



Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): WAD359/2013; WAD215/2018; WAD25/2019 NNTT Number: WCD2018/005
Determination Name:	Manado (on behalf of the Bindunbur Native Title Claim Group) v State of Western Australia
Date(s) of Effect:	2/05/2018
Determination Outcome:	Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date:	02/05/2018
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

On 2 May 2018, the Federal Court of Australia made orders that native title exists in parts of the determination area. Among other things, the Court ordered that:

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.

An appeal was made to the Full Court of the Federal Court of Australia, and on 20 December 2018, the Full Court made the following orders:

- 1. The appeal be allowed.
- 2. Schedule 7, item 12(f) of the determination of native title in proceeding WAD359/2013 on 2 May 2018 be set aside.
- 3. The appellant to prepare a minute of proposed amended determination in accordance with the reasons of the Court.

On 29 January 2019, further orders were made by the Full Court of the Federal Court of Australia which stated the following:

1. The Determination of Native Title made by Justice North on 2 May 2018 in WAD 359 of 2013, being Attachment A to the orders made in that proceeding on 2 May 2018, be amended to take the form of the Amended Determination of Native Title contained in Attachment A in order 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 4 April 2019, the Federal Court made further orders which stated the following:

1. Order 2 of the Orders made in these proceedings (formerly known as WAD359/2013) on 2 May 2018, be varied to remove the words "Within 12 months of the date on which these orders are made" and replace them with "by 5 July 2019".

On 21 August 2019, further orders were made by the Federal Court which stated the following:

1. Gogolanyngor Aboriginal Corporation ICN 8947 shall hold the determined native title in trust for the Jabirr Jabirr/Ngumbarl native title holders pursuant to s 56(2)(b) of the Native Title Act 1993 (Cth).

2. Nimanburr Aboriginal Corporation ICN 8948 shall hold the determined native title in trust for the Nimanburr native title holders pursuant to s 56(2)(b) of the Native Title Act 1993 (Cth).

3. Nyul Nyul PBC Aboriginal Corporation ICN 8956 shall hold the determined native title in trust for the Nyul Nyul native title holders pursuant to s 56(2)(b) of the Native Title Act 1993 (Cth).

4. The native title be held in trust by the prescribed bodies corporate referred to in Orders 1-3 in the areas identified in the maps and technical description annexed to the Affidavit of Alexander Romano of 4 July 2019, labelled "AR-27", "AR-28", "AR-29", "AR-30", "AR-31" and attached at Attachment A to these orders.

An appeal was made to the High Court of Australia, and on 18 March 2020, the High Court made the following orders:

1. Appeal allowed.

2. Set aside the orders of the Full Court of the Federal Court of Australia made on 20 December 2018 and in their place order that the appeal to the Full Court be dismissed.

REGISTERED NATIVE TITLE BODY CORPORATE:

Gogolanyngor Aboriginal Corporation
Trustee Body Corporate
PO Box 2145
Broome Western Australia 6725

Nimanburr Aboriginal Corporation
Trustee Body Corporate
PO Box 2145
Broome Western Australia 6725

Nyul Nyul PBC Aboriginal Corporation
Trustee Body Corporate
PO Box 2145
Broome Western Australia 6725

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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**).

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; Bornal; 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.

MATTERS DETERMINED:

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).

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.

REGISTER ATTACHMENTS:

1. WCD2018/005 Schedule 1 – Determination Area, 4 pages - A4, 02/05/2018
2. WCD2018/005 Schedule 2 – The areas where native title does and does not exist, 4 pages - A4, 02/05/2018
3. WCD2018/005 Schedule 4 – How the native title is held, 1 page - A4, 02/05/2018
4. WCD2018/005 Schedule 5 – Where Native Title is Exclusive Possession, 2 pages - A4, 02/05/2018
5. WCD2018/005 Schedule 6 – Where Native Title is not Exclusive Possession, 1 page - A4, 02/05/2018
6. WCD2018/005 Schedule 7 – Other Interests, 7 pages - A4, 02/05/2018
7. WCD2018/005 Schedule 8 – The Maps, 8 pages - A4, 02/05/2018
8. WCD2018/005 Attachment A to FCA Orders made 21 August 2019, 15 pages - A4, 21/08/2019

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.