

Yawuru Prescribed  
Body Corporate  
Indigenous Land Use  
Agreement - Broome

# Yawuru Prescribed Body Corporate Broome Indigenous Land Use Agreement

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This Deed is made on the 25<sup>th</sup> day of February 2010

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## Parties

- Name            Yawuru Native Title Holders Aboriginal Corporation RNTBC ICN 7033  
(**Yawuru RNTBC**)
- Name            Nyamba Buru Yawuru Ltd ABN 87 137 306 917 (**Nyamba Buru Yawuru**)
- Name            The State of Western Australia, through its Department of the Attorney  
General (**State**)
- Name            Minister for Lands, a body corporate continued under section 7(1) of the  
(WA) (**Minister for Lands**)
- Name            Conservation Commission of Western Australia, a body corporate  
established under section 18 of the  
(WA) (**Conservation Commission**)
- Name            Conservation and Land Management Executive Body, a body corporate  
established under Section 36 of the            (**Executive Body**)
- Name            Shire of Broome, a local government under the  
(WA) (**Shire**)

# Recitals

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- A The State and the Yawuru Community have negotiated this indigenous land use agreement under the (Cth) to give expression to the determination of native title by the Federal Court of Australia and to allow for the future development of Broome whilst also recognising and protecting Aboriginal heritage and the environment and providing compensation to the Yawuru Community for the loss and impairment of native title rights and interests.
- B Between 2 February 1994 and 1 December 1997, the Yawuru Community filed nine native title determination applications to land and waters in and around Broome. On 21 September 1999 eight of the applications were combined by an order of the Federal Court. Under that order the native title determination application in proceeding WAD 6006 of 1998 (Rubibi) was to be the lead application.
- C On 29 September 2004, a further native title determination application was lodged by the Yawuru Community. That application, WAD 223 of 2004 (Rubibi #17), was heard together with proceeding WAD 6006 of 1998.
- D Evidence was heard on country by Justice Merkel in 2003 and 2004, and on 28 April 2006 a determination was made in favour of the Yawuru Community as native title holders to a large part of the area covered by applications WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17). In some areas the Judge found that the Yawuru Community had the right to possession and occupation as against the whole world, in other areas the rights and interests were non-exclusive.
- E On 2 May 2008, the Full Court of the Federal Court of Australia, in the [2008] FCAFC 65, upheld Justice Merkel's determination in favour of the Yawuru Community and recognised additional areas where native title rights and interests were found to exist.
- F On 15 August 2008, the State filed an Application for Special Leave to Appeal (proceeding No. P30 of 2008) in the High Court of Australia seeking leave to appeal an aspect of the decision of the Full Court of the Federal Court of Australia. The State discontinued its application on 29 July 2009.
- G The Determination over Broome and its environs is entered on the National Native Title Register maintained by the National Native Title Tribunal, recording the date of determination as 28 April 2006.
- H Following the Determination on 28 April 2006, the Yawuru Community and the State commenced negotiations to resolve the issues associated with the Determination and associated matters.
- I On 31 May 2007, the State and the Yawuru Community entered into the Broome Negotiation Protocol and Broome Heritage Agreement, which together governed the global negotiations.

- J On 6 April 2009, an In Principle Agreement between Yawuru RNTBC and the State was signed. The In Principle Agreement forms the basis of this Agreement and the Area Agreement, which the Parties have agreed to enter into in order to:
- (i) give expression to the native title rights and interests of the Yawuru Community;
  - (ii) provide for the protection of Aboriginal heritage in particular Yawuru Aboriginal heritage;
  - (iii) apply the non-extinguishment principle of the wherever possible to land transfers and land reservations;
  - (iv) provide a package in consideration of and as full and final compensation for agreement to the future acts contemplated and surrender of native title and in respect of impairment and extinguishment of native title;
  - (v) facilitate the future development of land in Broome for residential, infrastructural and industrial purposes, by both the Yawuru Community and by the State;
  - (vi) establish conservation and marine parks in and around Broome jointly managed by Yawuru RNTBC, the Shire of Broome and the State (dependent upon geographical area) to provide for the protection of the environment and Aboriginal heritage;
  - (vii) provide that the 'right to negotiate' procedure of the does not apply to the doing of the future acts contemplated by this Agreement; and
  - (viii) confirm the validity of the grant of 199 freehold titles in the area known as Neighbourhood 5A.
- K Yawuru RNTBC and the State intend that this Agreement and the Area Agreement will provide the following benefits to members of the Yawuru Community:
- (i) social and cultural maintenance and enrichment;
  - (ii) the right to practise and sustain native title rights and interests;
  - (iii) just terms compensation for loss, diminution and impairment of native title rights and interests;
  - (iv) development of economic and commercial capability and capacity; and
  - (v) promotion of economic independence.
- L This Agreement is a body corporate agreement for the purposes of sections 24BA to 24BI of the and regulation 6 of the ILUA Regulations. The Determination Area is the area to which this Agreement applies and is set out in Schedule 2.
- M The Parties intend this Agreement to be registered on the ILUA Register. Once registered on the ILUA Register, this Agreement will bind all holders of native title within the Determination Area pursuant to section 24EA(1)(b) of the .
- N Yawuru RNTBC is the registered prescribed body corporate for the Determination Area pursuant to Orders made by the Federal Court of Australia on 8 September 2008, in proceedings WAD 6006 of 1998 (Rubibi) and WAD 223 of 2004 (Rubibi #17).



- O Nyamba Buru Yawuru is a body corporate incorporated under the \_\_\_\_\_ whose purpose is to receive and manage assets and monies on behalf of Yawuru RNTBC provided under this Agreement.
- P The Minister for Lands is responsible for the administration of the \_\_\_\_\_ and as such is responsible for the grant of land titles and creation of reserves under the \_\_\_\_\_.
- Q The Conservation Commission is a body corporate established under section 18 of the \_\_\_\_\_ whose function is \_\_\_\_\_, to develop management plans and submit them to the Minister for Environment and to accept directions from the Minister for Environment in the performance of its functions.
- R The Shire of Broome is a local government established under section 2.5 of the \_\_\_\_\_ whose functions include providing good government for residents of the Shire and making local laws to enable it to perform its functions under the \_\_\_\_\_.

# Agreed terms

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The Parties covenant and agree as follows:

## 1. Defined terms and interpretation

In this document:

**Adjacent Areas** means the State Adjacent Areas and the Yawuru Adjacent Areas being together all of those areas described in Schedule 9A.

**Agreement** means this indigenous land use agreement entered into pursuant to Part 2, Division 3, Subdivision B of the .

**Area Agreement** means the Yawuru Area Agreement Indigenous Land Use Agreement - Broome entered into pursuant to Part 2, Division 3, Subdivision C of the .

**Assistance Agreement**



## **Previous CPI**

- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty-four hours later;
- (m) references to time are to time in Western Australia;
- (n) if a payment is to be made or an act performed on a day which is not a Business Day, then the payment must be made or the act performed on the next following Business Day;
- (o) headings in this Agreement are inserted for convenience and do not affect the interpretation of this Agreement;
- (p) words of inclusion are not words of limitation;
- (q)

Nyamba Buru Yawuru represents and warrants



5. Lodgement of the Agreement with the Native Title Registrar for registration

The State is authorised by the Parties:







- (i) deliver to Nyamba Buru Yawuru copies of all notices, correspondence and other documents received by the State or the Minister for Lands, as the case may be, relating to or affecting the Yawuru Land as soon as reasonably practicon

## 8. Broome Road Airport Site and Broome Road Heavy Industrial Land

- (a) Prior to the clearing of the Broome Road Heavy Industrial Land, being the land hatched blue on the map in Schedule 6 (**Broome Road Heavy Industrial Land**) and the Broome Road Airport Site being the land hatched blue on the map in Schedule 6 (

9. Leases



- (b) Roebuck Bay intertidal areas and Cable Beach intertidal areas, as described in Part 2 of Schedule 9 (**Intertidal Areas**); and
  - (c) townsite areas, as described in Part 3 (a) and (b) of Schedule 9 (**Townsite Areas**).
- 
- (a) The Parties consent to the doing of any future acts in relation to the management of the Conservation Estate, as contemplated by the Joint Management Agreement and consistent with the terms of the lease, including creation of any improvements or the construction or establishment of any public work.
  - (b) The Parties agree that the Non-Extinguishment Principle applies to all acts done under this clause 11.
- 
- (a) The Parties agree that from the Registration Date until the earlier of:
    - (i) the \_\_\_\_\_ being amended to allow for joint management of private land (**CALM Act amendment**); or
    - (ii) the 4<sup>th</sup> anniversary of the Registration Date,
 the Freehold Areas will be reserved under Section 41 of the \_\_\_\_\_ (**Freehold Areas Reserve**) for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment and an order will be made placing the care, control and management of the Freehold Areas Reserve with Yawuru RNTBC and the Conservation Commission jointly in accordance with a cultural management plan and a management plan prepared under Part V of the \_\_\_\_\_ and the Joint Management Agreement.
  - (b) If the \_\_\_\_\_ amendment is legislated within four years of the Registration Date:
    - (i) the Freehold Areas Reserve shall be cancelled;
    - (ii) the State shall transfer to Yawuru RNTBC the Freehold Areas in fee simple under Section 75 of the \_\_\_\_\_ on the condition that Yawuru RNTBC use and manage the Freehold Areas for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment and for the purpose of practising, sustaining and maintaining native title rights and interests;
    - (iii) Yawuru RNTBC shall promptly grant a lease to the State for a term of 99 years at a rental of \$1.00 of the Freehold Areas (Lease) save those sections of the Freehold Areas identified by Yawuru RNTBC as law grounds, which sections shall be surrounded by restricted access areas and managed in accordance with an appropriate cultural management plan prepared by Yawuru RNTBC; and
    - (iv) the Joint Management Agreement remains on foot and is deemed to be an agreement between Yawuru RNTBC and the Executive Body for the purposes of the relevant provision of the \_\_\_\_\_ .
  - (c) Yawuru RNTBC may terminate the Lease if the State ceases to provide an agreed minimum level of funding for the duration of the Lease, which annual amount shall not exceed the annual amount committed by the State for management of the Conservation Estate under this Agreement in respect of the 5 year period from the Registration Date.
  - (d) Funding requirements for ongoing joint management operations shall be reviewed upon preparation of each new management plan.
  - (e) If the \_\_\_\_\_ amendment is not legislated within 4 years of the Registration Date and Yawuru RNTBC and the State have not agreed otherwise, then:

- (i) the Freehold Areas Reserve shall be cancelled;
  - (ii) the State shall transfer to Yawuru RNTBC the Freehold Areas in fee simple under Section 75 of the                   ; and
  - (iii) Yawuru RNTBC shall enter into an agreement with the Executive Body for the provision of services under Section 33(1)(f) of the                   for a period of one year and any extension agreed, and Yawuru RNTBC shall unilaterally develop and implement a management plan for the Freehold Areas.
- (f) The Minister for Lands shall ensure access is available to the Freehold Areas by the creation as soon as reasonably practicable of reserves over existing pastoral access roads.
- (g) The Minister for Lands shall rescind the grazing licences described in Part 4 of Schedule 9 as soon as reasonably practicable after receiving a written request from the party or parties responsible for management of the Freehold Areas, but in any event no later than 6 months after the receipt of a request therefor.
- (a)



(d)

activities or any other environmental incentive

(b)

Nyamba Buru Yawuru shall provide to the State:

- (a) a copy of the Nyamba Buru Yawuru directors' report, financial report and auditor's report prepared in accordance with Part 27.3 of the

The State acknowledges and agrees that suppression of native title rights and interests pursuant to the Non-Extinguishment Principle as applied in this Agreement does not constitute abandonment or relinquishment of native title rights and interests.

The State agrees that if within 7 years of the Execution Date the State or Yawuru RNTBC learns of the impairment or extinguishment of native title rights or interests that have occurred between the 28 April 2006 and the Execution Date, which impairment or extinguishment has not been compensated in this Agreement or otherwise, then the State shall compensate Yawuru RNTBC for that impairment or extinguishment.

(a) This Agreement has no effect on earlier agreements entered into by the State under which the State has outstanding compensation liabilities or obligations to the Yawuru Community, including but not limited to the State fulfilling its obligations to transfer the following land to the Party indicated below:

(i) to Nyamba Buru Yawuru transfer in fee simple of:

(A) Broome Lot 301 (3134/97) 2.4 ha Fairway Drive;

(B) Skuthorpe Lot 462, 35.891 ha; and

(C) balance of Broome Lot 3144 (3129/753) 7.6 ha (Clemenston St Reserve),

(ii) to Yawuru RNTBC as of the date of this Agreement under Section 0074 of the 0.0064 T44-19.6180

- (a) The Parties agree to enter into a memorandum of understanding within 12 months of the Registration Date (**Memorandum of Understanding**) under which, in respect of heritage issues arising from time to time in any area within the outer boundaries of the Determination Area, the Parties, inter alia, shall agree:
  - (i) for the purpose of protecting and preserving heritage, the Yawuru Community has the primary and principal interest and rights;
  - (ii) Yawuru RNTBC must be consulted about heritage issues in the first instance; and
  - (iii) to consult each other and deal in good faith in accordance with the provisions of the .
- (b) The State will disseminate the Memorandum of Understanding to all relevant Western Australian agencies for observance by them when dealing with heritage issues that relate to all areas within the outer boundaries of the Determination Area.

If the alleged defaulting Party:

- (a) within 10 Business Days of receipt of the notice referred to in clause 18.1 by written notice denies that it has committed a default; or
- (b) does not remedy the alleged default within 10 Business Days, or such longer time as specified in the notice of default,

then either Party may invoke the dispute resolution provisions of clause 19.

For the avoidance of doubt, a Party must comply with the dispute resolution provisions of clause 19.2 to 19.4 in respect of an alleged default to which clause 18.2 applies before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).

## 19. Dispute resolution

If a dispute arises under this Agreement including a dispute in respect of clause 18 (**Dispute**), a Party must comply with clauses 19.2 to 19.4 before commencing arbitration or court proceedings (except proceedings for urgent interlocutory relief).

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

During the 20 Business Days after a notice is given under clause 19.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 19.4.

- (a) If the Parties to the Dispute cannot agree on a mediator within 10 Business Days after a request under clause 19.3, the chairman of LEADR will appoint a mediator at the request of either Party.
- (b) The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 19:
  - (i) must be kept confidential; and
  - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 19. The Parties to the Dispute must equally pay the costs of any mediator.
- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the

Dispute by mediation within 20 Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 19.5) referring the matter to arbitration or commencing legal proceedings.

- (a) If the Parties to a Dispute have complied with clauses 19.1 to 19.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the
- (b) The arbitration shall be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties shall appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 19.5(c), then the Parties shall request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.

If a Party to a Dispute breaches clauses 19.1 to 19.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

## 20. Termination

No Party may unilaterally terminate this Agreement for any reason, including by reason of any breach or repudiation of this Agreement by any Party.

If all Parties agree in writing, the Parties may terminate this Agreement at any time, including at any time after this Agreement is registered on the ILUA Register.

Unless otherwise agreed in writing by all Parties, if this Agreement is terminated in accordance with clause 20.2 or is removed from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA, then:

- (a) other than this clause 20 and clauses 15 and 24 of this Agreement (which are to remain operative), and to the extent provided in this clause 20, this Agreement ceases to have any force or effect on and from the date of termination or removal from the ILUA Register (as the case may be);
- (b) any act done under or in accordance with this Agreement shall remain, to the extent permitted by law, valid; and
- (c) all rights and obligations under this Agreement which accrued before or on the date of termination of this Agreement or removal from the ILUA Register (as the case may be) shall remain binding and enforceable by or against each Party.





- (a) If GST is or becomes payable by a supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (d) If a Supplier makes a taxable supply under this Agreement to a Recipient the consideration for which is a supply by the Recipient which is not taxable, the additional amount is not payable by the Recipient to the Supplier unless the Recipient is entitled to an input tax credit for the taxable supply.

Where clause 23.3 requires Yawuru RNTBC or Nyamba Buru Yawuru to pay an additional amount to a Supplier equal to the GST imposed on a supply, the State shall, on behalf of Yawuru RNTBC or Nyamba Buru Yawuru, as the case may be, pay to the Supplier an amount equal to the GST imposed on the Supply by the date Yawuru RNTBC or Nyamba Buru Yawuru, as the case may be, would be required to pay the GST.

The State agrees to indemnify and keep indemnified Yawuru RNTBC and Nyamba Buru Yawuru from and against any losses and damages, including penalties or interest, which may arise in respect of a breach of clause 23.4 by the State.

## 24. Costs and duties

The State must pay all duties, or taxes of a similar nature, on and in relation to:

- (a) this Agreement;
- (b) any instrument, document or transaction contemplated by this Agreement; and
- (c) any instrument or document required under any relevant law in connection with any transaction contemplated by this Agreement,

even if another Party is primarily liable for payment of the duty.

If the State fails to perform its obligations under this clause, any other Party may pay the duties or other taxes of a similar nature and recover the amount paid from the State as a debt due on demand.

## 25. General

As at the Execution Date this Agreement constitutes the entire Agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or Agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which continues in full force and effect.

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power (or(a)-4we5(exconduct of a Par)-5(ty)-8( ising TJ/T( te1)8 0 0008 T

