/07/2016. Order 15 of the determination provides that "Within 12 months from the date of the determination, or such further time as the Court may allow, a representative of the common law holders must, by written notice to the Federal Court: (a) indicate whether the native title is to be held in trust; and (b) nominate a prescribed body corporate in accordance with s 56(2) or s 57(2) of the Native Title Act 1993 (Cth)". The Mbabaram Aboriginal Corporation was nominated on 26/08/2016 and registered on the National Native Title Register on 01/09/2016.

Persons claiming to hold native title:

The Bar Barrum native title claimant group is comprised of the biological and adopted

(in accordance with traditional law and custom) descendants of:

1. Rosie aka Lucy(mother of William Congo);
2. Nellie (mother of Albert Bennett);
3. Millie (mother of Alick/Aleck Collins aka Chalk aka Stevens) and of her siblings Fred and Jack Solomon;
4. Maggie Watsonville (mother of May Thynne);
5. Nora Miller nee Clark, and of her brother Billy;
6. Arkaragan and Kurimbu (parents of Jack Robinson);
7. Jack Brumby (father of Peter Fagan and Monday);
8. Archie Perrott aka Campbell (father of Margaret Perrott);
9. John Burt Grainer (father of John Grainer, Paddy Hastie);
10. Lizzie Simmonds (mother of Mamie Simmonds);
11. Nellie Williams, and of her sister Ethel Perrott; and
12. Bessie Tiger (mother of Peter Freeman).

Native title rights and interests claimed:

1 In relation to land where there has been no prior extinguishment of native title or where s238 (the non-extinguishment principle) applies, the native title rights and interests claimed are the exclusive rights to possession, occupation, use and enjoyment of the claim area as against the whole world, pursuant to the traditional laws and

customs of the claim group, but subject to the valid laws of the Commonwealth of Australia and the State of Queensland.

2 With regard to all remaining land within the claim area, the native title rights and interests claimed are not to the exclusion of all others and are non-exclusive rights to:

- a) Access, be present on, move about on and travel over the area;
- b) Camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
- c) Hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
- d) Take and use natural resources from the land and water of the area for personal, domestic and non-commercial communal purposes;
- e) Take and use the water of the area for personal, domestic and non-commercial communal purposes;
- f) Conduct ceremonies on the area;
- g) Be buried and bury native title holders within the area;
- h) Maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
- i) Teach on the area the physical and spiritual attributes of the area;
- j) Hold meetings on the area; and
- k) Light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;

3 For water, the non-exclusive rights to:

- a) Hunt, fish and gather from the water of the area for personal, domestic and non-commercial communal purposes;
- b) Take and use the natural resources of the water in the area for personal, domestic and non-commercial communal purposes; and
- c) Take and use the water of the area, for personal, domestic and non-commercial communal purposes.

4 The asserted native title rights and interests for both exclusive and non-exclusive areas are subject to the:

- a) Valid laws of the State of Queensland and the Commonwealth of Australia;
- b) Rights past and present conferred upon persons pursuant to the valid laws of the Commonwealth and laws of the State of Queensland; and

The asserted native title rights and interests for both exclusive and non-exclusive areas:

- c) Do not include a claim to ownership of any minerals (as defined in the *Mineral Resources Act 1989* (Qld)), petroleum (as defined in the *Petroleum Act 1923* (Qld)) or gas (as defined in the *Petroleum and Gas (Safety and Production) Act 2004* (Qld)) wholly owned by the Crown; and
- d) Are not exclusive rights or interests if they relate to waters including in an offshore place (if applicable), and will not apply if they have been extinguished in accordance with valid State or Commonwealth laws.

Note: "Natural Resources" means the animal, plant, fish and bird life found on or in the claim area from time to time and all water, clays and soils found on or below the surface of the claim area.

Application Area:**State/Territory:** Queensland**Brief Location:** Far North Queensland**Primary RATSIB Area:** Northern Queensland Region**Approximate size:** 52.3978 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):**

The area covered by the application comprises all land and waters within the external boundary described in Attachment B to this application, and as set out in the map in Attachment C of this application, but excludes any area covered by a Crown to Crown freehold grant, or any grant or vesting of:

- a) A freehold estate;
- b) A residential lease;
- c) A scheduled interest;
- d) A community purpose lease;
- e) An exclusive agricultural lease or an exclusive pastoral lease;
- f) A commercial lease that is neither an agricultural lease nor a pastoral lease;
- g) A lease dissected from a mining lease & referred to in s23B(2)(c)(vii); or
- h) Any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters, validly granted or vested on or before 23 December 1996, and any area
- i) Covered by the valid construction or establishment of any public work, where such construction or establishment was commenced on or before 23 December 1996;
- j) Which has been vested in any person by or under State of Queensland legislation where a right of exclusive possession is expressly or impliedly conferred on the person by or under the legislation;
- k) A public road; or
- l) Any area where the native title rights & interests claimed have otherwise been validly extinguished.

However, if the acts specified in a) - l) above fall within the provisions of s47, s47A, s47B, s23B(9), s23B(9A), s23B(9C) or s23B(10) of the *Native Title Act 1993* (Cth) the area covered by the act is not excluded from this application.

Exclusive possession is not claimed over areas subject to valid previous non-exclusive possession acts of the Commonwealth or State of Queensland as set out in Division 2B of Part 2 of the Act.

Any area subject to a native title determination registered at the time of filing this application is not claimed.

In the case of any discrepancies between the written description contained at Attachment B and the Map contained at Attachment C, the written description at Attachment B prevails.

Attachments:

1. Attachment B Technical Description of application area, 2 pages - A4, 01/04/2016
2. Attachment C Map of application area, 4 pages - A4, 01/04/2016

End of Extract