



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD128/2018
NNTT number: WC2018/004

Application Name: Ernest Damien Manado & Ors and State of Western Australia & Ors (Bindunbur #2)

Application Type: Claimant

Application filed with: Federal Court of Australia

Date application filed: 04/04/2018

Current status: Full Approved Determination - 05/07/2019

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

Registration decision status: Not Accepted for registration

Registration history: -

Date claim / part of claim determined: 22/01/2019

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

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Additional Information

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. That determination is attached to this Extract. The determination of native title was entered on the National Native Title Register (NNTR) on 13 February 2019. Those areas where it has been determined that native title exists will remain on the Schedule of Native Title Applications until a Prescribed Body Corporate is determined in relation to those areas and registered on the NNTR. The native title holders have until 2 May 2019 to nominate a Prescribed Body Corporate: see Orders 2 and 3 of the determination. Those areas where native title has been determined not to exist are removed from the Schedule of Native Title Applications as and from 22 January 2019. On 5 July 2019 Justice Robertson ordered that the Gogolanyngor Aboriginal Corporation be the prescribed body corporate for this determination, and therefore this determination is in effect and finalised as from 5 July 2019.

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 Kenagai
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 region 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 region and generally (but not always) associated with the identifier label Nyul Nyul; and
(c) in the northeast and east of the claim region 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 the use of 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 for any purpose 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 [1]-[96] 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 law as 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: Dampier Peninsula region of Western Australia

Primary RATSIB Area: Kimberley

Approximate size: 15.8970 sq km

(Note: There may be areas within the external boundary of the application that are not claimed.)

Does Area Include Sea: No

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

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 amended Form 1, “**claim region**” refers to the area covered by the original application. The claim area is located within the external boundary of the claim region.

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 (Effect 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 rights 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 relation 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.

Attachments:

1. Attachment B Claim Area Description, 1 page - A4, 24/04/2018
2. Attachment C Map of the Claim Area, 1 page - A4, 24/04/2018
3. Native Title Determination, 18 pages - A4, 22/01/2019

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