



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD20/2019
NNTT number: WC1999/008

Application Name: Kevin Allen & Ors v State of Western Australia & Ors (Nyamal #1)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 07/05/1999

Current stage(s): Notification Complete, Part Determination

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: 03/06/1999

Registration decision status: Accepted for registration

Registration history: Registered from 3/06/1999

Date claim / part of claim determined: 24/09/2019

Applicants: Kevin Allen, Willie Jumbo, Alice Mitchell, Tony Taylor, Jean Walker

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Additional Information

On 24 September 2019, the Federal Court made a determination that native title exists in parts of the application area - see <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2019/2019fca1570>. That determination was registered on the National Native Title Register (NNTT) on 04/10/2019. Pursuant to s 190(4)(e) the application remains on the Register of Native Title Claims only to the extent that it relates to the undetermined area. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application

Persons claiming to hold native title:

(a) The descendants of:

Ngurrpangu / Sally;

Yirlkurani / William Ball;

Pularji and Minparingu / Daisy;

Walykunpangu;

Mujayakirri;

Mikarnipirti;

Kutjikurtapa / Fred Mitchell;

Putangaja

Jarlapangu / Billy Ball;

Wijiringu;

Yirapinya;

Ngamalykarinya;

Wanarngykuranya / Tommy; and

(b) the following incorporated members:

Reggie Malana; and

Colin Malana.

Native title rights and interests claimed:

The applicants claim native title to the area covered by the application. The native title rights and interests claimed which are derived from that native title include, but are not limited to, the following rights and interests:

(1) Over areas where a claim to exclusive possession can be recognised, the applicants claims:

(a) except as stated in Schedule P, the right to possess the land and waters claimed;

(b) the right to be asked, and the enforceable right to say no, with respect to any proposed activity by any person not part of the native title claim group within or affecting the determination area;

(c) except as stated in schedule P, the right to occupy the land and waters claimed;

(d) except as stated in schedule P, the right to use and enjoy the land and waters claimed;

(e) except as stated in schedule P, the right to make decisions about the use and enjoyment of the land and waters claimed;

(f) except as stated in schedule P, the right to control the access of others to the land and waters claimed;

(g) except as stated in Schedule Q, the right to control the use and enjoyment of others of the resources of the land and waters claimed;

(h) except as stated in Schedule Q, the right to receive a portion of any resources taken by others from the land or waters claimed;

(i) the rights and interests listed in 2 below.

- (2) Over areas where a claim to exclusive possession cannot be recognised, the applicant claims:
- (j) the right to maintain and protect places of importance on the land and in the waters claimed;
 - (k) except as stated in Schedule P, the right of free access to the land and waters claimed;
 - (l) except as stated in Schedule Q, the right to use and enjoy the resources of the land and waters claimed;
 - (m) except as stated in Schedule Q, the right to trade in the resources of the land and waters claimed;
 - (n) the right to carry out the activities set out in Schedule G(a)-(d)

Schedule G states:

Members of the native title claim group have continuously carried out activities on the land and waters within the claim area. These activities are:

- (a) residing on and travelling over the area;
 - (b) making use of the resources of the area through activities including, but not limited to, hunting, fishing, gathering bush tucker and bush medicine, camping, extracting ochre and other materials, building dwellings and making ceremonial artefacts and implements;
 - (c) exercising the responsibility for looking after the area in accordance with their traditional laws and customs, including exercising native title rights;
 - (d) passing on knowledge of the area;
- in accordance with custom and tradition.

Schedule P states:

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.

Schedule Q states:

To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown in rights of the Commonwealth or the State of Western Australia, they are not claimed by the applicants.

Application Area: **State/Territory:** Western Australia
Brief Location: Pilbara Region
Primary RATSIB Area: Pilbara
Approximate size: 9238.2512 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):

The area covered by the application is attached as Attachment B to the application.

(1) Subject to paragraph (4), the areas within the external boundaries that are not covered by the application area are areas affected by:-

- (i) valid category A Past Acts as defined in s.228 and s.229 Native Title Act 1993(Cth);
- (ii) valid category A Intermediate Acts as defined in s.232A and s.232B Native Title Act 1993 (Cth);
- (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 act that are wholly inconsistent with the continued existence, enjoyment or

exercise of any native title rights or interests;

(v) previous exclusive possession acts as defined in 23B Native title Act 1993 (Cth) attributable to the Commonwealth;

(vi) permanent public works attributable to the Commonwealth;

(vii) dedicated roads lawfully Gazetted;

(viii) acts of adverse dominion;

(ix) previous exclusive possession acts as defined in s.23B Native Title Act 1993 (Cth) attributable to the State of Western Australia where a law of that State has made provision for that act as described in s.23E Native Title Act 1993.

(x) freehold title granted by the State of WA prior to 1975.

(xi) the applicant excludes from the claim areas in relation to which native title rights and interests have otherwise been extinguished, including areas subject to:-

(a) an act authorised by legislation which demonstrates the exercise of permanent adverse dominion in relation to native title; or

(b) actual use made by the holder of a tenure other than native title which is permanently inconsistent with the continued existence of native title.

(2) Subject to paragraph (4), the areas within the external boundaries that are not covered by the application includes any area that is subject to a valid grant of freehold and the areas of roads that have been lawfully dedicated, gazetted and used as a permanent public work in the areas and for the purposes for which they have been dedicated and gazetted.

(3) Subject to paragraph 4, this application 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 s23F of the native Title Act 1993 (Cth) was done and the act was an act attributable to the Commonwealth;

(b) a "previous non-exclusive possession act" as defined in s12M of the titles(Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) was done and the act is an act attributable to the State of Western Australia.

(4) Paragraphs (1), (2), (3) and (4) are subject to such of the provisions of s.47, 47A, 47B Native Title Act 1993 (Cth) as apply to any part of the area within the external boundaries of this application, particulars of which will be provided prior to the hearing but which include such areas as may be listed in Schedule L.

Combination Details

Date of order to combine: 19/03/1999

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
WAD6028/1998, WC1995/031	Johnson Taylor & Ors and State of Western Australia & Others (Njama)	07/08/1995	N/A	Registered from 12/08/1995 to 03/06/1999
WAD6137/1998, WC1996/112	McPhee v State of Western Australia	09/12/1996	N/A	Registered from 09/12/1996 to 03/06/1999
WAD6139/1998, WC1996/115	McPhee v State of Western Australia	09/12/1996	N/A	Registered from 09/12/1996 to 03/06/1999

WAD6141/1998, WC1996/117	Abdullah v State of Western Australia	30/12/1996	N/A	Registered from 30/12/1996 to 03/06/1999
WAD6093/1998, WC1996/056	Coppin v State of Western Australia	24/05/1996	N/A	Registered from 24/05/1996 to 03/06/1999
WAD6165/1998, WC1997/034	McPhee v State of Western Australia	21/05/1997	N/A	Registered from 21/05/1997 to 03/06/1999
WAD6172/1998, WC1997/042	McPhee v State of Western Australia	09/06/1997	N/A	Registered from 09/06/1997 to 03/06/1999
WAD6174/1998, WC1997/045	McPhee v State of Western Australia	26/06/1997	N/A	Registered from 26/06/1997 to 03/06/1999
WAD6145/1998, WC1997/008	McPhee v State of Western Australia	03/02/1997	N/A	Registered from 03/02/1997 to 03/06/1999

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

Attachments:

1. Description of Remaining Area, 4 pages - A4, 24/09/2019
2. Map of Remaining Area, 1 page - A4, 24/09/2019
3. Map of Njamal Country, Attachment 1, 1 page - A4, 25/05/2007
4. Technical description of external boundary, Attachment B, 7 pages - A4, 25/05/2007

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