

**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: WESTERN AUSTRALIA
DIVISION: GENERAL**

WAD 359 of 2013

BETWEEN: **ERNEST DAMIEN MANADO ON BEHALF OF THE
BINDUNBUR NATIVE TITLE CLAIM GROUP** (and others
named in the Schedule)
Applicant

AND: **STATE OF WESTERN AUSTRALIA** (and others named in the
Schedule)
Respondents

JUDGE: **NORTH J**

DATE OF ORDER: **2 MAY 2018**

WHERE MADE: **BEAGLE BAY, WESTERN AUSTRALIA**

THE COURT ORDERS THAT:

1. There be a determination of native title in the form attached as Attachment A to these orders.
2. Within 12 months of the date on which these orders are made, a representative of the common law holders of native title shall:
 - (a) indicate whether the common law holders intend to have the native title held in trust; and
 - (b) nominate, in writing given to the Federal Court, a prescribed body corporate or prescribed bodies corporate:
 - (i) to be trustee of the native title rights and interests; or
 - (ii) otherwise perform the functions set out in section 57(3) of the *Native Title Act*,

including within the nomination the written consent of the bodies corporate.
3. In the event that there is no nomination within 12 months of the date on which these orders are made, or such later time as the Court may order, the matter is to be listed for further directions.

4. The following areas are not included in the determination area and the proceeding be adjourned in relation to it:
- (a) all that land comprising that portion of Lot 259 as shown on Deposited Plan 220696 that is wholly within the external boundary of Petroleum Exploration Permit EP 436 R1 (as defined by The Department of Mines, Industry Regulation and Safety as at 11th November 2014); and
 - (b) all that land comprising that portion of Lot 851 as shown on Deposited Plan 66631 that is wholly within the external boundary of Mining Exploration Licence E04/2084 (as defined by The Department of Mines, Industry Regulation and Safety as at 17th July 2014).

Date: 2 May 2018

Justice North

ATTACHMENT A TO THE ORDERS – BINDUNBUR DETERMINATION

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: WESTERN AUSTRALIA
DIVISION: GENERAL

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BETWEEN: **ERNEST DAMIEN MANADO ON BEHALF OF THE
BINDUNBUR NATIVE TITLE CLAIM GROUP** (and others
named in the Schedule)
Applicant

AND: **STATE OF WESTERN AUSTRALIA** (and others named in the
Schedule)
Respondents

JUDGE: **NORTH J**

DATE OF ORDER: **2 MAY 2018**

WHERE MADE: **BEAGLE BAY, WESTERN AUSTRALIA**

THE COURT DETERMINES THAT:

Existence of native title [s 225]

1. Native title rights and interests exist in those parts of the Determination Area described in Schedule 2 Part 1 (**native title areas**).
2. Native title rights and interests do not exist in those parts of the Determination area described in Schedule 2 Part 2.

Native title holders [s 225(a)]

3. The rights and interests comprising the native title are held in the way described in Schedule 4 by Jabirr Jabirr/Ngumbarl, Nyul Nyul and Nimanburr people, being the people described in Schedule 3 (**native title holders**).

Nature and extent of native title [s 225(b) and (e)]

4. Subject to paragraphs 7 and 8, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 5

(being areas where any extinguishment must be disregarded) is the right of possession, occupation, use and enjoyment of that part as against the whole world.

5. Subject to paragraphs 6, 7 and 8, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 6 (being land and waters where there can only be partial recognition; or where there has been partial extinguishment other than where such extinguishment must be disregarded) are the following rights:
 - (a) the right to have access to, remain in and use that part;
 - (b) the right to access and take for any purpose the resources in that part; and
 - (c) the right to protect places, areas and things of traditional significance in that part.
6. The native title rights and interests referred to in paragraph 5 do not confer:
 - (a) possession, occupation, use and enjoyment of those parts of the Determination Area on the native title holders to the exclusion of all others; or
 - (b) a right to control the access of others to the land or waters of those parts of the Determination Area.
7. The native title rights and interests are exercisable in accordance with and subject to the:
 - (a) traditional laws and customs of the native title holders; and
 - (b) laws of the State and the Commonwealth, including the common law.
8. Notwithstanding anything in this determination, there are no native title rights and interests in the native title areas in or in relation to:
 - (a) pursuant to the *Mining Act 1904 (WA)*, gold, silver, other precious metals, precious stones and all other minerals; or
 - (b) petroleum as defined in the *Petroleum Act 1936 (WA)* (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*.

Other interests [s 225(c) and 225(d)]

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 7 (**other interests**).

10. The relationship between the native title rights and interests and the other interests is as follows:
- (a) the other interests co-exist with the native title rights and interests;
 - (b) the determination does not affect the validity of those other interests; and
 - (c) to the extent of any inconsistency, the native title rights and interests yield to the other interests.

Areas where extinguishment is disregarded [ss 47A and 47B]

11. Sections 47A and 47B of the *Native Title Act* respectively apply to disregard any prior extinguishment in relation to the parts of the determination area described in Schedule 5.

Definitions and interpretation

12. In this determination, unless the contrary intention appears:
- ‘**Determination Area**’ means the land and waters described in Schedule 1 Part 1, but does not include the area described in Schedule 1 Part 2;
 - ‘**land**’ and ‘**waters**’ respectively have the same meanings as in the *Native Title Act*;
 - ‘**high water mark**’ means the mean high water mark at common law;
 - ‘*Native Title Act*’ means the *Native Title Act 1993* (Cth) as amended as at the date of this Determination; and
 - ‘**State**’ means the State of Western Australia.
- In the event of an inconsistency between the written description of an area in Schedules 1, 2, 5 or 6 and an area depicted on the maps in Schedule 8, the written description prevails.

Schedule 1 – Determination Area

[See paragraphs 1 and 12 of the Determination]

Part 1 – External perimeter of the Determination Area

All those lands and waters commencing at the southeastern corner of Pastoral Lease N050224 (Kilto), being a point on the present boundary of Native Title Determination WAD6006/1998 Rubibi Community (WCD2006/001) and extending westerly along the boundary of that native title determination to Longitude 122.510750 East; Then northerly to the southernmost southwestern corner of Pastoral Lease N050014 (Country downs); Then northerly along the western boundary of that pastoral lease to the southernmost southwestern corner of Lot 301 as shown on Deposited Plan 66643, being Broome Cape Leveque Road; Then northerly along the western boundary of that lot to its southernmost northwestern corner; Then northerly to the southernmost southwestern corner of Lot 300 as shown on Deposited Plan 66643; Then northerly along the western boundary of that lot to the southernmost southwestern corner of Lot 851 as shown on Deposited Plan 66631; Then northerly along the western boundary of that lot to the intersection with the prolongation easterly of the southern boundary of the westernmost severance of Reserve 22615; Then westerly along that prolongation to the southernmost southeastern corner of that severance; Then westerly along the southern boundary of the westernmost severance of reserve 22615 to its southernmost southwestern corner; Then westerly to Latitude 17.239080 South, Longitude 122.145895 East; Then west to the intersection with the 3 nautical mile limit; Then north to the intersection with the 3 nautical mile limit, being south of the Lacepede Islands; Then generally northwesterly along that 3 nautical mile limit to its westernmost point; Then north to the intersection with the prolongation westerly of the westernmost southern boundary of Native Title Determination WAD49/1998 Bardi and Jawi (WCD2005/003); Then easterly along that prolongation to the westernmost southwestern corner of Native Title Determination WAD49/1998 Bardi and Jawi (WCD2005/003); Then easterly, southerly and generally easterly along boundaries of the native title determination to its easternmost southeastern corner at Latitude 16.794801 South, Longitude 123.417959 East; Then easterly to Latitude 16.794801 South, Longitude 123.501280, being a point on the present boundary of Native Title Determination WAD6061/1998 Dambimangari (WCD2011/002); Then southerly along a western boundary of that native title determination to the intersection with Latitude 16.917519 South; Then

westerly, southwesterly and generally southeasterly through the following coordinate positions;

LATITUDE (SOUTH)	LONGITUDE (EAST)
16.917519	123.487198
17.000000	123.433585
17.145141	123.478429
17.215355	123.584445
17.234082	123.584619

Then westerly to the northernmost northeastern corner of the northwestern severance of Pastoral Lease N050691 (Yeeda), being a point on the present boundary of Native Title determination WAD6099/1998 Nyikina Mangala (WCD2014/003); Then generally westerly and southerly along boundaries of that native title determination to the intersection with the centreline of the Fraser River; Then generally westerly along the centreline of that river to the intersection with an eastern boundary of Pastoral Lease N050014 (Country downs); Then southerly along the eastern boundary of that pastoral lease to its southernmost southeastern corner; Then southerly along the prolongation of that eastern boundary of Pastoral Lease N050014 (Country downs) to the intersection with the northernmost northern boundary of Pastoral Lease N049900 (Roebuck Plains), being a point on a present boundary of Native Title Determination WAD6006/1998 Rubibi Community (WCD2006/001) and then westerly along the boundary of that native title determination back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

Fraser River sourced from 250K Series 3 vector data © Commonwealth of Australia (Geoscience Australia) 2006.

Australian Maritime Boundaries data sourced from © Commonwealth of Australia (Geoscience Australia) 2006.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 2nd January 2018.

Petroleum Tenements sourced from The Department of Mines, Industry Regulation and Safety as at 11th November 2014.

Mining Tenements sourced from The Department of Mines, Industry Regulation and Safety as at 17th July 2014.

For the avoidance of doubt the determination excludes any land and waters already claimed by:

Native Title Determination Application WAD6099/1998 Nyikina Mangala (WCD2014/003) as Determined in the Federal Court on the 29th May 2014.

Native Title Determination Application WAD49/1998 Bardi and Jawi (WCD2005/003) as Determined in the Federal Court on the 30th November 2005.

Native Title Determination Application WAD6006/1998 Rubibi Community (WCD2006/001) as Determined in the Federal Court on the 28th April 2006.

Native Title Determination Application WAD6061/1998 Dambimangari (WCD2011/002) as Determined in the Federal Court on the 26th May 2011.

Native Title Determination Application WAD598/2016 Boorroola Moorrool Moorrool (WC2016/005) as Registered by the Native Title Registrar on the 9th May 2017.

Native Title Determination Application WAD258/2012 Warrwa Combined (WC2014/004) as Registered by the Native Title Registrar on the 26th November 2014.

Native Title Determination Application WAD104/2011 Mawadjala Gadjidgar (WC2011/003) as Registered by the Native Title Registrar on the 23rd June 2011.

Native Title Determination Application WAD357/2013 Jabirr Jabirr (WC2013/007) as Registered by the Native Title Registrar on the 14th November 2013.

Native Title Determination Application WAD374/2013 Goolarabooloo People (WC2013/008) as Registered by the Native Title Registrar on the 12th December 2013.

Native Title Determination Application WAD6255/1998 Mayala (WC1998/039) as Registered by the Native Title Registrar on the 28th July 2005.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Graphic Services (Landgate) 4th April 2018

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Part 2 – Areas excluded from the determination

The following areas are excluded from the determination:

- (a) all that land comprising that portion of Lot 259 as shown on Deposited Plan 220696 that is wholly within the external boundary of Petroleum Exploration Permit EP 436 R1 (as defined by The Department of Mines, Industry Regulation and Safety as at 11th November 2014); and
- (b) all that land comprising that portion of Lot 851 as shown on Deposited Plan 66631 that is wholly within the external boundary of Mining Exploration Licence E04/2084 (as defined by The Department of Mines, Industry Regulation and Safety as at 17th July 2014).

Schedule 2 – The areas where native title does and does not exist

[See paragraphs 1 and 2 of the Determination]

Part 1 – Areas where native title exists

Native title exists in all parts of the Determination Area other than those described in Part 2.

Part 2 – Areas where native title does not exist

Native title does not exist in the following parts of the Determination Area:

Public Works

Roads

Note: The "road numbers" identified at the beginning of each sub-paragraph below is a reference to the number of a road which was set out by the affidavit of Paul Terrence Godden filed on 16 December 2015 (marked as exhibit WA10 in WAD 359/2013) and which area is otherwise marked and labelled on the maps in Schedule 8.

- (1) The land and waters of the following roads:
 - (a) Road 03, BEING that area which is marked as road and bounded by a green border on diagram 56586;
 - (b) Road 04, BEING that area which is marked as road and within an area bounded by a green border on diagram 12362;
 - (c) Road 05, BEING the area designated as Road 15967 and described by publication in the Western Australian Government Gazette on 2 June 1978 as follows:

A strip of land 40 metres wide, commencing at the northwestern side of Great Northern Highway at a southeastern corner of Dampier Location 70 and extending as shown coloured red on Miscellaneous Plans 470 (1) and (2) generally northeastward through Reserve No. 25716 and Pastoral Lease 3114/810 thence northward and again northeastward through Lease 398/461 to terminate at a Northern boundary of the last mentioned lease;

- (d) Road 09, BEING the area designated as Road 6241 and described, by publication in the Western Australian Government Gazette on 5 September 1919, as follows:

A strip of land, 10 chains wide, commencing at the North boundary of the Broome Townsite Reserve about one mile from the sea-coast, and extending in a North-Easterly direction through Pastoral Leases 1126/98 (Passing near Bones Well), 1111/98, 1087/98, 981/98 (passing near Wanganup Well), 849/98, 243/98, and 328/98 to the Waterbanks Spring in the latter; thence North Westerly through Leases 328/98 and 827/98 for a distance of about 700 chains; thence North-Easterly through Lease 827/98 and Reserves Nos. 1012 and 1834 to the North-Western corner of Dampier Location 6; thence North-Easterly through Reserve No 1834 and Lease 375/98 for a distance of about 155 chains; thence Northerly through Lease 375 and 871/98 to about four miles East and three miles North of the latter's South-West corner; thence in a North-Easterly direction through Leases 871/98 and 1922/98 to Cape Leveque (Plans 136/300 and 138/300);

- (e) Road 10, BEING the area designated as Road 6863 and described by publication in the Western Australian Government Gazette on 9 February 1923, as follows:

A strip of land, two chains wide, leaving the Northern boundary of Reserve No. 631 at a point about 60 chains East of Duncan's Well, and extending in a North-North-Easterly direction through Pastoral Leases 1126/98, 1111/98, 1087/98, 981/98, 849/98, 243/98, 416/98, and 328/98 to Waterbanks Rock in the latter lease; thence North-Easterly through said Lease 328/98 and Leases 988/98 and 827/98 to a surveyed road at the South East corner of Dampier Location 5 (Plans 135 and 136/300);

- (f) Constructed Portion of the Broome Cape Leveque Road, BEING that portion of the Broome to Cape Leveque Road which is depicted on Deposited Plan 49462 and which is an area 80 metres wide which commences from the north boundary of Road 01 and Road 05 and extends through portions of Reserve 1834 and Reserve 22615 before joining Road 15970 at a point outside the Determination Area.

East Island Lighthouse and adjacent areas

- (2) The land and waters upon which the aid to navigation named the East Island Lighthouse is situated and the adjacent areas within the meaning of s 251D of the *Native Title Act*, being the land and waters within the following description:
- (a) Starting at coordinates 16° 57.256' Latitude South and 122° 9.631' Longitude East; and
 - (b) Moving north easterly through the coordinates 16° 56.419' Latitude South and 122° 9.932' Longitude East;
 - (c) Moving north easterly to the coordinates 16° 53.403' Latitude South and 122° 11.331' Longitude East;
 - (d) Moving north easterly to the coordinates 16° 51.139' Latitude South and 122° 12.588' Longitude East;
 - (e) Moving south easterly to the coordinates 16° 51.686' Latitude South and 122° 13.487' Longitude East;
 - (f) Moving south westerly to the coordinates 16° 53.712' Latitude South and 122° 12.399' Longitude East;
 - (g) Moving south easterly to the coordinates 16° 54.494' Latitude South and 122° 15.079' Longitude East;
 - (h) Moving south westerly to the coordinates 16° 55.332' Latitude South and 122° 14.769' Longitude East;
 - (i) Moving north westerly to the coordinates 16° 54.416' Latitude South and 122° 12.000' Longitude East;
 - (j) Moving south westerly to the coordinates 16° 57.251' Latitude South and 122° 10.601' Longitude East; and
 - (k) Moving westerly back to the coordinates 16° 57.256' Latitude South and 122° 9.631' Longitude East.

Reserves

- (3) The land and waters of the following reserves:
- (a) Reserve 7279, BEING a reserve set aside for the purpose of "conservation of flora and fauna" located on Lots 304, 305, 306 and 307 on Plan 240352;

- (b) Reserve 29983 (Coloumb Point Nature Reserve), BEING a reserve set aside for the purpose of "conservation of flora and fauna" located on Dampier Location 77;
- (c) Reserve 37168 (over part of which lease H612291 exists, which lease is identified in the list of leases in this Schedule), BEING a reserve set aside for the purpose of "conservation, navigation, communication, meteorology and survey" located on Lot 303 on Plan 92004;
- (d) Reserve 38436, BEING a reserve set aside for the purpose of "health clinic and associated staff housing" and which is located on Lot 212 on Plan 12362;
- (e) Reserve 44298, BEING a reserve set aside for the purpose of "navigation, communication, meteorology and survey" and which is located on Lot 240 on Plan 189239; and
- (f) Reserve 51146 BEING a reserve set aside for the purpose of "harbour purposes" and which is located on Lot 450 on Plan 69951.

Freehold

- (4) The area of the following freehold:
 - (a) CT 2210/074 BEING an estate in fee simple over land described as Lot 403 on Deposited Plan 195035 with the registered proprietor being the Roman Catholic Bishop of Broome.

Leases

- (5) The areas of the following leases:
 - (a) General Lease M199002 for the permitted use of "Land base in support of pearling", covering Lot 224 on Deposited Plan 216717;
 - (b) Reserve Lease H612291 (which lease exists over Reserve 37168, identified in the list of Reserves in this Schedule) to the Australian Maritime Safety Authority and covering Dampier Location 303 on Reserve Diagram 1010; and
 - (c) General Lease H583526 for the purpose of "Horticulture" and covering Lot 398 on Deposited Plan 194609.

Area of unallocated Crown land

- (6) UCL 67 BEING an area of unallocated Crown land generally located in King Sound and proximate to the eastern-most south-eastern corner of the Determination Area.

Schedule 3 – Native Title Holders

[See paragraph 3 of the Determination]

Jabirr Jabirr/Ngumbarl people

Jabirr Jabirr/Ngumbarl people are the living persons who are the descendants of one or more of the following ancestors, including by adoption in accordance with the traditional laws and customs of the native title holders:

Gadalargan; Murrjal; Dorothy Kelly; Liddy Kenagai; Liddy Skinner; Bernal; Wallai William & Mary Nelagumia; Senanus; Frank Walmandu; Sophie McKenzie; Frank Dixon (aka Frank Dinghi); Nabi; Appolonia; Dorothy (sister of Senanus); Agnes Imbarr; Deborah & Jacky; Ethyl Jacky; Alice Darada; Milare & Kelergado; Matilda; Louisa; Flora; Madeline; Fred/Friday Walmadang; and Walamandjin.

Nyul Nyul people

Nyul Nyul people are the living persons who are the descendants of one or more of the following ancestors, including by adoption in accordance with the traditional laws and customs of the native title holders:

Malambor (Tjanganbor); Ringarr Augustine; Alice Kotonel Wright; Bismarck; Kokanbor and Felix Nortingbor and Victor; Abraham Kongudu; Narcis Yumit, Peter Biyarr, Anselem and Patrick (brothers); Patrick Mouda; and Kandy.

Nimanburr people

Nimanburr people are the living persons who are the descendants of one or more of the following ancestors, including by adoption in accordance with the traditional laws and customs of the native title holders:

Mary and Din Din (sisters); Jidnyambala; and Bobby Ah Choo.

Schedule 4 – How the native title is held

[See paragraph 3 of the Determination]

The native title is held by the native title holders as follows:

- (1) Jabirr Jabirr/Ngumbarl people hold native title in that part of the Determination Area coloured yellow in Map A of Schedule 8 (in this schedule, **the map**) which part includes the areas Carnot Bay, Ngadalargin (Baldwin Creek), and Twin Peaks (Warnjinmirr and Djibbinj) as labelled on the map and the waters adjoining those areas;
- (2) Nyul Nyul people hold native title in that part of the Determination Area coloured blue in the map, which part includes the areas Beagle Bay (Ngarlan), Middle Lagoon, Chimney Rocks, Binduk, Loongabid, Weedong, Henry Well, Djilang, Djugark, Murphy Creek, Tappers Inlet, Neem, Banana Well (Burrjuk) and Bungarduk as labelled on the map and the waters adjoining those areas;
- (3) Nimanburr people hold native title in that part of the Determination Area coloured red on the map, which part includes the areas Goodenough Bay, Fraser River, Dora Spring, Valentine Island, Madarr, La Djadarr, Lake Paterson and Disaster Bay as labelled on map and the waters adjoining those areas;
- (4) Jabirr Jabirr/Ngumbarl people, Nyul Nyul people and Nimanburr people hold native title in that part of the Determination Area coloured white on the map, for their respective rights and interests in accordance with traditional laws and customs; but the rights and interests of Nimanburr people do not extend west of the section of the Broome to Cape Leveque Road shown on Map A in Schedule 8.

Note 1: for the avoidance of doubt, the areas coloured yellow, blue and red on the map are areas uncontroversially identified by reference to language identity and it is to be understood that Jabirr Jabirr/Ngumbarl, Nyul Nyul and Nimanburr areas respectively may extend beyond the edging of the coloured areas.

Schedule 5 – Where Native Title is Exclusive Possession

[See paragraph 4 of the Determination]

Note: A reference in any part of this Determination to a parcel of unallocated Crown land in the form "UCL #" is a reference to the number of a given parcel of UCL which was set out by the affidavit of Paul Terence Godden filed on 16 December 2015 (marked as Exhibit WA10 in WAD 359/2013).

The parts of the Determination Area where native title comprises the rights and interests set out in paragraph 4 of the Determination are the following parts, being the parts of the Determination Area to which sections 47A and 47B of the *Native Title Act* respectively apply, as generally shown on the Maps in Schedule 8.

Areas to which s 47A applies

- (1) Reserve 1012, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" being located on Lots 348 and 361 on Plan 91101.
- (2) Reserve 1834, BEING a reserve set aside for the purpose of "use and benefit of Aborigines" being located on Lot 246 on Plan 91725.
- (3) Reserve 22615, BEING a reserve set aside for the purpose of "use and benefit of Aborigines" being located on Lot 26 on Plan 221072.
- (4) Reserve 46572, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" being located on Lot 375 on Plan 219679.
- (5) Reserve 46705, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" being located on Lot 429 on Plan 106140.
- (6) Reserve 46706, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" being located on Lot 430 on Plan 106142.
- (7) CT 320/168, BEING an estate in fee simple over land described as Lot 8 on Deposited Plan 106143, with the registered proprietor being the Roman Catholic Vicar Apostolic of the Kimberleys of Broome.

- (8) CT 1635/760, BEING an estate in fee simple over land described as Lot 4 on Diagram 56586, with the registered proprietor being the Aboriginal Lands Trust of 256 Adelaide Terrace, Perth.
- (9) CT 2221/075, BEING an estate in fee simple over land described as Lot 402 on Deposited Plan 219679, with the registered proprietor being the Aboriginal Lands Trust of 197 Saint Georges Terrace, Perth.
- (10) CT 2891/194, BEING an estate in fee simple over land described as Lot 33 on Deposited Plan 73719, with the registered proprietor being the Aboriginal Lands Trust of 151 Royal Street, East Perth.
- (11) CT 2891/195, BEING an estate in fee simple over land described as Lot 9000 on Deposited Plan 73719, with the registered proprietor being the Aboriginal Lands Trust of 151 Royal Street, East Perth.
- (12) Makalaba Lane, BEING a road which is shown on Deposited Plan 73719 and which generally joins Felix Avenue and Beagle Bay Road.
- (13) Felix Avenue, BEING a road which is shown on Deposited Plan 73719 and which generally joins Makalaba Lane on the northern boundary of Felix Avenue.
- (14) General Lease K145618, BEING a lease over Lot 223 on Deposited Plan 187725, granted to Goojar Goonyool Aboriginal Corporation for the permitted use of "whale research and use and benefit of Aboriginal people".

Areas to which s 47B applies

- (15) Each of the following areas of unallocated Crown land: UCL 14; UCL 61; UCL 65, UCL 78, UCL 116, UCL 138; that part of UCL 139 which is not in the area described in paragraph (a) of Schedule 1 Part 2; UCL 141; UCL 148; UCL 151; that part of UCL 152 which is not in the area described in paragraph (b) of Schedule 1 Part 2.
- (16) Each other area of unallocated Crown land within the Determination Area, excluding UCL 48, to the extent (if any) that it extends landward of the high water mark.

Schedule 6 – Where Native Title is not Exclusive Possession

[See paragraph 5 of the Determination]

The parts of the Determination Area where native title comprises the rights and interests set out in paragraph 5 of the Determination are all parts where native title exists other than those referred to in Schedule 5, as generally shown on the Maps in Schedule 8. For the avoidance of doubt, those parts are the following areas:

Areas of unallocated Crown land

- (1) UCL 48.

Areas seaward of the high water mark

- (2) Each area of unallocated Crown land to the extent (if any) that such area is not included in paragraph 16 of Schedule 5. (For the avoidance of doubt, for the purposes of this paragraph, UCL 48 is not to be taken as included in paragraph 16 of Schedule 5).

Lease areas

- (3) The areas of the following leases:
 - (a) Pastoral Lease N050014 covering Lot 850 on DP 66632, known as Country Downs pastoral lease;
 - (b) Pastoral Lease N050224 covering Lot 263 on DP 194605, known as Kילו pastoral lease; and
 - (c) Pastoral Lease N050161 covering Dampier Location 265 on DP 29347, known as Mt Jowlaenga pastoral lease.

Road

- (4) Road 01, BEING Lots 300 and 301 on Deposited Plan 66643.

Other areas

- (5) Any other area not identified in Schedule 2 Part 2 or Schedule 5.

Schedule 7 – Other Interests

[See paragraph 9 of the Determination]

The nature and extent of other interests in relation to the Determination Area are the following as they exist as at the date of this determination:

Reserves

- (1) The interests of persons who have the care, control and management of the following reserves, and the interests of persons entitled to access and use these reserves for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights:
 - (a) Reserve 1012, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" located on Lots 348 and 361 on Plan 91101;
 - (b) Reserve 1834, BEING a reserve set aside for the purpose of "use and benefit of Aborigines" located on Lot 246 on Plan 91725;
 - (c) Reserve 22615, BEING a reserve set aside for the purpose of "use and benefit of Aborigines" located on Lot 26 on Plan 221072;
 - (d) Reserve 46572, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" located on Lot 375 on Plan 219679;
 - (e) Reserve 46705, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" located on Lot 429 on Plan 106140; and
 - (f) Reserve 46706, BEING a reserve set aside for the purpose of "use and benefit of Aboriginal inhabitants" located on Lot 430 on Plan 106142.

Leases

- (2) The rights and interests of the holders of:
 - (a) Pastoral Lease N050014 covering Lot 850 on DP 66632, known as Country Downs pastoral lease;
 - (b) Pastoral Lease N050224 covering Lot 263 on DP 194605, known as Kilty pastoral lease;
 - (c) Pastoral Lease N050161 covering Dampier Location 265 on DP 29347, known as Mt Jowlaenga pastoral lease; and

- (d) General Lease K145618, BEING a lease over Lot 223 on Deposited Plan 187725, granted to Goojar Goonyool Aboriginal Corporation for the permitted use of "whale research and use and benefit of Aboriginal people".
- (3) The interests of persons holding valid or validated leases over areas of the reserves identified in this Schedule.

Freeholds

- (4) The rights and interests of the holders of:
 - (a) CT 320/168, BEING an estate in fee simple over land described as Lot 8 on Deposited Plan 106143, with the registered proprietor being the Roman Catholic Vicar Apostolic of the Kimberleys of Broome;
 - (b) CT 1635/760, BEING an estate in fee simple over land described as Lot 4 on Diagram 56586, with the registered proprietor being the Aboriginal Lands Trust of 256 Adelaide Terrace, Perth;
 - (c) CT 2221/075, BEING an estate in fee simple over land described as Lot 402 on Deposited Plan 219679, with the registered proprietor being the Aboriginal Lands Trust of 197 Saint Georges Terrace, Perth;
 - (d) CT 2891/194, BEING an estate in fee simple over land described as Lot 33 on Deposited Plan 73719, with the registered proprietor being the Aboriginal Lands Trust of 151 Royal Street, East Perth; and
 - (e) CT 2891/195, BEING an estate in fee simple over land described as Lot 9000 on Deposited Plan 73719, with the registered proprietor being the Aboriginal Lands Trust of 151 Royal Street, East Perth.

Telstra

- (5) The following interests of Telstra Corporation Limited:
 - (a) rights and interests as the owner and operator of telecommunications facilities installed within the Determination Area, including customer radio terminals and telecommunications cabling;
 - (b) rights and interests created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications*

Corporation Act 1989 (Cth), the *Telecommunications Act 1991 (Cth)* and the *Telecommunications Act 1997 (Cth)*; and

- (c) rights of access by employees, agents or contractors of Telstra Corporation Limited to its telecommunications facilities in, and in the vicinity of, the Determination Area, in the performance of their duties.

Road

- (6) Rights or interests of members of the public, the State, Commonwealth or any local government arising in, on or in relation to Road 01, BEING Lots 300 and 301 on Deposited Plan 66643.

Petroleum Interests

- (7) The rights and interests of the holders of the following exploration permits under the *Petroleum and Geothermal Energy Resources Act 1967 (WA)*:
 - (a) EP 104;
 - (b) EP 436; and
 - (c) EP 487.

Mining Interests

- (8) The rights and interests of the holders of the following exploration licences under the *Mining Act 1978 (WA)*:
 - (a) EL 04/2083;
 - (b) EL 04/2084;
 - (c) EL 04/2159;
 - (d) EL 04/2192;
 - (e) EL 04/2193;
 - (f) EL 04/2194; and
 - (g) EL 04/2348.

Fishing and Pearling interests

- (9) The interests of the holders of statutory interests and exemptions granted under the *Fish Resources Management Act 1994* (WA), the *Pearling Act 1990* (WA), the *Fisheries Management Act 1991* (Cth) or any other legislative scheme for the control, management and exploitation of the living resources within the determination area.

Kimberley Marine Reserve

- (10) The rights and interests of the Commonwealth of Australia:
- (a) In the Kimberley Commonwealth Marine Reserve, as defined by Part 11 of Schedule 2 of the *Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013* (Cth);
 - (b) In the management of the Kimberley Commonwealth Marine Reserve, as set out in the *Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013* (Cth), including the rights and interests of the Director of National Parks;
 - (c) Under s 514B and s 514C of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) in relation to the Kimberley Commonwealth Marine Reserve, including the rights and interests of the Director of National Parks; and
 - (d) As defined in such other legislation as exists from time to time as it applies to the Kimberley Commonwealth Marine Reserve.

Horizon Power

- (11) The rights and interests of Horizon Power under the following:
- (a) Lease J966228 being that part of Lot 246 on Deposited Plan 91725 marked as "A" and shown hatched in black on Deposited Plan 52361;
 - (b) Sub lease K60598 being that part of Lot 246 on Deposited Plan 91725 marked as "A" and shown hatched in black on Deposited Plan 52361; and
 - (c) as owner of infrastructure and related assets relating to the delivery of electricity to homes and other buildings within the Beagle Bay and Bobieding Aboriginal Communities and being generally items of the following kinds:
 - (i) mini pillars;

- (ii) unmetered supply pits;
- (iii) universal pillars;
- (iv) pole mounted substations;
- (v) distribution substations;
- (vi) A-Frame rails;
- (vii) falcon metal rounds;
- (viii) streetlighting, including lamps and poles;
- (ix) box rails;
- (x) double box rails;
- (xi) mercury vapour lamps;
- (xii) mains;
- (xiii) above ground powerlines; and
- (xiv) underground powerlines.

Other

(12) The following rights and interests:

- (a) rights and interests held under valid and validated grants from the Crown pursuant to statute or in the exercise of its executive power or otherwise validly conferred by legislation (whether an Act or a Regulation);
- (b) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the:
 - (i) *Rights in Water and Irrigation Act 1914* (WA); and
 - (ii) *Aboriginal Communities Act 1979* (WA);
- (c) the rights and interests of the Australian Maritime Safety Authority:
 - (i) as the owner, manager or operator of aids to navigation (including the East Island Lighthouse) pursuant to s 190 of the *Navigation Act 2012* (Cth);
 - (ii) under, and as the lessee of, Reserve Lease H612291 on East Island;
- (d) the rights and interests of the Australian Fisheries Management Authority in relation to plans of management made under the *Fisheries Management Act*

1991 (Cth), including for the Western Tuna and Billfish Fishery and for the Western Skipjack Fishery;

- (e) the right to access the Determination Area by:
- (i) an employee or agent or instrumentality of the State;
 - (ii) an employee or agent or instrumentality of the Commonwealth; or
 - (iii) an employee or agent or instrumentality of any local government authority;
- as required in the performance of his or her statutory or common law duty where such access would be permitted to private land;
- (f) (Pursuant to section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) public access to and enjoyment of all of those areas which are seaward of:
- (i) Reserve 1012;
 - (ii) Reserve 1834, excluding:
 - A. that part of Reserve 1834 which abuts CT 320/168;
 - B. any area which is within Reserve 51146; and
 - C. UCL 67 (which is entirely abutted by Reserve 51146);
 - (iii) CT 320/168;
 - (iv) Reserve 7279;
 - (v) Reserve 22615, excluding:
 - A. that part of Reserve 22615 which abuts lease K 145618; and
 - B. Reserve 7279; and
 - (vi) Lease K 145618;
- being areas which are:
- (vii) waterways;
 - (viii) beds and banks or foreshores of waterways;
 - (ix) coastal waters; or
 - (x) beaches.

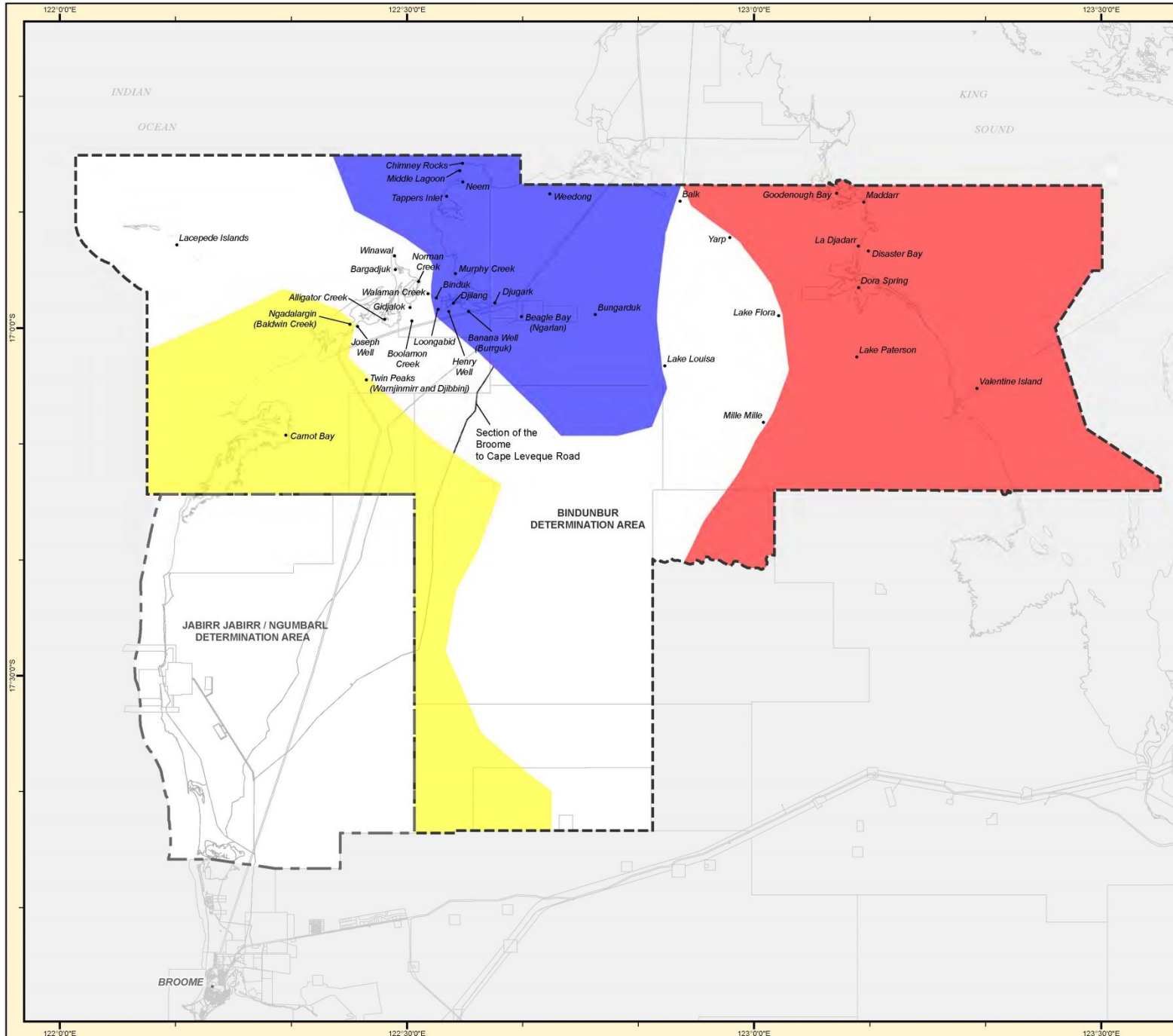
Note: For the avoidance of doubt, paragraph 12(f) of this Schedule does not

confer, create or entitle public access to or enjoyment of any area which is not identified in paragraph 12(f) above.

- (g) rights and interests of members of the public under the following:
 - (i) the public right to fish; and
 - (ii) the public right to navigate;
- (h) the international right of innocent passage through the territorial sea; and
- (i) rights or interests comprised in or conferred under or in accordance with the Canning-Kimberley Groundwater Area, proclaimed by proclamation published in the Western Australian Government Gazette on 2 May 1997.

Schedule 8 – The Maps

[See paragraph 12 of the Determination]



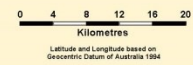
**BINDUNBUR
DETERMINATION OF NATIVE TITLE**
WAD 359 of 2013
SCHEDULE 8 - MAP A
SEE SCHEDULE 4

LEGEND

- Bindunbur Determination Area
- Jabirr Jabirr/Ngumbarl Determination Area
- Nyuul Nyul
- Nimanbur
- Nimanbur

Jabirr Jabirr/Ngumbarl, Nyuul Nyul and Nimanbur for their respective rights and interests in accordance with traditional laws and customs of the native title holders. Nimanbur rights and interests in this area do not extend west of Cape Leveque Road as marked.

Note: This map does not show the areas that are excluded from the Determination Area (Schedule 1 Part 2) or the areas where native title does not exist (Schedule 2 Part 2).



DATA SOURCES

Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB), 01 May 2014
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
 Topographical data sourced from the PSMA Dataset.
 Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 250K raster data © Commonwealth of Australia (Geoscience Australia) 2008.
 Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 Pastoral Leases terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
 Islands shown are Unallocated Crown Land (UCL) unless otherwise specified.
 Language Areas & Section of the Broome to Cape Leveque Road sourced from Kimberley Land Council.



DISCLAIMER

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 Waterlines shown on this map do not necessarily depict an exact cadastral boundary.
 Native title application boundaries interpolated from descriptions held by the National Native Title Tribunal (NNTT) and Federal Court.
 Reference should be made to the NNTT for confirmation of this boundary for any legal purposes.
 In the event of any discrepancy between the written application boundary description and the areas depicted on this map the written description shall take preference as the maps and/or enlargements are indicative only.

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BINDUNBUR

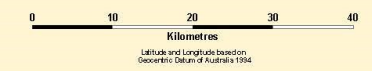
DETERMINATION OF NATIVE TITLE

WAD 359 of 2013

SCHEDULE 8 - MAP B

LEGEND

- DETERMINATION AREA
- EXCLUSIVE NATIVE TITLE AREAS (Schedule 5)
- NON-EXCLUSIVE NATIVE TITLE AREAS (Schedule 6)
- AREAS WHERE NATIVE TITLE DOES NOT EXIST (Schedule 2, Part 2)
- EXCLUSIVE NATIVE TITLE AREAS LANDWARD OF HIGH WATER MARK AND NON-EXCLUSIVE NATIVE TITLE AREAS SEAWARD OF HIGH WATER MARK (PARAGRAPH 16 OF SCHEDULE 5 AND PARAGRAPH 2 OF SCHEDULE 6)
- EXCLUDED AREAS (Schedule 1, Part 2)



DATA SOURCES

Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB), 01 May 2014
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
 Topographical data sourced from the P5MA Dataset.
 Road names sourced from Landgate Road Centreline Dataset.
 Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 Local Authorities term in use at Low Water Mark (LWM) unless otherwise specified.
 Pastoral Leases terminate 60 metres above High Water Mark (HWM) unless otherwise specified.
 Islands shown are Unallocated Crown Land (UCL) unless otherwise specified.
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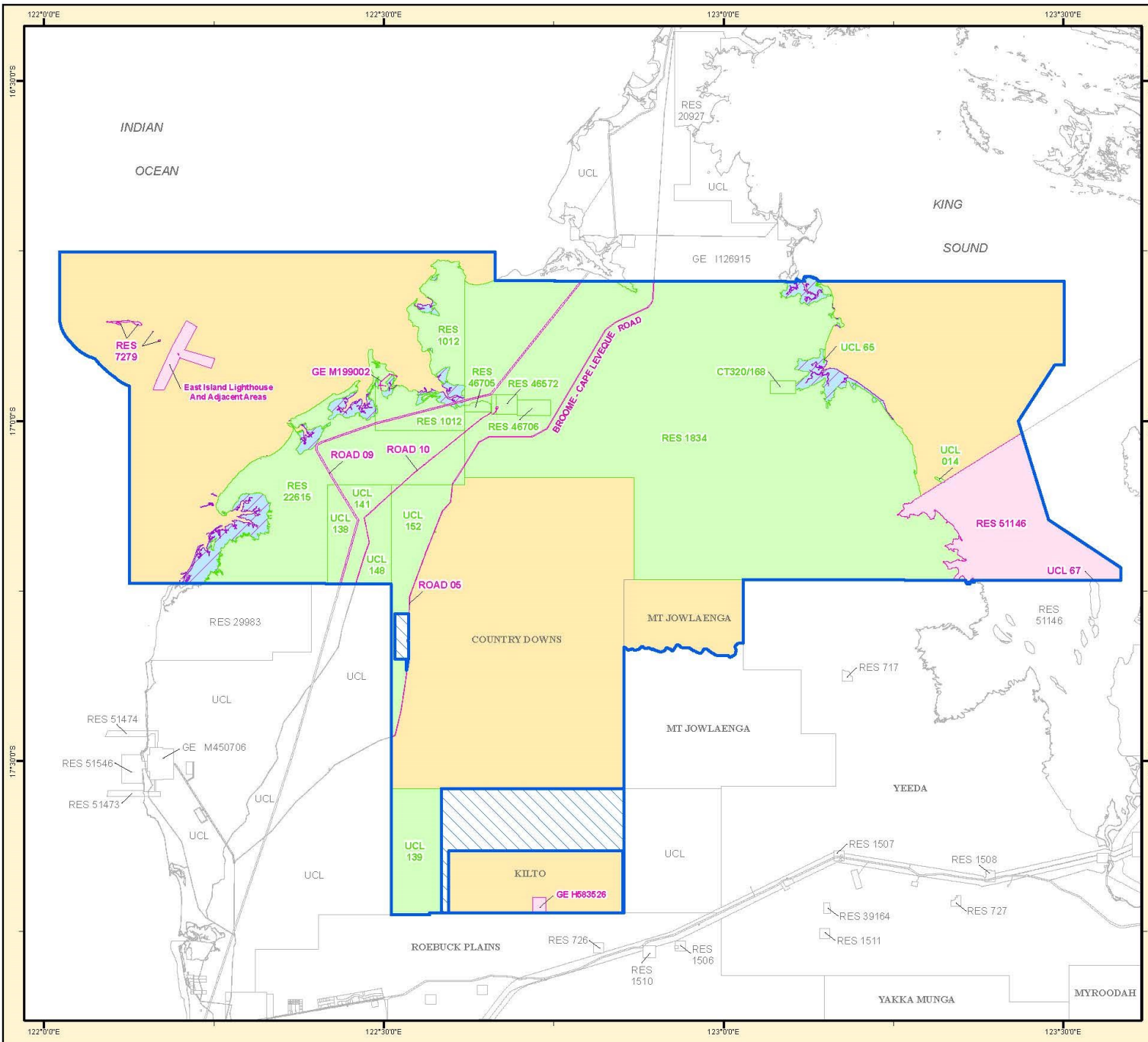
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BINDUNBUR DETERMINATION OF NATIVE TITLE WAD 359 of 2013 SCHEDULE 8 - MAP C

LEGEND

- DETERMINATION AREA
- EXCLUSIVE NATIVE TITLE AREAS (Schedule 5)
- NON-EXCLUSIVE NATIVE TITLE AREAS (Schedule 6)
- AREAS WHERE NATIVE TITLE DOES NOT EXIST (Schedule 2, Part 2)
- EXCLUSIVE NATIVE TITLE AREAS LANDWARD OF HIGH WATER MARK AND NON-EXCLUSIVE NATIVE TITLE AREAS SEAWARD OF HIGH WATER MARK (PARAGRAPH 16 OF SCHEDULE 5 AND PARAGRAPH 2 OF SCHEDULE 6)
- EXCLUDED AREAS (Schedule 1, Part 2)



Latitude and Longitude based on Geocentric Datum of Australia 1984

DATA SOURCES
 Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB), 01 May 2014
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset. Topographical data sourced from the P-SMA Dataset.
 Road names sourced from Landgate Road Centreline Dataset.
 Coastlines and shorelines are interpreted from aerial photography or records from ground surveys. Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 Pastoral Leases terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
 All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate. This map is indicative only.



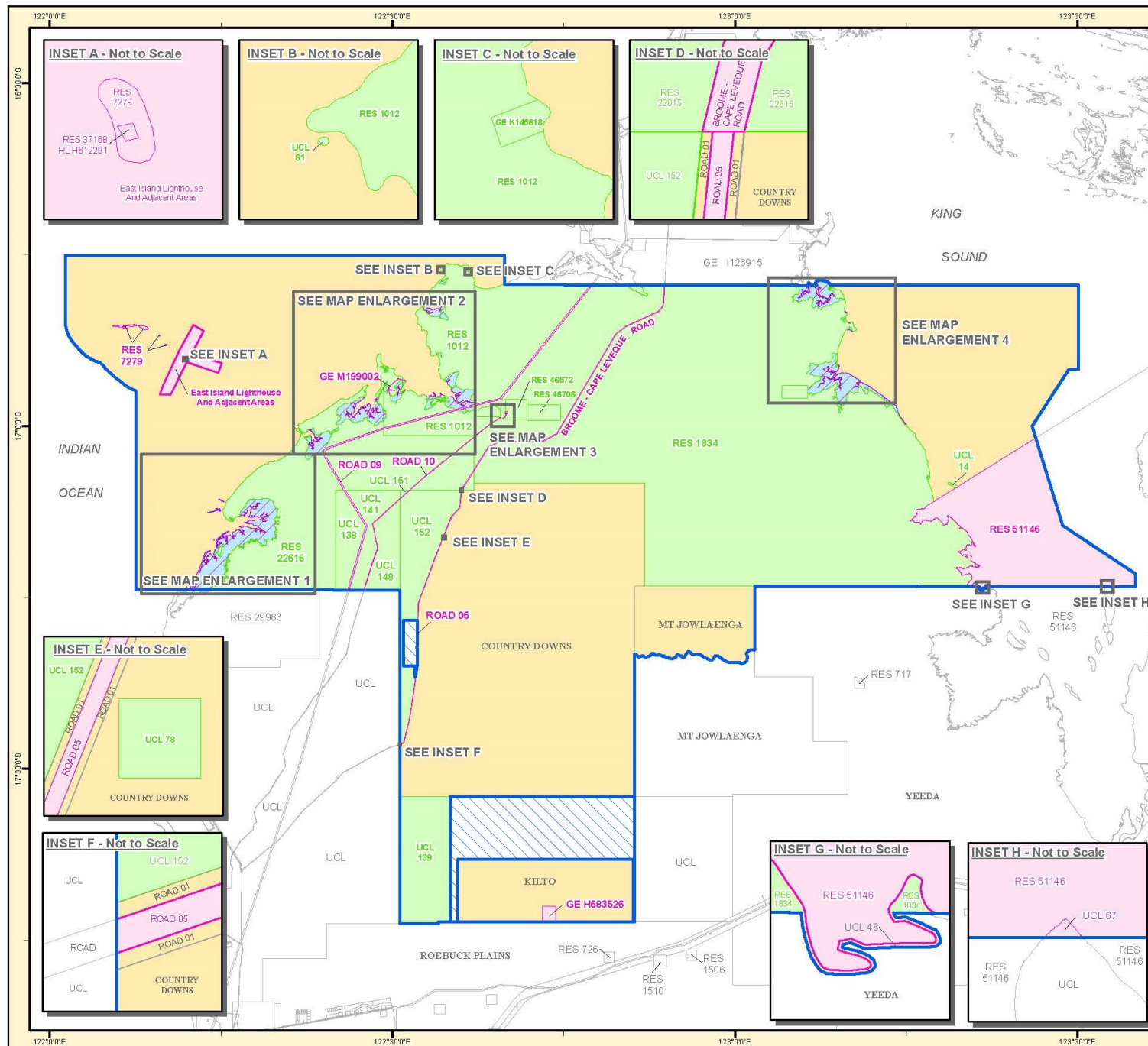
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 Native Title application boundaries interpreted from interpretations by the National Native Title Tribunal (NNTT) and Federal Court.
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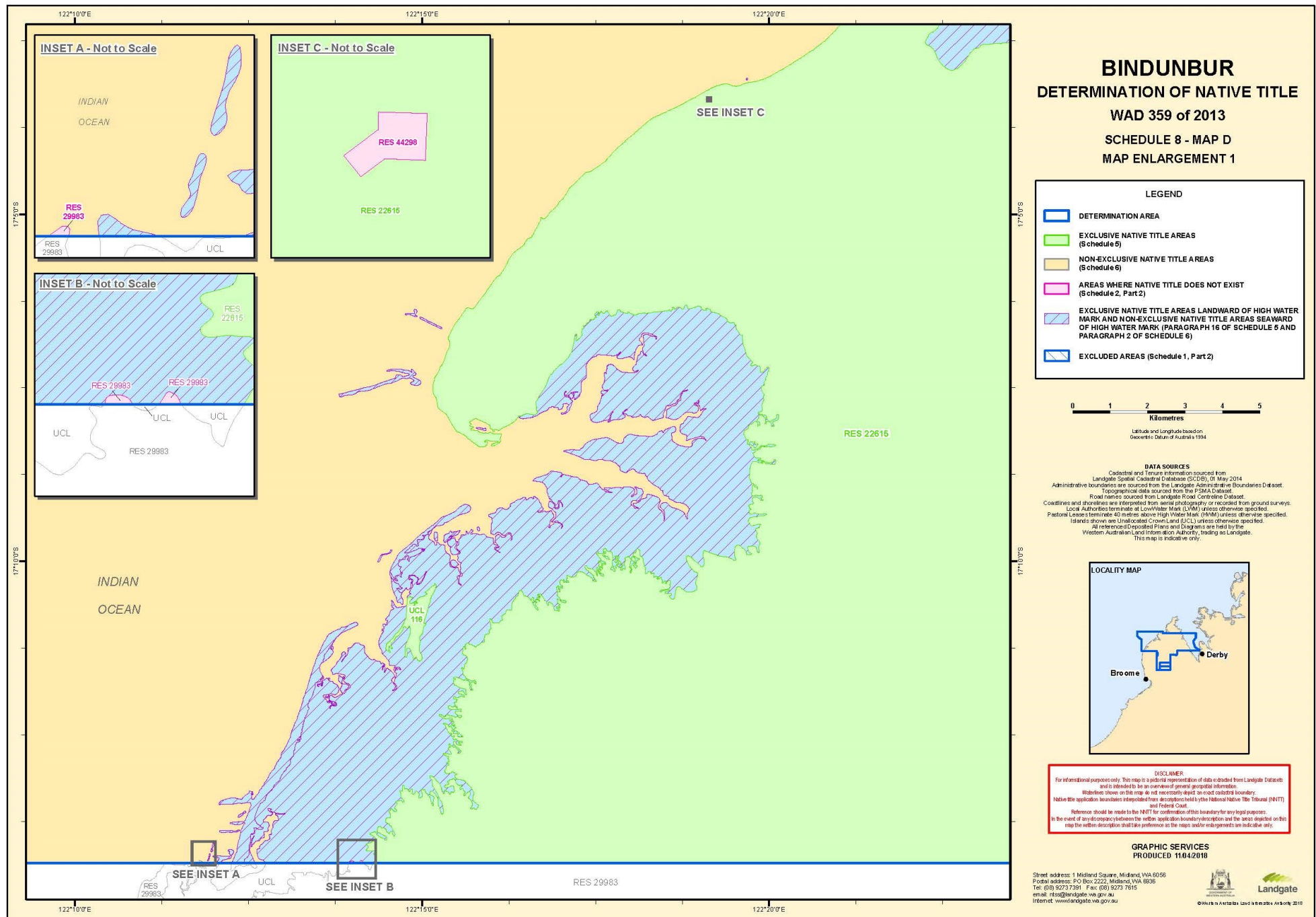
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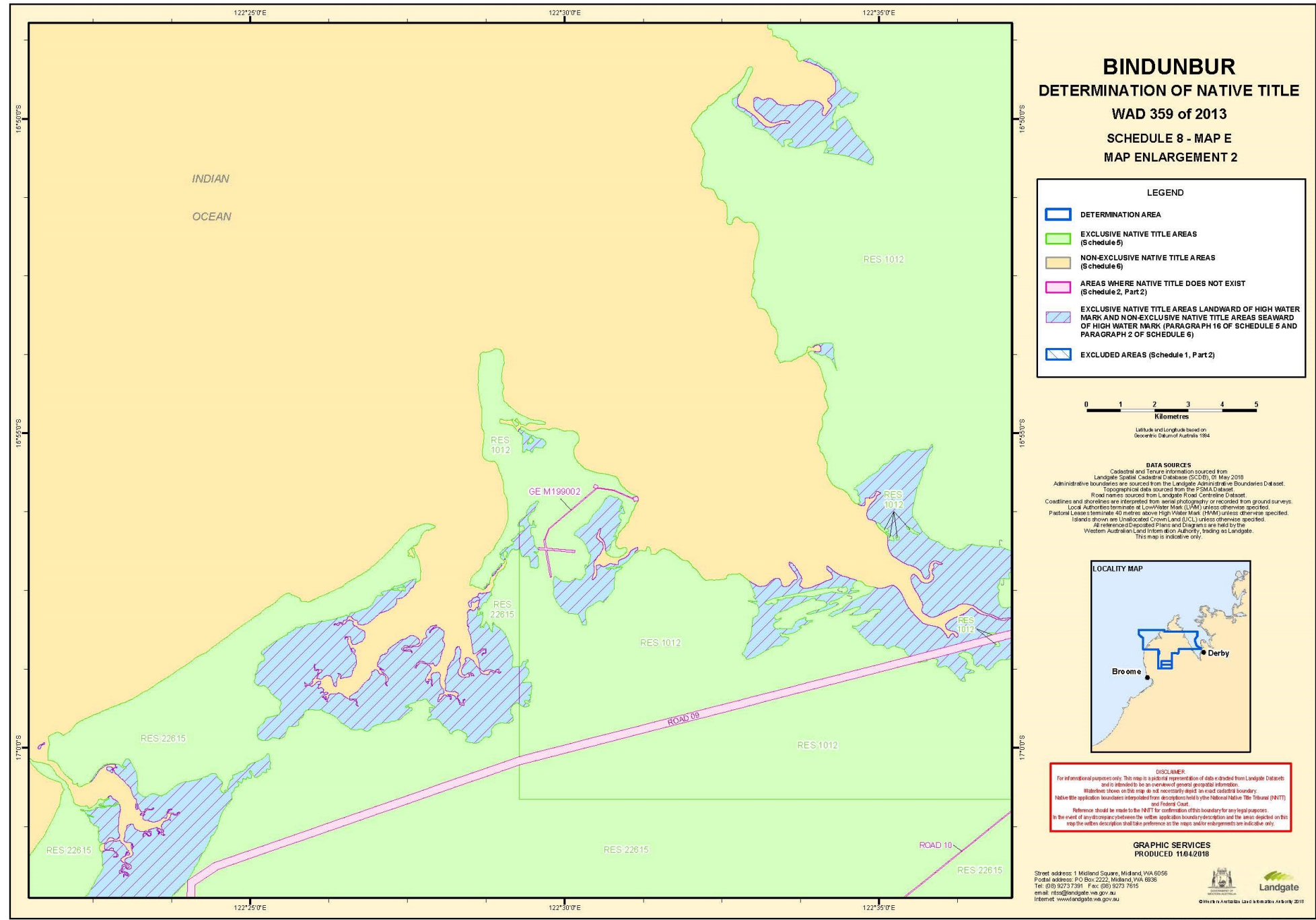
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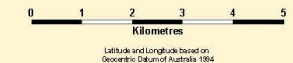




BINDUNBUR
DETERMINATION OF NATIVE TITLE
WAD 359 of 2013
SCHEDULE 8 - MAP E
MAP ENLARGEMENT 2

LEGEND

- DETERMINATION AREA
- EXCLUSIVE NATIVE TITLE AREAS (Schedule 5)
- NON-EXCLUSIVE NATIVE TITLE AREAS (Schedule 6)
- AREAS WHERE NATIVE TITLE DOES NOT EXIST (Schedule 2, Part 2)
- EXCLUSIVE NATIVE TITLE AREAS LANDWARD OF HIGH WATER MARK AND NON-EXCLUSIVE NATIVE TITLE AREAS SEAWARD OF HIGH WATER MARK (PARAGRAPH 16 OF SCHEDULE 5 AND PARAGRAPH 2 OF SCHEDULE 6)
- EXCLUDED AREAS (Schedule 1, Part 2)



DATA SOURCES
 Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB), 01 May 2018
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
 Topographical data sourced from the FSA Data Set.
 Road names sourced from Landgate Road Centreline Dataset.
 Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 Pastoral Leases terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
 Islands shown are Unincorporated Crown Land (UCL) unless otherwise specified.
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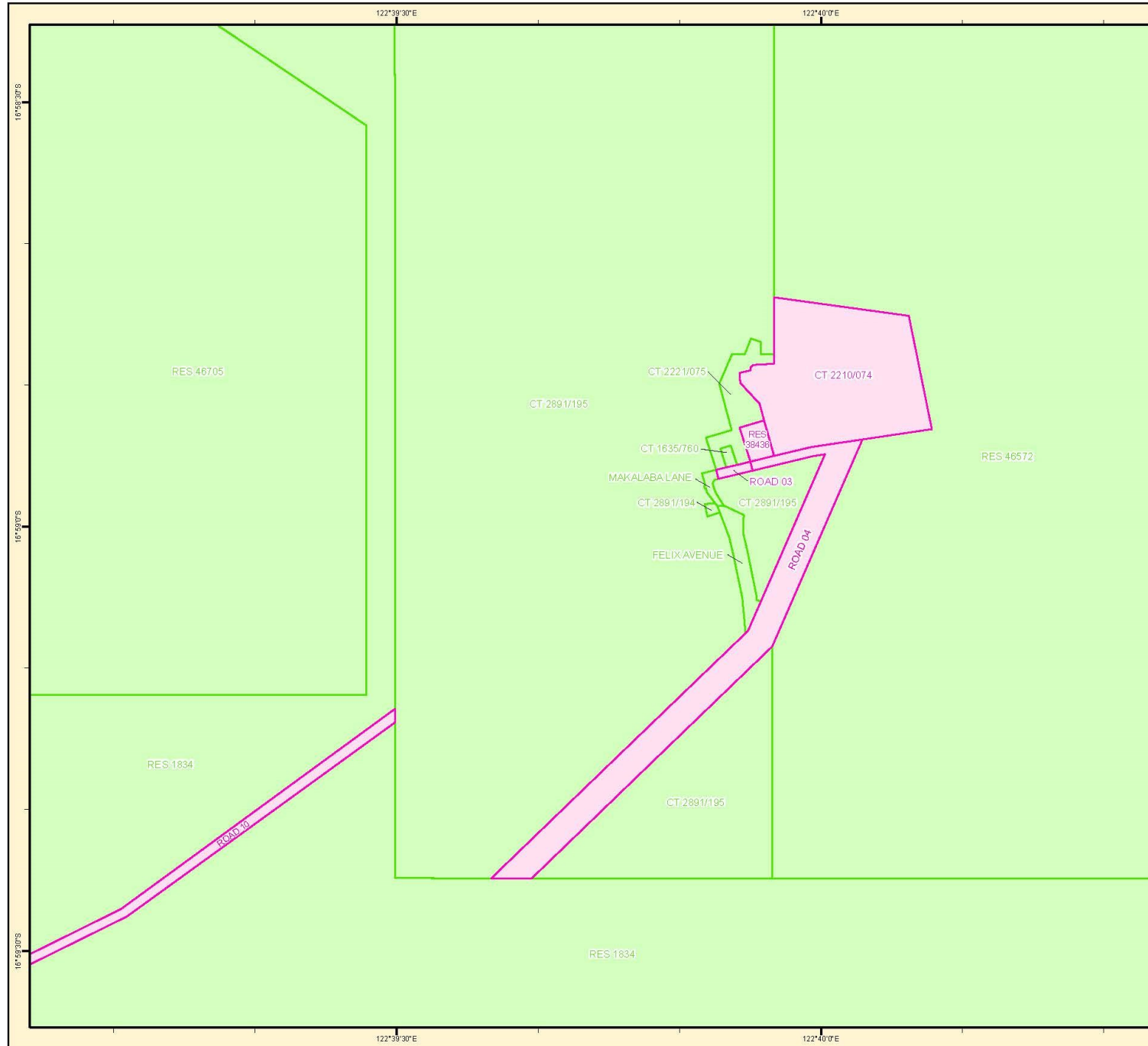


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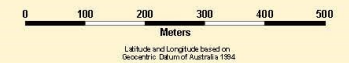
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BINDUNBUR
DETERMINATION OF NATIVE TITLE
WAD 359 of 2013
SCHEDULE 8 - MAP F
MAP ENLARGEMENT 3

LEGEND

- DETERMINATION AREA
- EXCLUSIVE NATIVE TITLE AREAS (Schedule 5)
- NON-EXCLUSIVE NATIVE TITLE AREAS (Schedule 6)
- AREAS WHERE NATIVE TITLE DOES NOT EXIST (Schedule 2, Part 2)
- EXCLUSIVE NATIVE TITLE AREAS LANDWARD OF HIGH WATER MARK AND NON-EXCLUSIVE NATIVE TITLE AREAS SEAWARD OF HIGH WATER MARK (PARAGRAPH 16 OF SCHEDULE 5 AND PARAGRAPH 2 OF SCHEDULE 6)
- EXCLUDED AREAS (Schedule 1, Part 2)



DATA SOURCES
 Cadastral and Tenure information sourced from Landgate Spatial Cadastral Database (SCDB), 02 January 2018
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
 Topographical data sourced from the 1:50,000 dataset.
 Road names sourced from Landgate Road Centreline Dataset.
 Coastlines and shorelines are interpreted from aerial photography or recorded from ground surveys.
 Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 Factual Lines terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
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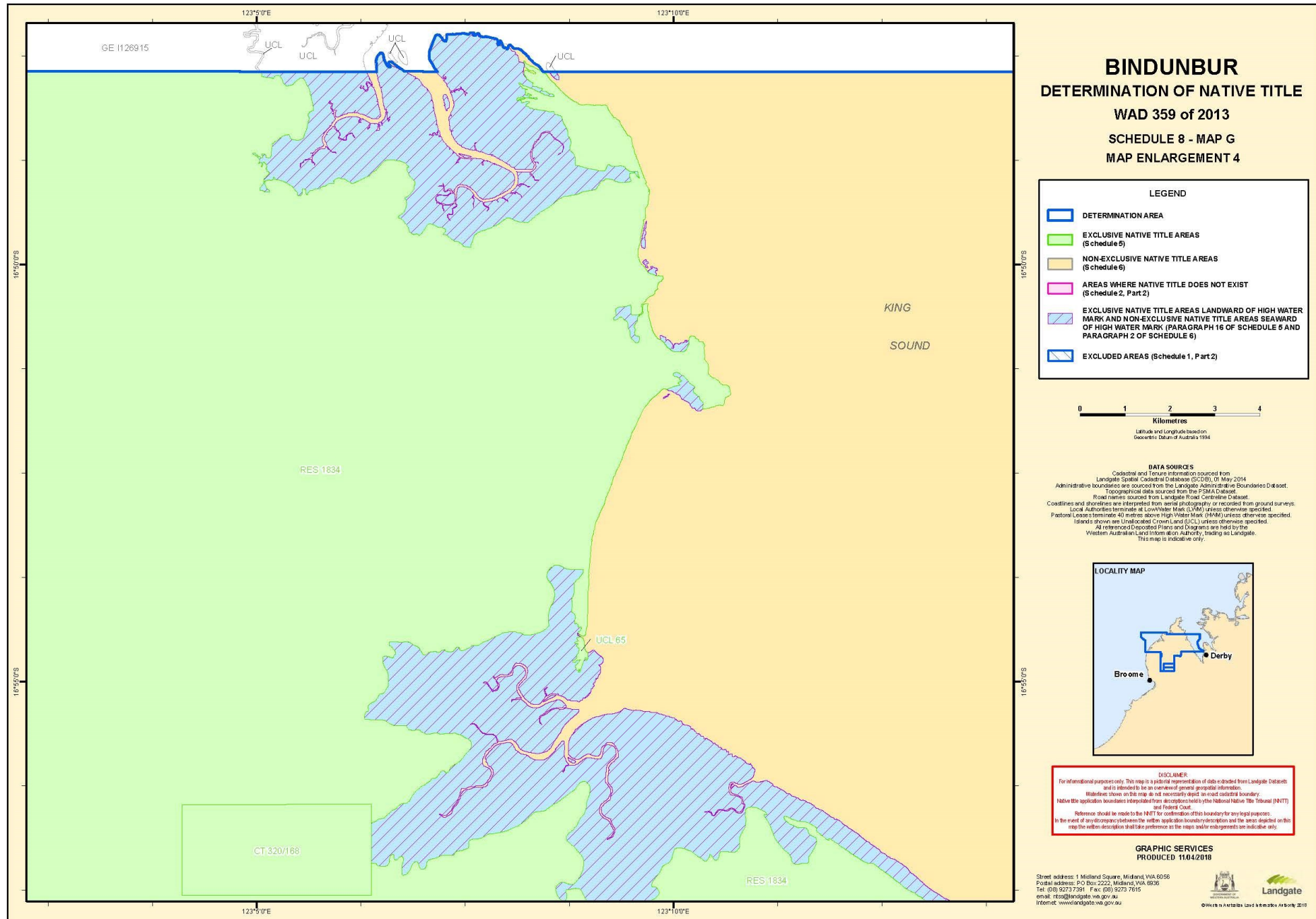


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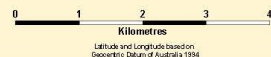
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BINDUNBUR
DETERMINATION OF NATIVE TITLE
WAD 359 of 2013
SCHEDULE 8 - MAP G
MAP ENLARGEMENT 4

LEGEND

- DETERMINATION AREA
- EXCLUSIVE NATIVE TITLE AREAS (Schedule 5)
- NON-EXCLUSIVE NATIVE TITLE AREAS (Schedule 6)
- AREAS WHERE NATIVE TITLE DOES NOT EXIST (Schedule 2, Part 2)
- EXCLUSIVE NATIVE TITLE AREAS LANDWARD OF HIGH WATER MARK AND NON-EXCLUSIVE NATIVE TITLE AREAS SEAWARD OF HIGH WATER MARK (PARAGRAPH 16 OF SCHEDULE 5 AND PARAGRAPH 2 OF SCHEDULE 6)
- EXCLUDED AREAS (Schedule 1, Part 2)



Latitude and Longitude based on Geostatic Datum of Australia 1984

DATA SOURCES
 Cadastral and Tenure information sourced from Landgate Spatial Cadastre Database (SCDB), 01 May 2014
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset.
 Topographical data sourced from the PSM A Dataset.
 Road names: sourced from Landgate Road Centrelines Dataset.
 Coastlines and shorelines are interpreted from aerial photography, or recorded from ground surveys.
 Local Authorities terminate at Low Water Mark (LWM) unless otherwise specified.
 Pastoral Lease's terminate 40 metres above High Water Mark (HWM) unless otherwise specified.
 Islands shown are Unincorporated Crown Land (UCL) unless otherwise specified.
 All references to Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.
 This map is indicative only.



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SCHEDULE OF PARTIES

WAD 359 of 2013

Applicant	CECILIA CHURNSIDE ALEC DANN BETTY DIXON WALTER KOSTER PHILLIP MCCARTHY
Respondents	COMMONWEALTH OF AUSTRALIA SHIRE OF BROOME SHEFFIELD RESOURCES LIMITED JAMIE PETER BURTON VICTORIA JANE BURTON KURT ELEZOVICH YEEDA STATION PTY LTD JD ARROW SJ ARROW