



## Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD25/2019  
NNTT number: WC2015/007

**Application Name:** Ernest Damien Manado & Ors v State of Western Australia & Ors (Bindunbur)

**Application Type:** Claimant

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

**Date application filed:** 18/12/2015

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**Current status:** Full Approved Determination - 13/11/2019

**Registration information:** Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

**Date claim entered on Register of Native Title Claims:** 24/03/2016

**Registration decision status:** Accepted for registration

**Registration history:** Registered from 24/03/2016 to 15/11/2019,

**Date claim / part of claim determined:** 13/11/2019 , 02/05/2018

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**Applicants:** Ernest Damien Manado, Alec Dann, Walter Koster, Cecilia Churnside, Betty Dixon, Phillip McCarthy

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## Additional Information

On 2 May 2018, the Federal Court made a determination that native title exists in parts of the application area - see Ernest Damien Manado & Ors and State of Western Australia & Ors (Bindunbur) (unreported, FCA, 2 May 2018, North J). That determination is attached to this Extract. The determination of native title was entered on the National Native Title Register (NNTR) on 15 May 2018. Pursuant to s 190(4)(da) of the Native Title Act 1993 (Cth) those areas where it has been determined that native title exists will remain on the Register of Native Title Claims (RNTC) until a Prescribed Body Corporate is determined in relation to those areas and registered on the NNTR. The native title holders had 12 months from the determination date to nominate a Prescribed Body Corporate (or such further time as the Court may allow): see Order 2 of the determination. Those areas where native title has been determined not to exist were removed from the RNTC as and from 2 May 2018. On 22 January 2019, the Federal Court made a determination that native title exists in the entire application area - see Manado (on behalf of the Bindunbur Native Title Claim Group) v State of Western Australia [2019] FCA 30. Order 4 of the determination provides that “[p]roceeding WAD359/2013 is dismissed, to the extent of its overlap with the area of this proceeding WAD128/2018”. In addition, that part of the application area that remains undetermined will remain on the Register of Native Title Claims pursuant to s 190(4)(e). On 29 January 2019, the Federal Court ordered that Attachment A to the orders made on 2 May 2018 be amended to give effect to the Full Court's reasons for judgment published on 20 December 2018 in Manado on behalf of the Bindunbur Native Title Claim Group v State of Western Australia [2018] FCAFC 238. On 21 August 2019 Justice Robertson ordered that the Gogolanyngor Aboriginal Corporation RNTBC; the Nimanburr Aboriginal Corporation RNTBC and the Nyul Nyul PBC Aboriginal Corporation RNTBC be the prescribed bodies corporate for this determination, and therefore this determination is finalised as at 21 August 2019. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application.

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### Persons claiming to hold native title:

The members of the native title claim group in aggregate comprise the descendants (including by adoption) of the following persons,

Murrjal

Dorothy Kelly

Liddy Kenagal

Liddy Skinner

Bornal

William Wallai & Mary Nelagumia

Senanus

Frank Walmandu & granddaughter Sophie McKenzie

Jimmy Bulongi (aka Frank Dinghi)

Nabi

Appolonia

Dorothy

Agnes Imbarr

Deborah & Jacky

Ethel Jacky

Alice Daradara

Matilda

Louisa

Milare & Kelergado

Flora

Madeline

Malambor (Tjanganbor)

Walmandjin & son Ringarr Augustine

Alice Kotonel Wright

Bismarck

Kokanbor and Felix Nortingbor and Victor

Abraham Kongudu

Narcis Yumit, Peter Biyarr, Anselem and Patrick (brothers)

Patrick Mouda

Kandy

Mary and Din Din

Jidnyambala and Bobby Ah Choo

Fred/Friday Walmadayin

being, generally, persons from buru or family group locations:

(a) In the southwest of the claim area generally (but not always) associated with the identifier label Jabirr Jabirr, which is sometimes referred to as including the identifier label Nyombal;

(b) in the northwest of the claim area and generally (but not always) associated with the identifier label Nyul Nyul; and

(c) in the northeast and east of the claim area generally (but not always) associated with the identifier label Nimanbur which in turn is sometimes associated with the identifier label Bardi (Nimanbur).

**Native title rights and interests claimed:**

Native title where traditional rights are wholly recognisable

11. Paragraph [12] applies to every part of the claim area:

(a) where there has been no extinguishment to any extent of native title or where any extinguishment is required to be disregarded; and

(b) which is not subject to the public right to navigate or the public right to fish.

12. Where this paragraph [12] applies the right possessed under traditional law and customs is properly interpreted as, and the native title right recognised by the common law of Australia is, the right of possession, occupation, use and enjoyment of land and waters as against all others.

Native title where traditional rights are partially recognisable

13. Paragraph [14] applies to every part of the claim area to which paragraph [12] does not apply.

14. Where this paragraph [14] applies, the right possessed under traditional law and customs is properly interpreted as the right of possession, occupation, use and enjoyment of land and waters as against all others, but the native title rights and interests recognised by the common law of Australia are the rights to do all such things as may be done under the right referred to in paragraph [12] save for controlling the access to or use the land or waters by others; being the (non-exclusive) rights to:

- (a) have access to, remain on and use the land and waters;
- (b) access and take the resources of the land and waters; and
- (c) protect places, areas and things of traditional significance on the land and waters.

Area covered by the native title and who holds the rights

15. Each of the native title rights referred to in each of paragraphs [12] and [14] exist in relation to the whole of each part of the claim area to which those paragraphs respectively apply and is held by the members of the native title claim group subject to and in accordance with traditional law and custom, as further described in paragraphs [42]-[62] in Schedule F.

Activities currently carried on

16. Activities in exercise of the native title rights referred to in Schedule E are all such activities as are contemplated by those rights and interests and include the activities identified in Schedule G.

Rights subject to laws of Australia

17. The members of the native title claim group acknowledge that their native title rights and interests are subject to and exercisable in accordance with valid and current laws of the Commonwealth and the State of Western Australia including the common law.

18. In this Schedule E, "resources" does not include such minerals, petroleum, geothermal energy or geothermal energy resources, if any, as are, under the laws of the Commonwealth and the State of Western Australia including the common laws at the date of this application, wholly owned by the Crown.

19. More information is provided for the purposes of Schedule E in Schedules F, G and M to meet the requirements of ss 62(2)(d) to (f) and 190B(5), (6) and (7) of the Native Title Act.

**Application Area:**                    **State/Territory:** Western Australia  
**Brief Location:** Kimberley Region  
**Primary RATSIB Area:** Kimberley  
**Approximate size:** 303.5491 sq km  
(Note: There may be areas within the external boundary of the application that are not claimed.)  
**Does Area Include Sea:** Yes

**Area covered by the claim (as detailed in the application):**

Area covered by the Application

6. The area covered by the application (claim area), is all the parcels of land and waters and all other land and waters which are within the area described in Attachment B, shown in the map attached at Attachment C; and which are not excluded by paragraph 8.

7. In this Form 1, "claim region" refers to the area shown as such on the map in Attachment C.

Areas not covered by the application

8. The following areas within the claim area, if any, are not covered by the application, except where any extinguishment by the acts mentioned is required by sections 47, 47A or 47B of the Native Title Act 1993 to be disregarded:

(a) any area that, when the application is made, is subject to any of the following kinds of acts as they are defined in either the Native Title Act 1993, as amended (where the act in question is attributable to the Commonwealth), or Titles (Validation) and Native Title (Effects of Past Acts) Act 1995 (WA), as amended, (where the act in question is attributable to the State of Western Australia):

(i) Category A past acts;

(ii) Category A intermediate period acts;

(iii) Category B past acts that are wholly inconsistent with the continued existence of any native title right or interests;

(iv) Category B intermediate period acts that are wholly inconsistent with the continued existence of any native title rights or interests;

(b) any area in relation to which a 'relevant act' as that term is defined in section 12I of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) was done and the act is attributable to the State of Western Australia;

(c) any area in relation to which a previous exclusive possession act under section 12J of the Titles (Validation) and Native Title (effect of Past Acts) Act 1995 (WA) was done and that act is attributable to the State of Western Australia;

(d) any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B(7)) of the Native Title Act 1993 was done in relations to the area and the act was attributable to the Commonwealth;

(e) any areas where native title rights and interests have otherwise been wholly extinguished; and

(f) specifically, any area where there has been:

(i) an unqualified grant of an estate in fee simple;

(ii) a public work as defined in section 253 of the Native Title Act 1993; or

(iii) an existing dedicated public road.

### Combination Details

Date of order to combine: 14/12/2015

This application is a combination of the following applications:

Application number(s)	Application name	Date application lodged/filed	Date claim entered on Register*	Registration History
WAD359/2013, WC2013/011	Ernest Damien Manado & Ors v State of Western Australia	03/12/2013	N/A	Registered from 13/12/2013 to 8/04/2016
WAD94/2014,W C2014/003	Ernest Damien Manado & Ors on behalf of the Bindunbur Native Title Claim Group (Bindunbur (Area B)) v State of Western Australia	24/04/2014	N/A	

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

### Attachments:

1. Remaining Area Description, 1 page - A4, 22/01/2019
2. Remaining Area Map, 1 page - A4, 22/01/2019
3. Attachment B - External Boundary Description, 3 pages - A4, 18/12/2015
4. Attachment C - Map of Claim Area, 1 page - A4, 18/12/2015
5. Bindunbur Native Title Determination, 34 pages - A4, 02/05/2018

### NNTT Contact Details

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