

DOCUMENTATION OF PLACES - ASSESSMENT DOCUMENTATION

11. ASSESSMENT OF CULTURAL HERITAGE SIGNIFICANCE

The criteria adopted by the Heritage Council in November 1996 have been used to determine the cultural heritage significance of the place.

PRINCIPAL AUSTRALIAN HISTORIC THEME(S)

- 2.1 Living as Australia's earliest inhabitants
- 2.6.1 Resisting the advent of Europeans and their animals
- 7.6.4 Dispensing justice
- 7.6.8 Administering indigenous affairs
- 9.7.3 Remembering the dead

HERITAGE COUNCIL OF WESTERN AUSTRALIA THEME(S)

- 102 Aboriginal occupation
- 103 Racial contact and interaction
- 301 Grazing, pastoralism & dairying
- 403 Law and order
- 601 Aboriginal people

11.1 AESTHETIC VALUE

Butterabby Graves is an isolated, unfenced gravesite on a small rise adjacent to a winter-flowing creek and surrounded on all sides by agricultural land. (Criterion 1.3)

11.2. HISTORIC VALUE

Butterabby Graves is a site providing evidence of the north eastward spread of pastoral expansion that occurred from the late 1850s in Western Australia. (Criterion 2.1)

Butterabby Graves is a site of conflict where the Wajarri and the Nhanhagardi/Wilunyu peoples attempted to resist pastoralist expansion. This conflict resulted in the deaths of Thomas Bott and James Rudd in 1864 and subsequently, the capture, sentencing and execution of Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra. (Criterion 2.2)

Butterabby Graves is a site where Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra were executed in 1865. The execution of Aboriginal people at the place where resistance to the spread of pastoralists occurred is an example of a policy undertaken by the Colonial Government to deter others from resisting. (Criterion 2.2)

Butterabby Graves is the gravesite of James Rudd, Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra. (Criterion 2.3)

11. 3. SCIENTIFIC VALUE

11. 4. SOCIAL VALUE

Butterabby Graves is highly valued by Aboriginal communities of the Murchison through their oral tradition as a site where five of their people were executed. (Criterion 4.1)

Butterabby Graves is highly valued by the European community of Mullewa which is attested through the placing of the commemorative stone on the site in 1973, the erection of a shelter shed c.2001, the inclusion of the place in the shire's tourist trail and the inclusion of the place in the Shire of Mullewa Municipal Inventory. (Criterion 4.2)

12. DEGREE OF SIGNIFICANCE

12. 1. RARITY

Butterabby Graves is rare as a site in Western Australia where the government execution and burial of five men was conducted together at one time and location. (Criterion 5.1)

Butterabby Graves is rare as an undisturbed archaeological site with the potential to reveal evidence about pastoral and Aboriginal ways of life in the 1860s. (Criterion 5.2)

12. 2 REPRESENTATIVENESS

Butterabby Graves is representative of many sites, recorded and unrecorded, where conflict occurred between Europeans and Aboriginals in the early years of Western Australian history due to the displacement of the Aboriginal peoples from their traditional lands through the establishment of agricultural and pastoral properties. (Criterion 6.2)

Butterabby Graves is representative of the type of gravesites and grave markers found in isolated areas of Western Australia. (Criterion 6.2)

12. 3 CONDITION

Butterabby Graves is an undisturbed archaeological site. No visible physical structure of the 1864 hut remains, although there is evidence in change of soil surface texture to suggest the hut's location. This corresponds to the area marked out by eight marker stones.

Some grave marker stones were temporarily moved in the 1970s, but the contents of the graves remain undisturbed. The graves, being located on a small rise in the ground, suffer from wind and water erosion, and there is concern that due to the shallow depths of the graves, skeletal remains could become uncovered.

At present there is no management structure in place to assist in the conservation of the place.

12. 4 INTEGRITY

Butterabby Graves retains high integrity. Further study to locate the well and the site of the tree where the men were hanged would assist in the interpretation of

the site as a place of pastoral expansion, Wajarri and Nhanhagardi/Wilunyu resistance and colonial law enforcement.

12. 5 AUTHENTICITY

Even though the grave marker stones have been disturbed *Butterabby Graves* retains a high degree of authenticity. The memorial stone (1973) is a later addition and has a moderate degree of authenticity.

13. SUPPORTING EVIDENCE

The documentation for this place is based on the heritage assessment completed by Gary Martin, Historian, in August 2004, with amendments and/or additions by HCWA staff and the Register Committee.

13.1 DOCUMENTARY EVIDENCE

Butterabby Graves comprises a hut site (1864), three random rubble grave mounds (1864/5), a large granite memorial stone (1973) and a pine and corrugated iron shelter shed (c.2001), located approximately 16km south of the town of Mullewa

At the time of European colonization of Western Australia, the Wajarri (a circumcised people) were extending their territory westward into the coastal region inhabited by a different ethno-linguistic group known as the Nhanhagardi/Wilunyu people (who did not practice circumcision). When European explorers arrived in the area, the land on which *Butterabby Graves* is located was on the edge of the territory occupied by the Wajarri people.¹

By the late 1840s the Avon Valley was becoming seriously overstocked and pastoralists sought fresh pastures. News had spread of suitable grazing country to the north discovered by Grey (1839) and the Gregory brothers (1848). However, Colonial Government policy at that stage was to limit the expansion of settled areas. The term for leasing land from the Crown was made more favourable for pastoralists in 1850. Those with livestock could now move into what was classified as B-class land and take pastoral leases of up to 8,100 hectares at a yearly rental of ten shillings per 405 hectares. Taking advantage of this change, Thomas Brown of York applied for land in the Victoria District, just to the east of Champion Bay and the newly surveyed town site that was to become Geraldton. With his son Kenneth, John S. Davis, James Walcott, Major Logue, several servants, 1,700 sheep, 150 cattle and horses, Thomas left the Avon Valley on 9 October 1850 to move north to his new property.²

By March 1852, Davis, Walcott and Logue had ceased working for Brown and had taken up a pastoral lease totaling 16,200 hectares to the east and north-east of Glengarry. The young men assisted each other in establishing pastoral properties in the area. Davis named his pastoral property 'Tibradden'.³

In the late 1850s, these pastoralists were forced to extend their spreads eastwards, as the more fertile land closer to the coast was surveyed and sold by the Colonial Government as freehold land.⁴ The increased settlement on the Greenough Flats through subdivision of the land into small agricultural holdings resulted in the displaced Nhanhagardi/Wilunyu people being pushed eastward into the territory of the Wajarri people.⁵

¹ Bates, D., *The Native Tribes of Western Australia*, National Library of Australia, 1985, p.58.

² Bain, Sister M.A., *Ancient Landmarks – A Social and Economic History of the Victoria District of Western Australia 1839-1894*. University of Western Australia Press, 1975, p. 54.

³ Ibid., p. 176.

⁴ Bain, Sister M.A., *A Life of Its Own – A social and economic history of the City of Geraldton and the Shire of Greenough, 1846-1988*, City of Geraldton, 1996, p. 97.

⁵ Information provided by members of the Naaguja working group on 3 August 2004.

Davis took up pastoral leases to the east of his home station Tibradden at Kockatea, Wooderarrung and Mullewa Spring.⁶

The common practice at that time was for sheep to be pastured at the home station during the winter months. With the onset of summer the sheep would be divided into flocks of approximately 1,000 and under the care of a shepherd and a hutsman would be driven east to new pastures for the summer/ autumn months.⁷

As their water supplies were taken over by the shepherds and their flocks, the Aboriginal people became more resolute about repelling these foreign invaders. Fearful of the Aboriginal people, any threat, real or perceived, was immediately retaliated with violence by the shepherds and their masters.⁸

Conflict at Davis' outcamps between his shepherds and local Aborigines occurred as early as 1858. There were at least two cases of shepherds killing Aboriginal men in retaliation for spearing sheep. Whilst the men were acquitted of homicide, the Resident Magistrate was to write,

I fear that these aggressions by the Natives are often caused by the negligence of the shepherds, who often leave their flocks in the bush feeding and absent themselves from them for hours together thus throwing temptation in the way of the Natives...⁹

The abuse of Aboriginal women by the shepherds was another cause of conflict. In 1859, whilst attempting to steal an Aboriginal girl, one of Davis' shepherds named Richard Bibby, shot and killed an Aboriginal man named Billimarra. Bibby was convicted of the charge of murder upon evidence given by Gin-bar-roo and sentenced to death in Perth.¹⁰

Further disputes occurred in 1862 when Davis' outcamp at Kockatea Spring was attacked and sheep killed. Eleven Aboriginal men were captured and sent to Perth for trial.¹¹

On 17 February 1864, John Lewis, another of Davis' shepherds, was speared at Kockatea Spring in retaliation for shooting a dog belonging to Mulkarby. Harry Dunn, the hut man, dragged the dying Lewis into their hut, and then went for assistance to Dongorie Spring where Kirkup and Wright were camped. Fearing further attacks, the three men took the body to another camp at Wooderarrung Spring, 22km north of Kockatea Spring.¹²

On 23 February 1864, the Champion Bay Resident Magistrate, L. J. Bayley, accompanied by J. S. Davis, Joseph Fogarty and Police Constable Samuel Farmer held an inquest at Wooderarrung Spring, where Lewis' body was then buried. The verdict was death through a spear wound and the police were ordered to capture the men responsible for the crime. P. C. Joseph Watson then proceeded to the site and upon making enquiries, captured Mulkarby, Willaka and Jeenanga. The three prisoners, along with Yono, the wife of Mulkarby and

⁶ Bain, *A Life of Its Own*, p.88.

⁷ Keeffe, B., *Eastward Ho – To Mullewa and The Murchison*, Mullewa Shire Council, 1995, p. xi..

⁸ Bain, *A Life of Its Own*, p.81.

⁹ Colonial Secretary's Records, Vol. 413 Letter from William Burges, Resident Magistrate, 16 August 1858.

¹⁰ Purdue, B., *Legal Executions in Western Australia*, Foundation Press 1993, pp. 8-9. This was the first execution in Western Australia of a white man found guilty of killing an Aboriginal person.

¹¹ *Inquirer and Commercial News*, 9 April 1862, as cited in Keeffe, p.3.

¹² Keeffe, p.4.

Jankenner, the wife of Jeenanga, were then taken to Champion Bay and shipped to Perth.¹³

Bayley was to write in his report to the Colonial Secretary,

... should the prisoners be ultimately convicted and sentenced to death, I would most strongly recommend the sentence may be carried into effect on the spot where the murder was committed, as then others would actually see the law carried out ...¹⁴

However, at the trial held in the Supreme Court on 6 April 1864, Willaka was found guilty of the lesser charge of manslaughter and sentenced to life imprisonment at the Rottnest Gaol. Mulkarby and Jeenanga were acquitted.¹⁵

Undeterred by these events, James Rudd, a former Conditional Pardon man, left his tillage lease at Greenough to take up a 4050ha pastoral lease (No. 2288) at Butterabby, 6.4km west of Kockatea.¹⁶ With Rudd was Thomas Bott, a ticket-of-leave man from the Geraldton Depot, Jane Tunstill, a widow and Tunstill's 5 year-old daughter, Jane.¹⁷

The men built a hut on a small rise, dug a well in the creek and commenced clearing the land. On the afternoon of 22 August 1864, Bott was grubbing out a tree about 90 metres from the hut when eight Aboriginal men attacked him. After spearing Bott numerous times and leaving him for dead, the men ransacked the hut.¹⁸ Bott however, survived the attack and once the men had left, crawled to the hut. Rudd hadn't seen the attack and was shocked to see the condition Bott was in. Rudd left Bott in the hut and traveled the 128km to Champion Bay for assistance.¹⁹

On receiving news of the attack, the Resident Magistrate dispatched a cart along with the Medical officer and a constable to bring Bott back to the Depot Hospital. He also ordered Constables Watson and Farmer to capture the offenders.²⁰

Dr. Elliott and Constable Healey arrived at Butterabby on 25 August and found Bott lying in the hut. He had been speared about 10 times. The men arrived back at Geraldton on 28 August and Bott was placed in the hospital.²¹

Meanwhile, Constables Watson and Farmer had arrived at Butterabby on 26 August. There, Rudd showed them where the attack had occurred. Tracks were followed in an easterly direction.²²

¹³ ibid, p.4.

¹⁴ Colonial Secretary's Reports Fol. 165 Vol. 546, 1864 as cited in Keeffe, p. 5.

¹⁵ Keeffe, p.5.

¹⁶ Rudd's tillage lease was at the area now known as Rudd's Gully, south of Geraldton. In a letter written to the editor of the *Perth Gazette*, Henry Gray, who also held pastoral leases in the area, mentions that '... James Rudd, has a squatting station adjoining the Kockatea Station.' *Perth Gazette*, 14 October 1864.

¹⁷ Keeffe, p.6

¹⁸ According to an article written by "Fossil" in the *Geraldton Express*, 17 September 1920, the woman hid in an empty water barrel when she saw the Aboriginal men approach the hut.

¹⁹ Although not mentioned in the records, it is likely that Rudd took Jane Tunstill and her daughter with him to Champion Bay. Healey doesn't mention her presence when he collected Bott, and when Watson returned on 26 August, he mentioned in the trial proceedings that Rudd was the only person at Butterabby.

²⁰ Colonial Secretary's Reports Vol. 548/34.

²¹ *The Inquirer and Commercial News*, 11 January 1865.

²² ibid.

In early September, Henry Gray's station was broken into by men from the same tribe as those who killed Lewis and a gun, a pistol, ammunition and other articles were stolen and attempts made to burn the place.²³

On 5 September, Bott, knowing that he was dying, made two depositions to the Resident Magistrate. Bott declared that he had done nothing to aggravate his attackers. He died at the hospital on 18 September 1864.²⁴ An inquest into the death of Bott was held that day before L. J. Bayley, RM and Coroner, and a jury consisting of D. H. Scott, G. Baston and E. Ridley.²⁵

On 21 September, Constable Robert Bird and Native Constable Gardemarra went to Butterabby, to replenish their supply of flour from Rudd. Bird warned Rudd to keep a gun on hand at all times.²⁶

About two days later, Rudd left his gun leaning against the hut wall whilst he went to the well to fetch water. An Aboriginal woman named Belo tried to steal the gun and in the fracas that followed, an Aboriginal man named Mumbleby knocked Rudd down and killed him by striking him on the back of his head with his digging stick. Mumbleby, Belo and a young girl named Beeja Beeja then stole flour, cooking utensils and clothes from the hut.²⁷

On 29 September, Constable Watson arrested Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra.²⁸ All the men except Wangayakoo admitted killing Bott.²⁹

Early on the morning of 3 October, Constable Bird and Gardemarra returned to Butterabby and found Rudd's body lying about 2m from the door of his hut. A sack had been carefully placed over the body. Bird then returned to Tibradden to report the news to Davis.³⁰

On 4 October, Constable Watson visited Butterabby on his way back to Geraldton with some Aboriginal prisoners. With the help of Naldabunga, tracks were identified at the site.³¹

On 6 October, an inquest into the death of Rudd was held at Butterabby with L. J. Bayley RM as Coroner and Joseph Fogarty, Thomas Ryan and John Holloway as jury. After viewing the body, the inquest adjourned to be held at Tibradden on 8 October. The Medical Officer, C. H. Elliott stated that Rudd had died from a blow

23 Colonial Secretary's Reports, Vol.548/35. [Seven men were convicted of the robbery and sent by the *Favourite* to Rottenest to undergo their sentence of three years imprisonment. Colonial Secretary's Reports, Vol.548/75].

24 *The Inquirer and Commercial News*, 11 January 1865.

25 Colonial Secretary's Reports, Vol. 548/37-39.

26 Colonial Secretary's Reports, Vol. 548/50.

27 This description of events comes from evidence provided at Mumbleby's trial. *Perth Gazette and W. A. Times*, 13 January 1865. According to members of the Naaguja working group, Mumbleby is a Wajarri name.

28 There are several variations in the spelling of these men's names. For consistency, the spelling used on the memorial stone has been used in this report. According to members of the Naaguja working group, it is possible some of these men were Nhanhagardi/Wilunyu.

29 Whilst Watson could speak some Aboriginal languages, he was not conversant with that of his prisoners and relied on Yandancarra and Gnowby as translators. *The Inquirer and Commercial News*, 11 January 1865.

30 Colonial Secretary's Reports, Vol. 548/50.

31 *Perth Gazette and W. A. Times*, 13 January 1865.

to the head. After hearing the evidence from Bird and Elliott, the jury determined that one or more Aboriginal persons had murdered Rudd.³²

Constable Watson left Geraldton on 10 October to search for the men who had killed Rudd. On 27 October he arrested Mumbleby, Belo and Beeja-Beeja about 160km east of Butterabby. The prisoners had in their possession flour and clothing belonging to Rudd. The prisoners were then taken to Butterabby where through an interpreter Mumbleby told Watson what had taken place.³³

There were calls by prominent citizens and the press that those charged with the killing of Bott and Rudd be tried in Geraldton and if convicted, conveyed to the scene where the crimes were committed for punishment. However, it was found to be too inconvenient to hold a court at Geraldton and so the prisoners and witnesses were shipped to Perth.³⁴

On 5 January 1865, Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra were charged in Perth with the murder of Thomas Bott. Because of language difficulties, court proceedings and evidence had to be interpreted by Mr Armstrong, the Native Interpreter, first to Canahan, an Aborigine from the Champion Bay area who then translated to Yangecoura who was conversant in the prisoner's language. A plea of not guilty was recorded by the Court. Evidence was then heard from L. J. Bayley, RM, C. H. Elliott, Constables Watson and Healey, Naldabunga and a 13 year-old boy named Elieu.³⁵

Elieu provided the following evidence;

I recollect a number of natives going off to Cockateer [sic] [a spring near Butterabby]; they had spears with them, they were all common spears. All the prisoners, except Wangayacca [sic], were among them. Wangayacca [sic] stopped behind. They went away for roots and opossums. They did not bring any back. They started in the morning well armed with spears, and came back in the middle of the day with only a few. Before they left they said "We will go west and see the white people." [Elieu then identified the weapons as those belonging to all the men except Wangayakoo] I stayed behind with Wangayacca [sic] till the others came back – about dinner time. [Elieu later retracted this evidence] We did not sleep at that place but went away. On their return the men said, "We have killed a white man. We will not sleep here." And they went away. Younmaccarra [sic] said they had speared a white man. The others denied it, saying "We've only been there." They brought back a shirt, rug, trousers, blankets and some bread, no sugar, nor flour.³⁶

Naldabunga's evidence was as follows;

These men are from the interior. I saw them some time ago. I was not with them when they killed the white man, but I was with them after. I did not see them kill the white man. On seeing these men come to the white man's house, I went away. I was at the house when the prisoners came up. I saw the white man go out to work. I did not stay there, but a little distance off. I heard a noise, and I saw them spear the white man. I did not join them. I did not see Wangayacca [sic] there; I saw all the others using their spears; they were throwing them at the white man. [Naldabunga later admitted that Wangayakoo had thrown a spear at Bott but had missed the man.] Charlacarra threw the first; he hit the white man just above the right hip. Yeunmacarra

32 Colonial Secretary's Reports, Vol. 548/50. Although not mentioned in the trial proceedings, Rudd would have been buried once his badly decomposed body had been examined by the doctor and jury.

33 *Perth Gazette and W. A. Times*, 13 January 1865.

34 See *The Inquirer and Commercial News*, 2 November 1864 and 7 December 1864, also Bayley's letter to the Colonial Secretary, 22 November 1864 (CSR Vol. 548/75).

35 *The Inquirer and Commercial News*, 11 January 1865.

36 *ibid.* Wangayakoo and Garder were Elieu's uncles.

[sic] threw the next spear, that struck in the man's back and came out at his breast. Walliakarra [sic] speared him in the right side. Garder's spear hit the man below the heart; it went through his body. The white man lay there some time, and got up and went to his house. The prisoners then made off. Those who speared the white man were joined by others. They robbed the hut, and then went away. When they first went up they had no intention of spearing the white man, but seeing him, they determined to do so.³⁷

Wangayakoo, Yourmacarra, Garder, Charlacarra and Williacarra admitted to killing Bott, saying, 'they were self-sulky and speared the white man.' The jury found the prisoners guilty and the five men were sentenced to death.³⁸

On 6 January 1865, Mumbleby and Belo were charged with the murder of James Rudd. Evidence was heard from L. J. Bayley, RM, C. H. Elliott, Constables Watson and Bird, Naldabunga and a 14 year old girl named Beeja-Beeja.³⁹

Beeja Beeja provided the following evidence;

I know the prisoners well. I have been at Cockateer and Butter Abbey. I have only been once at Butter Abbey; when I was there with the prisoners I saw a white man there. We went there to get some flour. We had seen the house some time before, while it was being built, but on this occasion we came right up to the house. We saw Rudd go outside the house, and go back; get some firewood together and some water. He asked us where we came from. We said from the interior, and we stayed about for a short time. A gun was standing outside near the door. Mumbleby took hold of it and examined it, saying it was a nice gun – a good gun. The white man was standing near. We were all struggling for the gun. Shortly after we went there the white man went to the well, and when he was away we got the gun. Belo first got it; then Mumbleby got it; then the white man got it. The white man dropped his buckets, ran up as hard as he could, and we all struggled for the gun. The gun went off. The prisoners struggled with the white man, who fell; he tried to get up, when Mumbleby struck him with the digging stick, and he rose no more. The white man was struck just about the back of the ear; a quantity of blood flowed from it. That one blow struck him dead. He fell with his face to the ground. Mumbleby took the white man's shirt off him. The white man did not stir after he received the blow. The shirt was taken from him as he lay, and a bag was placed over him. A dish, a saucepan, and some flour were stolen from the hut. We had a quantity of it in a bag when we was [sic] taken. Mumbleby killed the white man, and stole the flour. The women did not kill him, or steal the flour. Mumbleby hid the things in the thicket, supposing that they would be caught, and that they would be brought back they would show them to the policemen.⁴⁰

Mumbleby was convicted of the manslaughter of Rudd and sentenced to life imprisonment. Belo was acquitted of the crime.⁴¹

The *Hastings* sailed from Fremantle on 19 January 1865 for Champion Bay. Aboard were the Aboriginal prisoners.⁴²

On 25 January 1865, a small procession consisting of the Sheriff of Perth (S. Hillman), a posse of mounted police, the five Aboriginal prisoners in a cart

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 *The Inquirer and Commercial News*, 11 January 1865. However, according to an article written by "Fossil" in the *Geraldton Express*, 17 September 1920, a woman named Maggie went to the hut and finding Rudd still alive, finished him with a dowark. Long after the trial, Maggie confessed to her crime. She continued to live in the district until her death in the 1910s. There is a possibility that Belo and Maggie was the same person.

42 *The Inquirer and Commercial News*, 1 February 1865. Shipping Intelligence.

guarded by an escort of five pensioner soldiers in full uniform, an Aboriginal assistant and a baggage cart left Geraldton on the long trip to Butterabby.⁴³

The cavalcade camped the first night at Tibradden and then at Illinew, arriving at Butterabby about noon on 27 January. A suitable tree was found and graves dug.⁴⁴ Around midnight, constables Watson, Farmer and Goodwin brought in twelve Aboriginal people who had been gathered up to witness the spectacle.⁴⁵ The executions were carried out on the morning of 28 January. Once declared dead, the men were laid out in the graves. At the completion of the executions, the Sheriff and police left Butterabby, arriving back in Geraldton on the evening of 29 January.⁴⁶

The Sheriff returned to Perth on 13 February. Although disappointment was expressed at the small number of Aboriginal people who had viewed the execution, it was felt that;

... it seems probable that the late ceremony was witnessed by a sufficient number to communicate what took place to those who were away, and the superstition which the detailed account of such a scene would be likely to inspire into their minds, added to their natural dislike of death and the location where the dead are deposited, will so far have the desired effect, as at all events to deter the natives from their murderous attacks for a time...⁴⁷

The Wajarri and Nhanhagardi/Wilunyu suffered greatly from the murder, execution and imprisonment of so many of their men. Disease took a heavy toll along with the depredations brought about by the pastoralists. Water holes were fenced in, causing the wild life to decline, and the sheep and cattle destroyed many plants that were traditional staple foods. Within a few decades of European settlement, the Nhanhagardi/Wilunyu of the Greenough area and the Wajarri in the Mullewa area were decimated.⁴⁸

Perth Solicitor, G. F. Stone placed notices in the *Perth Gazette* and *W. A. Times* calling for expressions of interest from anybody claiming to be next of kin of James Rudd as he had died unmarried and without issue.⁴⁹ James Rudd's estate and effects were valued at £463 in October 1865. The only claimant upon the estate was William King, a farmer from Greenough who was owed £135 10s 3d

⁴³ *The Inquirer and Commercial News*, 15 February 1865.

⁴⁴ *The Inquirer and Commercial News*, 'Execution of the native murderers of Bott, at Butter Abbey, on the 28th of January.' 15 February 1865. The article doesn't specify exactly where the execution tree was located and only mentions one grave being dug. Bert Keffe believed the tree was a York gum, since destroyed that was a short distance to the south-west of the graves. Although not mentioned in the report, it is likely the stones were placed on top of the shallow graves at the time of burial to prevent dingoes from disturbing the remains.

⁴⁵ A letter written by Jimmy Mullewa appeared in the *Geraldton Express* on 10 April 1907. Jimmy wrote, "Mine nothing likem policeman. Long time Jin Watson and nother one piecceman wantem catchem mine. He carnt he tellem, "You killem Jimmy Rudd Butterabby mia? He wyamber wongie. He catchem nother one blackfeller Butterabby; and my word he hangem up poorfeller York gum tree like crow, and Kit Kit dead makem." Unfortunately there is not enough evidence at present to prove that this is a genuine Aboriginal eyewitness account of the hangings.

⁴⁶ *The Inquirer and Commercial News*, 'Execution of the native murderers of Bott, at Butter Abbey, on the 28th of January.' 15 February 1865.

⁴⁷ *Perth Gazette and W. A. Times*, 17 February 1865.

⁴⁸ Leyland, E., *Wajarri Wisdom – Food and Medicine Plants of the Mullewa/Murchison District of Western Australia as used by the Wajarri People*, The Yamaji Language Centre, Geraldton 2002, p. xii.

⁴⁹ *Perth Gazette and W. A. Times*, 30 December 1864 to 10 February 1865.

from the sale of cattle and goods. King was then declared executor of the estate.⁵⁰

In February 1886 the Midland Railway Company contracted to construct a 440km railway line between Midland and Walkaway in return for a grant of 4860ha of land for every 1.6km of rail constructed. This land was to be within 64km of the line.⁵¹ Part of that grant included the land on which the *Butterabby Graves* are located. This was surveyed as Victoria Location 1920, a 7006 ha (17300 acres) lot whose title was taken up by the Midland Railway Company on 3 February 1893.⁵²

By the early 1900s there were calls by local farmers that the land held by the Midland Railway Company be released into smaller blocks for wheat growing.⁵³

On 19 September 1912, Victoria Location 1920 was subdivided and sold to a group of Greenough farmers. Lot 5, on which *Butterabby Graves* is located and consisting of 2830 ha (6985 acres), was purchased by John Joseph Keffe.⁵⁴

J. J. Keffe had knowledge of the agricultural potential of this land as he had previously cut sandalwood in this locality;

...when Grandfather took up his land at Butterabby there was [sic] still ropes on the trees. No, that's not quite right, when he was cutting sandalwood, a bit earlier than that, there was [sic] still ropes on the trees and um, as a child I always knew ... we always knew of these graves. They were clearly marked with stones...⁵⁵

J. J. Keffe employed woodcutters to clear his land at Butterabby. Orders given to spare the hanging tree were ignored by the woodcutters.⁵⁶

On 22 July 1929, the block was further divided between the three sons of J. J. Keffe and Lot 15 of Victoria Location 1920 on which *Butterabby Graves* are located became the possession of Glen Leonard Keffe.⁵⁷

On 8 May 1951, Lot 15 of Victoria Location 1920 was transferred to Patrick Clarence Keffe.⁵⁸

In 1972, Mullewa Shire workers started removing the original grave stone markers to repair the Butterabby Creek crossing. However, prompt action from Max Keffe who was working nearby, saw that the stones were returned to the graves. Bert Keffe became interested in the site and commenced researching the history. With the help of his son Greg, a large granite boulder was obtained from their property, 'Dongorie' and Bert carved the following inscription on the stone;

50 Grant of Letter of Administration WAS 57, CONS 3437, Book One/127, State Records Office, Perth. As there is no mention of King putting forward a claim to the pastoral lease at Butterabby, the land would have reverted to the Crown.

51 *A Brief History*, Western Australian Government Railways Publication as cited in, Crake, H. A., *Carridena – A history of the Three Springs Shire Area*, Three Springs Shire Council, 1979, p. 23.

52 Certificate of Title, Volume XLVIII, Folio 15, Department of Land Information.

53 Keffe, p. 128.

54 Certificate of Title, Volume 531, Folio 26, Department of Land Information.

55 Keffe, B., Transcript of Interview, 10 December 1984. Geraldton Regional Library, OH208KEE.

56 Keffe, K., phone conversation with Gary Martin, 16 February 2004. However, according to a conversation held with Garry Ronan on 6 July 2004, the ropes were still hanging from the tree in the 1960s.

57 Certificate of Title, Volume 1011, Folio 701, Department of Land Information.

58 Certificate of Title, Volume 1136, Folio 459, Department of Land Information.

IN THESE GRAVES LIE
 JAMES RUDD
 SPEARED HERE AT
 BUTTERABBY 27 SEPT 1864
 ALSO GARDER
 WANGAYAKOO
 YOURMACARRA
 CHARLACARRA
 WILLIACARRA
 SENTENCED IN
 PERTH AND HANGED
 HERE 28 JAN 1865
 FOR THE SPEARING OF
 THOMAS BOTT
 AT BUTTERABBY 22 AUG
 1864

With approval from Pat Keeffe, the memorial stone was erected by Bert Keeffe in a central spot between the graves at Butterabby in 1973.⁵⁹

In May 1975, the *Butterabby Graves* site was inspected by Don McCaskill and subsequently listed as an Aboriginal site.⁶⁰

On 19 May 1986, the title of Lot 15 of Victoria Location 1920 was transferred to Kim Patrick Keeffe and Rodney John Keeffe. On 16 November 1989, Kim Patrick Keeffe became the sole owner of the land on which *Butterabby Graves* is located.⁶¹

Kim Keeffe erected a small shelter shed on the site about 3 years ago for the convenience of people visiting *Butterabby Graves*.⁶²

In 2004, the Aboriginal community at Mullewa is still aware of the events that took place at *Butterabby Graves*. However as it is a site where five of their men were executed they do not visit the graves.⁶³ *Butterabby Graves* continues to be visited by people travelling through the Shire of Mullewa.⁶⁴

13.2 PHYSICAL EVIDENCE

Butterabby Graves comprises a hut site (1864), three random rubble grave mounds (1864/5), a large granite memorial stone (1973) and a pine and

⁵⁹ Keeffe, B, Correspondence sent to G. Martin, 22 March 2004.

⁶⁰ Butterabby, File No. 5727, Department of Indigenous Affairs.

⁶¹ Certificate of Title, Volume 1136, Folio 459, Department of Land Information.

⁶² Keeffe, K., phone conversation with Gary Martin, 16 February 2004.

⁶³ Telephone conversation between Ike Simpson, Elder of the Wajarri people and Gary Martin, 29 June 2004. According to Garry Ronan, Manager of the Yamaji Language Centre, the Wajarri people are pleased that other people are learning about what happened at *Butterabby Graves* and so have no objection to people visiting the site.

⁶⁴ *Butterabby Graves* is listed on the following websites, http://www.traveldownunder.com.au/Western_Australia/Mid_West/Butterabby_Graves.asp and <http://www.walkabout.com.au/fairfax/locations/WAMullewa.shtml>

corrugated iron shelter shed (c.2001). There is no evidence of either the well dug by Rudd in 1864 or the tree on which the men were hanged (1865).

Butterabby Graves is situated 1.8km west of the Mullewa-Mingenew Road. The site is located on a low rise that is bounded to the east and north by Butterabby Creek. Access is by a gravel track leading from Butterabby Road to the western side of the site. The memorial stone is located approximately 90m north of Butterabby Road and approximately 12m east of the entrance track. Grave 1 is located 4m to the north-west of the memorial stone. Grave 2 is 6m to the south-west, and Grave 3 is 5m to the south-east. Grave 3 is also 8m from the western edge of Butterabby Creek. The shelter shed is located approximately 10m to the north-west of the memorial stone. The possible site of Rudd's hut is located 7.5m to the north of the memorial stone.

All three graves consist of low randomly placed piles of rocks. Grave 1 is 1m by 2m in size and is orientated east-west. The size of the grave and its proximity to the hut site (only 4m to the north) suggest that James Rudd is buried here. Grave 2 is 3m by 2m in size and Grave 3 is 2m by 2m in size. The different grave sizes suggest that three men were buried in Grave 2 and two men in Grave 3.

The memorial stone is a granite rock 1.41m high, 1m wide at the base and 0.16m thick. The following inscription has been carved on the west side;

IN THESE GRAVES LIE
JAMES RUDD
SPEARED HERE AT
BUTTERABBY 27 SEPT 1864
ALSO GARDER
WANGAYAKOO
YOURMACARRA
CHARLACARRA
WILLIACARRA
SENTENCED IN
PERTH AND HANGED
HERE 28 JAN 1865
FOR THE SPEARING OF
THOMAS BOTT
AT BUTTERABBY 22 AUG
1864

The hut site is 4m to the east of the shelter shed. Eight rocks placed to form a rectangle 3m by 4m in size mark out the site. Small wooden pegs have also been placed under the corner stones. No visible physical evidence of the 1864 hut remains.

The shelter shed faces the east and is located between the hut site and the entrance track. The shelter shed is 2.18m by 2.7m in size and 2.24m in height. It is constructed of four treated pine pole uprights, with pine lattice walls on the south and north sides and a corrugated iron wall to the west. The shed has a flat corrugated iron roof. Two planks 0.3m wide have been fixed 0.5m above the ground to form benches along the north and south walls. On the inside rear wall is attached a sign 1.21m by 1.25m in size.

The following text has been printed on the sign;

BUTTERABBY GRAVES

The story behind these graves began with [sic] James Rudd, with the help of convict Thomas Bott, started to develop this station also living here at the time was Mrs Jane Tunstill and her daughter Jane. They had dug a well on the bank of the creek and built a hut on this site.

On the 22nd of August 1864 Bott was grubbing out a tree about one hundred metres from the hut when he was speared several times by natives. Bott lay motionless until the natives left. Then he removed the spears himself and crawled to the hut. The attackers had taken everything they could carry from the hut. Rudd returned to find the wounded man and leaving him in the care of Mrs Tunstill and her daughter set off for Champion Bay to report the attack. A doctor and constable were sent out with a cart to bring Bott back for treatment. One could imagine after four days how stiff and infected Bott's wounds were and how painful the journey back to Champion Bay was.

Three policemen were sent out to catch the attackers knowing that the tribe to which they belonged ranged up to 200 miles inland and would be difficult to capture.

Bott died of his wounds on the 18th of September. Because of the size of the area to search another constable and a number of native constables returned to Rudd's place to replenish their supplies and warned him to be careful. By this time the woman and her daughter were sent to Champion Bay.

On the 29th of September Wangyackoo [sic], Yemakkarra [sic], Garrolee [sic], Charlakarra [sic] and Willakakarra [sic] were arrested for the murder of Bott.

On the 3rd of October the party returned to Rudds for more supplies to find Rudd's decomposed body outside his hut and all the provisions gone. Rudd was in a struggle with a native man, woman and a 14 year old girl when he was struck on the head and died of his wounds. An inquest was held on this site and presumably he was buried in one of these graves.

Mumbleby, Belo and Beeja, Rudd's assailants were arrested about 15 miles south east of where Yalgoo is today. The prisoners were transported to Perth for trial in the Supreme Court. Mumbleby was convicted of Manslaughter and Belo was acquitted of the death of Rudd.

Wangyackoo [sic], Yemakkarra [sic], Garrolee [sic], Charlakarra [sic] and Willakakarra [sic] were found guilty of the murder of Bott and sentenced to death the Colonial Secretary successfully applied to have the convicted men returned to this site to be hanged in front of their tribe as a deterrent for the crimes committed. The executions took place on the 28th of January 1865. Their bodies were buried here.

There is no evidence to suggest that the hut site and the graves (apart from temporary movement of the marker stones in 1972) have been disturbed. The site is likely to contain archeological material.

Whilst there is no evidence of the location of the tree on which the men were hanged, there are remains of a large York Gum (*Eucalyptus loxophleba*) in the creek to the north of the site.

13.3 COMPARATIVE INFORMATION

There are many examples of isolated European and post Colonial Aboriginal gravesites scattered throughout Western Australia. However, most of the remaining known Aboriginal graves are of men and women who worked for the colonialists and most date from c.1900 onwards. One example from a similar time period to those at *Butterabby Graves* is the grave of Mike, a Perth born Aborigine

and servant of Charles Von Bibra. Mike died in 1862 and is buried in the private cemetery on Murchison House Station. His gravestone is still visible today.⁶⁵

Butterabby Graves is unusual as it is the only site listed in *More Lonely Graves of Western Australia* where the execution and burial of more than one person took place at the same time in the same location.⁶⁶

The procedure of executing Aboriginal prisoners found guilty under colonial law at the site of their crime had been put into practice elsewhere in the colony. In February 1832, several Aboriginal men were found guilty of the murder of Reuben Beecham at Greenmount Hill and were hanged from a gum tree beside his grave.⁶⁷ Doodjeep and Barrabong were convicted of the murder of Sarah Cook and infant daughter that occurred in May 1839. Their executions took place in July 1840 at the ruins of the Cook homestead, near York.⁶⁸ In neither case is there any mention of burials taking place after the executions. Peter Barlow, the Protector of Aborigines, was to write in his Annual Report to the Governor, dated 31 March 1841, that;

The execution of the two natives, Barrabong and Doodjeep, for the murder of Mrs Cook, appears to have had a most beneficial effect; their bodies are still hanging in chains, a terror to evil doers.”⁶⁹

Although a comparatively recent addition to *Butterabby Graves*, the carved memorial stone is now an integral part of the site. A similar granite memorial stone is also located within the Shire of Mullewa at Wooderarrung Spring (6.5km north of Mullewa). The stone was obtained by shire workers from the Greenough River bed at the North Road crossing in 1988 and carved with the following inscription;

IN MEMORY

OF

JOHN LEWIS

SHEPHERD

SPEARED AT

KOCKATEA SP.

17-2 1864

BURIED HERE

WOODERARUNG SP.

This stone was placed at Wooderarrung Spring as part of the Shire of Mullewa's Bicentenary celebrations in 1988.⁷⁰

⁶⁵ Coate, Y. & K., *More Lonely Graves of Western Australia*, Hesperian Press, 2000, p.264. Another similar example listed in the above book is the grave of Tommy Windich who died at Esperance Bay in 1876 (p.417).

⁶⁶ The only other comparable example listed in Coate is the grave of Buckley, an Aborigine killed by a Police Constable in 1904 at Mt Wynne in the Kimberley. Coate, Y. & K., op. cit., p.52.

⁶⁷ Green, N., *Broken Spears – Aborigines and Europeans in the southwest of Australia*, Focus Education Services, Perth, 1984, pp. 205, 219.

⁶⁸ Blackburn, G., *Conquest and Settlement – The 21st Regiment of Foot (North British Fusiliers) in WA 1833-40*. Hesperian Press, 1999, pp. 80-85.

⁶⁹ *The Inquirer*, 5 July 1841, cited in Blackburn, G., op. cit., p.85.

⁷⁰ Keeffe, B, Correspondence sent to G. Martin, 6 February 2004.

Butterabby Graves as well as being an historic gravesite is a rare example of a place that contains within its history the elements of pastoral expansion, Aboriginal resistance and Colonial law enforcement.

13. 4 KEY REFERENCES

Keeffe, B. *Eastward Ho – To Mullewa and The Murchison*, Mullewa Shire Council & B. Keeffe, 1995.

13. 5 FURTHER RESEARCH
