

NORTHERN TERRITORY OF AUSTRALIA INDIGENOUS LAND USE AGREEMENT

IN ACCORDANCE WITH SUBDIVISION C OF DIVISION 3 OF PART 2 OF THE *NATIVE TITLE ACT*, FOR THE PURPOSE OF DEALING WITH COMPENSATION IN RESPECT OF A PARK IDENTIFIED IN SCHEDULE 1 OF THE *PARKS AND RESERVES (FRAMEWORK FOR THE FUTURE) ACT*

THIS AGREEMENT is made the _____ day of _____ 200

BETWEEN:

the **NORTHERN TERRITORY OF AUSTRALIA** care of the Department of the Chief Minister, 4th Floor, N T House, 22 Mitchell Street, Darwin NT 0800 (“the Territory”)

AND:

the **NORTHERN LAND COUNCIL / CENTRAL LAND COUNCIL**, a body corporate established pursuant to section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Commonwealth) of Mitbul House, 9 Rowling Street, Casuarina 0810 Northern Territory/of 33 Stuart Highway, Alice Springs 0870 Northern Territory (“the Land Council”)

AND:

the persons named in Item 1 of the Schedule (“the Native Title Parties”) who are the persons who have made an application for a Native Title Determination or who otherwise claim to hold native title rights and interests in respect of the Park (as defined in clause 1) **[as appropriate]**.

RECITALS

- A. Following the decision of the High Court in *Ward*, the Territory and the Northern and Central Land councils entered into negotiations concerning the future title and management of a number of Parks and Reserves in the Northern Territory. The Territory and the Land councils considered that a negotiated outcome was preferred so as to avoid expensive and drawn-out litigation that would occur over many years.
- B. Following those negotiations, the Territory enacted the *Parks and Reserves (Framework for the Future) Act* (“the Act”). The Act provides that, inter alia, the Chief Minister is authorised to request the Commonwealth Minister responsible for the administration of the ALRA to use his or her best endeavours to effect an amendment of Schedule 1 to the ALRA to include in that Schedule the Parks and Reserves specified in Schedule 1 of the Act.

- C. Section 10 of the Act provides that the Chief Minister is only authorised to seek scheduling of the Parks and Reserves specified in Schedule 1 if, inter alia, one or more Indigenous Land Use Agreements or other legally enforceable agreements have been executed dealing with compensation for the effect of the declaration or purported declaration and use of those parks and reserves on native title rights and interests, and facilitating future development in those Parks and Reserves.
- D. The area of land described in Item 2 of the Schedule (“the Park”) is one of the Parks specified in Schedule 1 of the Act. The purpose of this agreement is to satisfy the condition set out in section 10(1)(b) of the Act, and to otherwise deal with native title issues in respect of the scheduling of the Park as Aboriginal land under the ALRA.
- E. The parties have agreed to enter into this agreement to confirm that the provisions of the Act applicable to the Park have been complied with.

NOW THIS AGREEMENT WITNESSES as follows:

1. Interpretation

- 1.1 In this agreement, including the Recitals, unless the context otherwise requires:

“ALRA” means the *Aboriginal Land Rights (Northern Territory) Act 1976*.

“*Native Title Act*” means the *Native Title Act 1993* (Commonwealth).

“Native Title Regulations” means the Native Title “Indigenous Land Use Agreements” Regulation 1999.

“Register” means the Register of Indigenous Land Use Agreements established pursuant to Part 8A of the *Native Title Act*.

“Registrar” means the Native Title Registrar under the *Native Title Act*.

“the Act” means the *Parks and Reserves (Framework for the Future) Act*.

“the Park” means the area of land described in Item 2 of the Schedule.

- 1.2 In this agreement, unless the contrary intention appears:

- (a) “person” includes a firm, body corporate, statutory corporation, an unincorporated association or an authority and a reference to gender includes each other gender;
- (b) the singular includes the plural and visa versa;
- (c) a reference to a person includes a reference to the person’s executors, administrators, successors,

substitutes (including but not limited to persons taking by novation) and assigns;

- (d) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally; and
- (e) a reference to anything is a reference to the whole or any part of it and reference to a group of persons is a reference to any one or more of them.

2. **Conditions Precedent**

This agreement shall have no force or effect and shall not be binding on any party unless and until:

- (a) the Commonwealth takes action to schedule the Park as Aboriginal land under the ALRA; and
- (b) the Chief Minister has indicated that she is satisfied that the conditions set out in section 10 of the Act have been satisfied.

3. **Consent and Compensation**

3.1 The parties consent to the granting of the Park as Aboriginal land under the ALRA, and agree to facilitate future development of the Park in compliance with the ALRA;

3.2 The parties agree that in the event that any compensation is payable, pursuant to the *Native Title Act* or otherwise, in respect of the effect on native title rights and interests:

- (a) by virtue of any action taken by the Territory or the Commonwealth in respect of the declaration or purported declaration and use or purported use of the Park as a Park declared under the *Territory Parks and Wildlife Conservation Act*, or any earlier Act or Ordinance of the Territory or the Commonwealth prior to the date that the Park is granted as Aboriginal land under the ALRA; or
- (b) the future use of the land as a park, provided that such use is in compliance with ALRA,

then the quantum of such compensation is limited to a total of One Dollar (\$1.00).

4. **Warranties**

4.1 The Land Council warrants to the Territory that:

- (a) as required by subsection 203BH(2) of the *Native Title Act*, it has, before becoming a party to this agreement, as far as practicable, and having regard to the matters proposed to be covered by this agreement,

consulted with and had regard to the interests of persons who hold or who may hold native title in the Park; and

(b) as required by subsection 203BE(5) and 203BH(2) of the *Native Title Act*, it is of the opinion that:

(i) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in the Park have been identified; and

(ii) all of the persons so identified have authorised the making of this agreement; and

(c) to the best of its knowledge, skill and belief after making diligent enquiry, all persons so identified have authorised the person signing this agreement on behalf of the parties **[where the native title holders are parties]**.

5. **Registration**

5.1 The parties agree that the Land Council shall apply to the Registrar for this agreement to be registered on the Register.

5.2 The parties agree that they shall in all respects cooperate with the Registrar and do all things necessary or convenient in order to satisfy the Registrar, upon the application for registration being made, that this agreement should be registered.

5.3 For the purposes of subsection 24CG(1) of the *Native Title Act*, and paragraph 7(2)(b) of the Native Title Regulations, this agreement constitutes a statement by each party to the agreement that the party agrees to the application for registration being made.

6. **Miscellaneous**

6.1 **Severability**

If a court determines that a word, phrase, sentence, paragraph or provision in this agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this arrangement shall remain operative.

6.2 **Counterparts**

This Agreement may be signed in any number of counterparts and all such counterparts when taken together shall constitute one instrument.

EXECUTED by the parties as an Agreement.

SIGNED by the **HON CLARE MAJELLA**)
MARTIN MLA, CHIEF MINISTER)
for and on behalf of the **NORTHERN**)
TERRITORY OF AUSTRALIA)
pursuant to a delegation under the)
Contracts Act in the presence of:)

.....
Witness

IN WITNESS whereof the **COMMON**)
SEAL of the **NORTHERN LAND**)
COUNCIL was hereunto affixed in the)
presence of:)

.....
Chairman

.....

IN WITNESS whereof the **COMMON**)
SEAL of the **CENTRAL LAND**)
COUNCIL was hereunto affixed in the)
presence of:)

.....
Chairman

.....

SIGNED by _____)
in the presence of: _____)

.....

.....
Witness

SIGNED by _____)
in the presence of: _____)

.....

.....
Witness

SIGNED by _____)
in the presence of: _____)

.....

.....
Witness

SIGNED by _____)
in the presence of: _____)

.....

.....
Witness

SCHEDULE

ITEM 1: Native Title Parties

ITEM 2: The Park

**NORTHERN TERRITORY OF
AUSTRALIA**

("the Territory")

AND:

CENTRAL LAND COUNCIL

("the Land Council")

AND:

NATIVE TITLE PARTIES

("the Native Title
Parties")

**INDIGENOUS LAND USE
AGREEMENT**

**IN ACCORDANCE WITH
SUBDIVISION C OF DIVISION 3 OF
PART 2 OF THE *NATIVE TITLE
ACT*, FOR THE PURPOSE OF
DEALING WITH COMPENSATION
IN RESPECT OF A PARK
IDENTIFIED IN SCHEDULE 1 OF
THE *PARKS AND RESERVES
(FRAMEWORK FOR THE FUTURE)
ACT***

Solicitor for the Northern Territory
45 Mitchell Street
DARWIN NT 0800

Telephone: (08) 8999 7837

Facsimile: (08) 8999 6316

Ref: COM2002-229 AJS:ME

Indigenous Land Use Agreement –
Parks – Schedule 1 – 15.02.2005

