

FEDERAL COURT OF AUSTRALIA

**Coconut on behalf of the Northern Cape York #2 Native Title Claim Group v
State of Queensland [2014] FCA 629**

Citation: Coconut on behalf of the Northern Cape York #2 Native Title Claim Group v State of Queensland [2014] FCA 629

Parties: **MARYANNE COCONUT, GRACE JOHN, MALCOLM CALLOPE, CHARLES BUDDY, GABRIEL MAIRU, FLORENCE HECTOR, IVY GORDON, ANDREA TOBY, MAURICE WOODLEY, VICTORIA KENNEDY, CELIA FLETCHER, AGNES MARK, ALMA DAY, HARRIET FLINDERS, FLORENCE LUFF, NEVILLE MOTTON, RHONDA PARRY, ALLISON SAILOR, RAYMOND AHMAT, LINDA MCLACHLAN and MICHELLE KOSTECKI (NEE AHMAT) ON BEHALF OF THE NORTHERN CAPE YORK #2 NATIVE TITLE CLAIM GROUP v STATE OF QUEENSLAND, COOK SHIRE COUNCIL, MAPOON ABORIGINAL SHIRE COUNCIL, OLD MAPOON ABORIGINAL CORPORATION, AUSTRALIAN MARITIME SAFETY AUTHORITY, ERGON ENERGY CORPORATION LIMITED, TELSTRA CORPORATION LIMITED, ALCAN SOUTH PACIFIC PTY LTD, RTA WEIPA PTY LTD and SUNRISE MINERALS PTY LTD**

File number(s): QUD 156 of 2011

Judge(s): **GREENWOOD J**

Date of judgment: 20 June 2014

Catchwords: **NATIVE TITLE** – consideration of a native title determination application under s 13(1) and s 61(1) of the *Native Title Act 1993* (Cth) (the “Act”) – consideration of the terms of an s 87 Agreement entered into between the parties to the proceeding – consideration of whether the making of orders in terms of the s 87 Agreement is appropriate for the purposes of s 87 of the Act

Legislation: *Native Title Act 1993* (Cth), s 13(1), s 56, s 57, s 61(1), s 87, s 94A, s 223, s 225

Cases cited: *Kerindun v Queensland* (2009) 258 ALR 306 – cited
Kuuku Ya’u People v State of Queensland [2009] FCA 679 – cited
Members of the Yorta Yorta Aboriginal Community v

Victoria (2002) 214 CLR 422 – cited

Other Materials:

Native Title – A Constitutional Shift?, University of Melbourne Law School, JD Lecture Series, French CJ, 24 March 2009

Date of hearing: 20 June 2014

Date of last submissions: 20 June 2014

Place: Weipa

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 61

Solicitor for the Applicant: Mr A McLean, Cape York Land Council Aboriginal Corporation

Solicitor for the First Respondent: Mr G R Cooper, Crown Solicitor for the State of Queensland

Solicitor for the Second and Third Respondents: Mr A Kerr, Preston Law

Solicitor for the Fourth Respondent: Mr M Neal, P&E Law

Solicitor for the Fifth Respondent: Ms M Dean, Australian Maritime Safety Authority

Solicitor for the Sixth Respondent: Ms J Humphris, MacDonnells Law

Solicitor for the Seventh Respondent: Ms C Lawrence, Ashurst Australia (Melbourne)

Solicitor for the Eighth and Ninth Respondents: Mr T Denholder, Ashurst Australia (Brisbane)

Representative for the Tenth Respondent: Mr B Woodhouse, Sunrise Minerals Pty Ltd

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 156 of 2011

BETWEEN:

MARYANNE COCONUT, GRACE JOHN, MALCOLM CALLOPE, CHARLES BUDBY, GABRIEL MAIRU, FLORENCE HECTOR, IVY GORDON, ANDREA TOBY, MAURICE WOODLEY, VICTORIA KENNEDY, CELIA FLETCHER, AGNES MARK, ALMA DAY, HARRIET FLINDERS, FLORENCE LUFF, NEVILLE MOTTON, RHONDA PARRY, ALLISON SAILOR, RAYMOND AH MAT, LINDA MCLACHLAN, MICHELLE KOSTECKI (NEE AH MAT) ON BEHALF OF THE NORTHERN CAPE YORK #2 NATIVE TITLE CLAIM GROUP
Applicant

AND:

STATE OF QUEENSLAND
First Respondent

COOK SHIRE COUNCIL
Second Respondent

MAPOON ABORIGINAL SHIRE COUNCIL
Third Respondent

OLD MAPOON ABORIGINAL CORPORATION
Fourth Respondent

AUSTRALIAN MARITIME SAFETY AUTHORITY
Fifth Respondent

ERGON ENERGY CORPORATION LIMITED
Sixth Respondent

TELSTRA CORPORATION LIMITED
Seventh Respondent

ALCAN SOUTH PACIFIC PTY LTD
Eighth Respondent

RTA WEIPA PTY LTD
Ninth Respondent

SUNRISE MINERALS PTY LTD
Tenth Respondent

JUDGE:

GREENWOOD J

DATE OF ORDER: 20 JUNE 2014

WHERE MADE: WEIPA

THE COURT NOTES THAT:

- A. The parties to the application have reached an agreement as to the terms of a determination of native title to be made in relation to the Determination Area.
- B. The applicant, the State of Queensland and RTA Weipa Pty Ltd (as assignee from Rio Tinto Aluminium Limited, formerly Comalco Aluminium Limited) are parties to an agreement known as the Western Cape Communities Coexistence Agreement dated 14 March 2001 ("the WCCA") which was registered as the Comalco ILUA on the Register of Indigenous Land Use Agreements on 24 August 2001, an extract of the relevant parts of which is contained in Sch 5.

BEING SATISFIED that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87 of the *Native Title Act 1993* (Cth),

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below ("the determination").
2. The determination will take effect upon the last of the agreements referred to in paras 4(b), 4(c) and 4(d) of Sch 4 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreements referred to in para 2 are not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.
4. Each party to the proceedings is to bear its own costs.

BY CONSENT THE COURT DETERMINES THAT:

5. Native title exists in relation to that part of the Determination Area described in Pt 1 and Pt 2 of Sch 1.
6. The native title is held by the Northern Cape York #2 Native Title Claim Group, being the persons descended from the apical ancestors described in Sch 3 ("the native title holders").

7. Subject to paras 9, 10 and 12 below, the nature and extent of the native title rights and interests in relation to the land and waters described in Pt 1 of Sch 1 are:
- (a) other than in relation to Water, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
 - (b) in relation to Water, the non-exclusive rights to:
 - (i) hunt, fish and gather from the Water of the area;
 - (ii) take and use the Natural Resources of the Water in the area; and
 - (iii) take and use the Water of the area, for cultural, personal, domestic and communal purposes.
8. Subject to paras 9, 10, 11 and 12 below, the nature and extent of the native title rights and interests in relation to the land and waters described in Pt 2 of Sch 1 are the non-exclusive rights to:
- (a) access, be present on, move about on and travel over the area;
 - (b) hunt and fish in or on, and gather from, the area;
 - (c) take, use, share and exchange Natural Resources on the area;
 - (d) take and use Water from the area for cultural, personal, domestic and communal purposes;
 - (e) live and camp on the area and for those purposes to erect shelters and other structures thereon;
 - (f) light fires on the area for cultural, spiritual or domestic purposes, including cooking, but not for the purpose of hunting or clearing vegetation;
 - (g) be buried and to bury native title holders within the area;
 - (h) conduct ceremonies on the area;
 - (i) hold meetings on the area;
 - (j) teach on the area the physical and spiritual attributes of the area;
 - (k) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs on the area and to protect those places and areas from harm;

- (l) be accompanied on to the area by those persons who, though not native title holders, are:
 - (i) spouses or partners of native title holders;
 - (ii) people who are members of the immediate family of a spouse or partner of a native title holder; or
 - (iii) people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the area.
9. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the Laws of the State and the Commonwealth;
 - (b) the traditional laws acknowledged and traditional customs observed by the native title holders; and
 - (c) the terms and conditions of the agreements referred to in para 4 of Sch 4.
10. The native title rights and interests referred to in paras 7(b) and 8 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
11. The native title rights and interests referred to in para 8 do not extend to a right to control access to or a right to control the use of the land and waters described in Pt 2 of Sch 1.
12. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).
13. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Sch 4 and where applicable, Sch 5.
14. The relationship between the native title rights and interests described in paras 7 and 8 and the other interests described in Sch 4 (the “other interests”) and, where applicable, Sch 5 is that:
 - (a) the other interests continue to have effect, and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title rights and interests;
 - (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land

and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and

- (c) the other interests and any activity that is required or permitted by or under, and done in accordance with, the other interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.
15. For the avoidance of doubt, the relationship between the native title rights and interests described in paras 7 and 8 and the other interests of RTA Weipa Pty Ltd and Rio Tinto Aluminium Limited in para 5 of Sch 4 is that on the enactment of the *Comalco Act* in 1957, the making of the Comalco Agreement, the grant of Special Bauxite Mining Lease 1 or the registration of the WCCCA, the Comalco Act, the Comalco Agreement, the conferral of the Comalco Interests, the performance of the Comalco Activities or the WCCCA, whether done before or after the date of this determination, prevail over the native title rights and interests to the extent of any inconsistency.
16. For the avoidance of doubt, the relationship between the native title rights and interests described in paras 7 and 8 and the other interests of Alcan South Pacific Pty Ltd in para 6 of Sch 4 is that the other interests continue to have effect and the rights conferred by or held under those other interests (including new rights and interests conferred pursuant to those other interests after the date of this determination) may be exercised notwithstanding the existence of the native title rights and interests, and any activity that is required or permitted by or held under, and done in accordance with, the other interests (including new rights and interests conferred pursuant to the rights and interests after the date of this determination) or any activity that is associated with or incidental to, such an activity, prevails over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of s 24JA of the *Native Title Act 1993* (Cth), does not extinguish them.

DEFINITIONS AND INTERPRETATION

17. In this determination, unless the contrary intention appears:

“Alcan Act” has the meaning given in cl 6 of Sch 4;

“Comalco Act” has the meaning given in cl 5 of Sch 4;

“Comalco Activities” has the meaning given in the WCCCA;

“Comalco Agreement” has the meaning given in cl 5 of Sch 4;

“Comalco Interests” has the meaning given in the WCCCA;

“High Water Mark” means the ordinary high-water mark at spring tides;

“Determination Area” means the areas of land and waters described in Pt 1 and Pt 2 of Sch 1, to the extent that those areas are within the External Boundary, and depicted in the map attached to Sch 1, and does not include those areas in Sch 2;

“External Boundary” means the boundary described in Pt 3 of Sch 1;

“land” and “waters”, respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

“Laws of the State and the Commonwealth” means the common law and the laws of the State of Queensland and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

“Local Government Area” has the meaning given in the *Local Government Act 2009* (Qld);

“Local Government Act” has the meaning given in the *Local Government Act 2009* (Qld);

“Natural Resources” means:

- (a) animals;
- (b) plants; and
- (c) charcoal, wax, resin, clay, soil, sand, shell, gravel, rock or other such material naturally occurring in the land and waters of the Determination Area,

but does not include:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another; and
- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“Water” means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream;
- (b) any natural collection of water, whether permanent or intermittent;
- (c) tidal water;

“WCCCA” has the meaning given in Note B.

Other words and expressions used in this Determination have the same meanings as they have in Pt 15 of the *Native Title Act 1993* (Cth).

THE COURT DETERMINES THAT:

18. Upon the determination taking effect:

- (a) The native title is held in trust;
- (b) The Mokwiri Aboriginal Corporation (ICN: 7972), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (i) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
 - (ii) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

SCHEDULE 1 - DETERMINATION AREA**A. Description of Determination Area****Part 1 - Exclusive Areas**

All of the land and waters described in the following table and depicted in dark blue on the determination map:

Area Description (at date of Determination)	Determination Map Sheet Number
That part of Lot 21 on Plan SP266617 within the External Boundary	4 and 5
Lot 4 on Plan WP50	3 and 4
Lot 5 on Plan WP50	3
Lot 6 on Plan WP50	3
Lot 7 on Plan WP50	3
Lot 8 on Plan WP50	3
Lot 9 on Plan WP50	4
Lot 1 on SP252492	2
Lot 1 on Plan SP204113	1
Lot 2 on Plan SP204113	1
Lot 3 on Plan SP204113	1
Lot 4 on Plan SP204113	2
Lot 5 on Plan SP204113	2
Lot 6 on Plan SP140905	4
Lot 2 on Plan SP252512	1
Lot 4 on Plan SP252512	1
Lot 5 on Plan SP252512	1
Lot 34 on Plan AP15881	3

Area Description (at date of Determination)	Determination Map Sheet Number
Lot 602 on Plan MP37322	3
Lot 27 on Plan AP15881	3

Part 2 - Non-Exclusive Areas

All of the land and waters described in the following table and depicted in light blue on the determination map:

Area Description (at date of Determination)	Determination Map Sheet Number
That part of Lot 8 on Plan MP14466 within the External Boundary	1, 2 and 4
That part of the area subject to the WCCCA excluding Lot 602 on Plan MP37322, including that part of Lot 7024 on Plan MP41159 within the External Boundary	1, 2, 3 and 4
Lot 3 on Plan SP252506	1
Save for any waters forming part of a lot on plan, all waterways, natural lakes, creeks and rivers within the External Boundary including but not limited to: Pennefather River, Wenlock River, Janie Creek, Turtle Creek, Ducie River, Pargon Creek and Mission River	1, 2 and 4

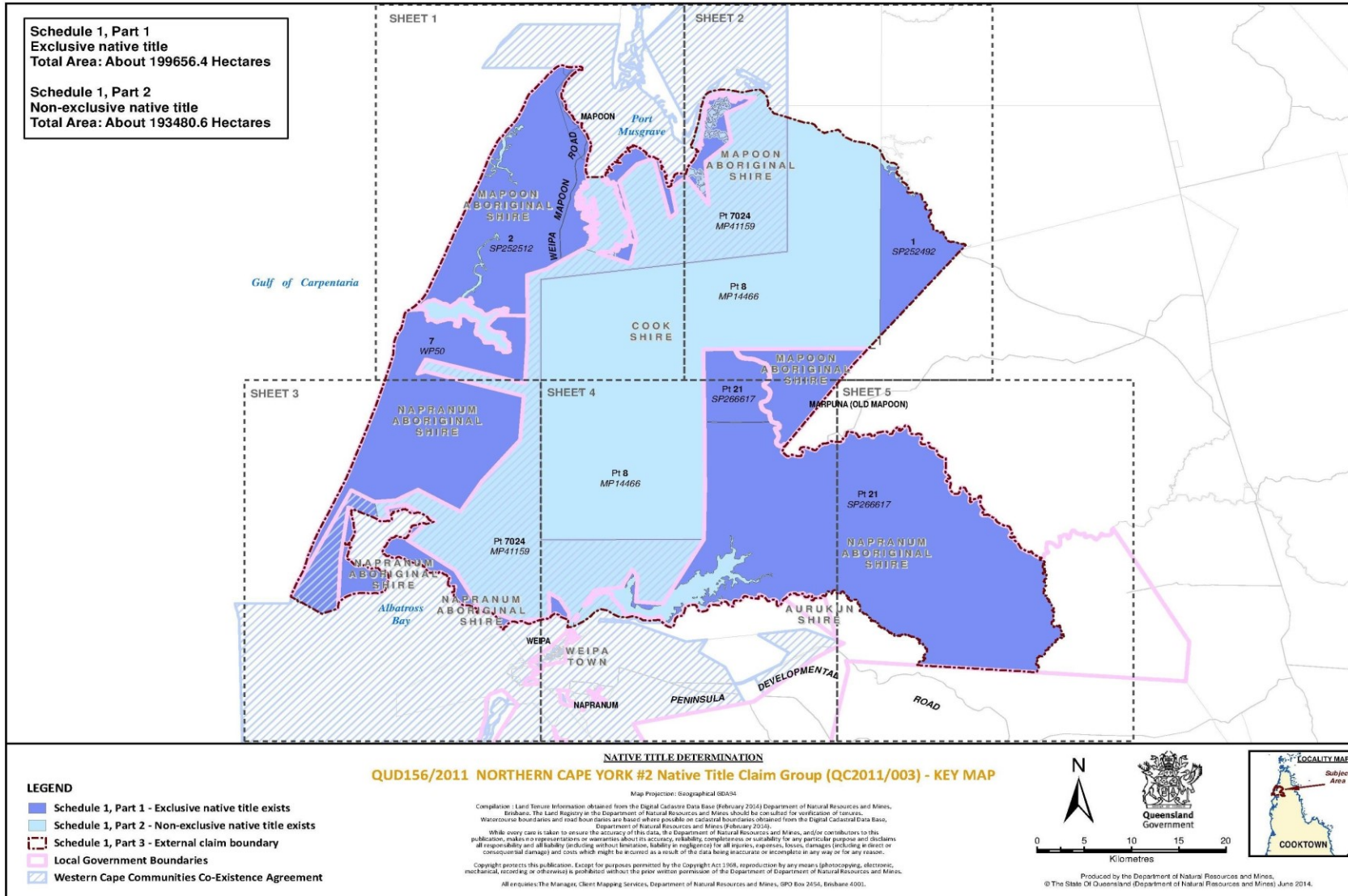
Part 3 - External Boundary

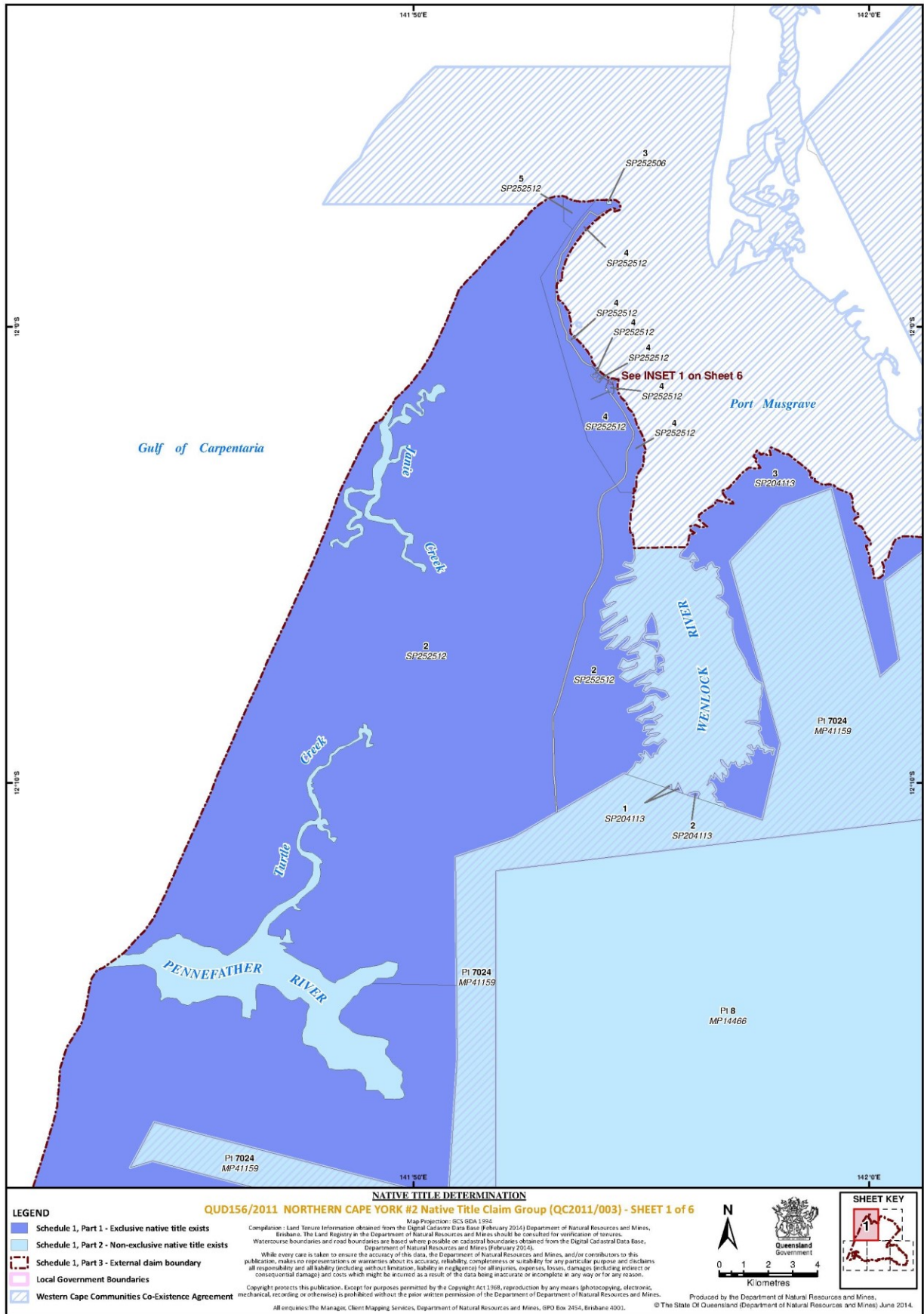
The External Boundary is described below and is depicted in red on the determination map:

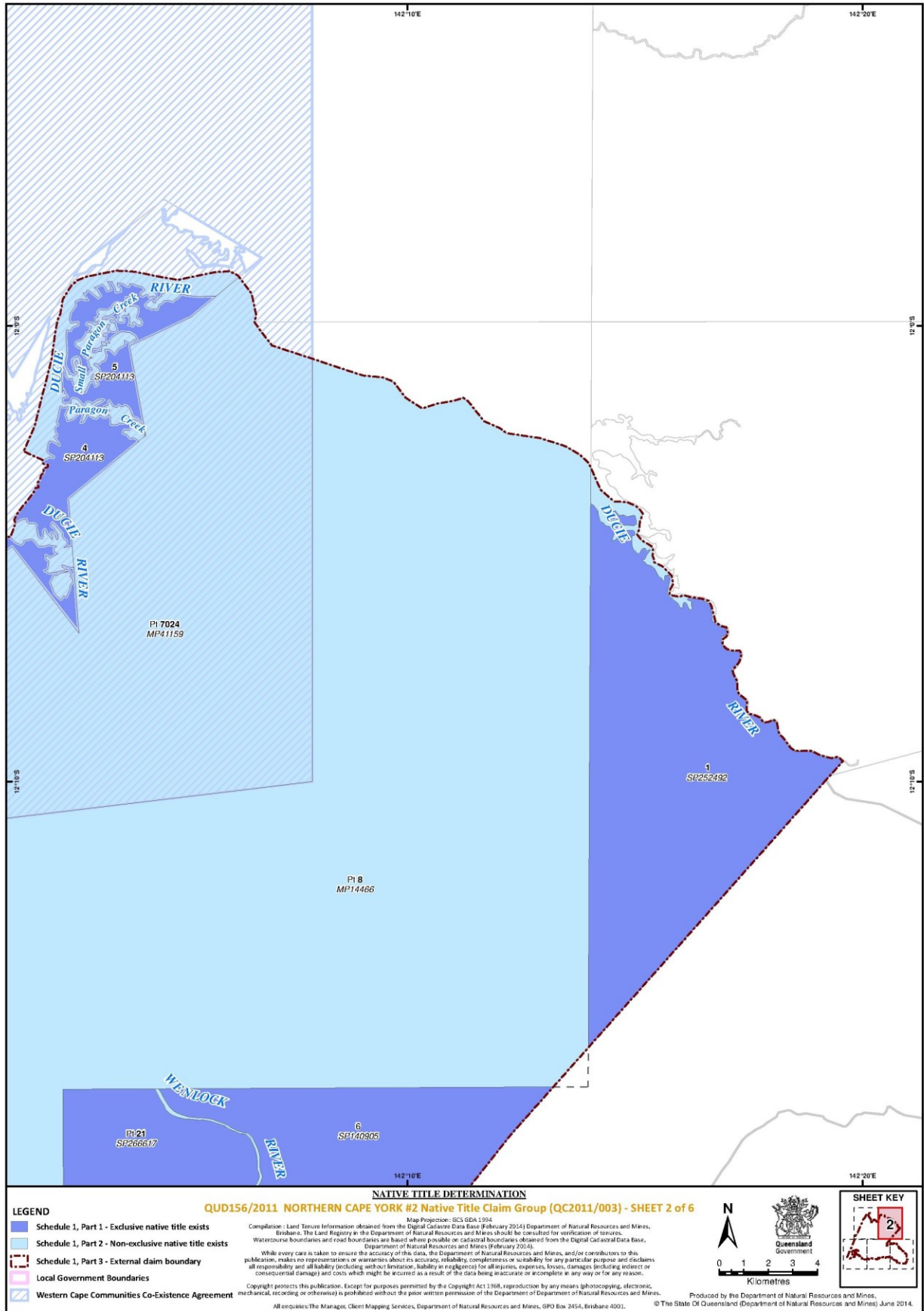
Commencing at the southern most corner of Lot 1 on SP252492 being part of Old Mapoon DOGIT and extending south westerly along the boundary of Lot 4 on SP222990 (Bertiehaugh Pastoral Holding) and onwards to the centreline of the Wenlock River; then generally easterly and generally south easterly along the centreline of that river to the centreline of Moonlight Creek; then generally southerly along the centreline of that creek and Cox Creek to the northern boundary of Lot 1 on SP201111 (Sudley Pastoral Holding); then westerly along that boundary of that lot to the centreline of Myall Creek; then generally north easterly and generally north westerly along the centreline of that creek to the centreline of the Mission River; then generally westerly along the centreline of that river to a western boundary of Lot 7024 on MP41159; then northerly along that boundary to the south east corner of Lot 4 on WP50; then generally westerly, generally north westerly and generally north easterly along the southern boundaries of that Lot, Esplanade, again the southern boundaries of that Lot, again Esplanade, south western and north western boundaries

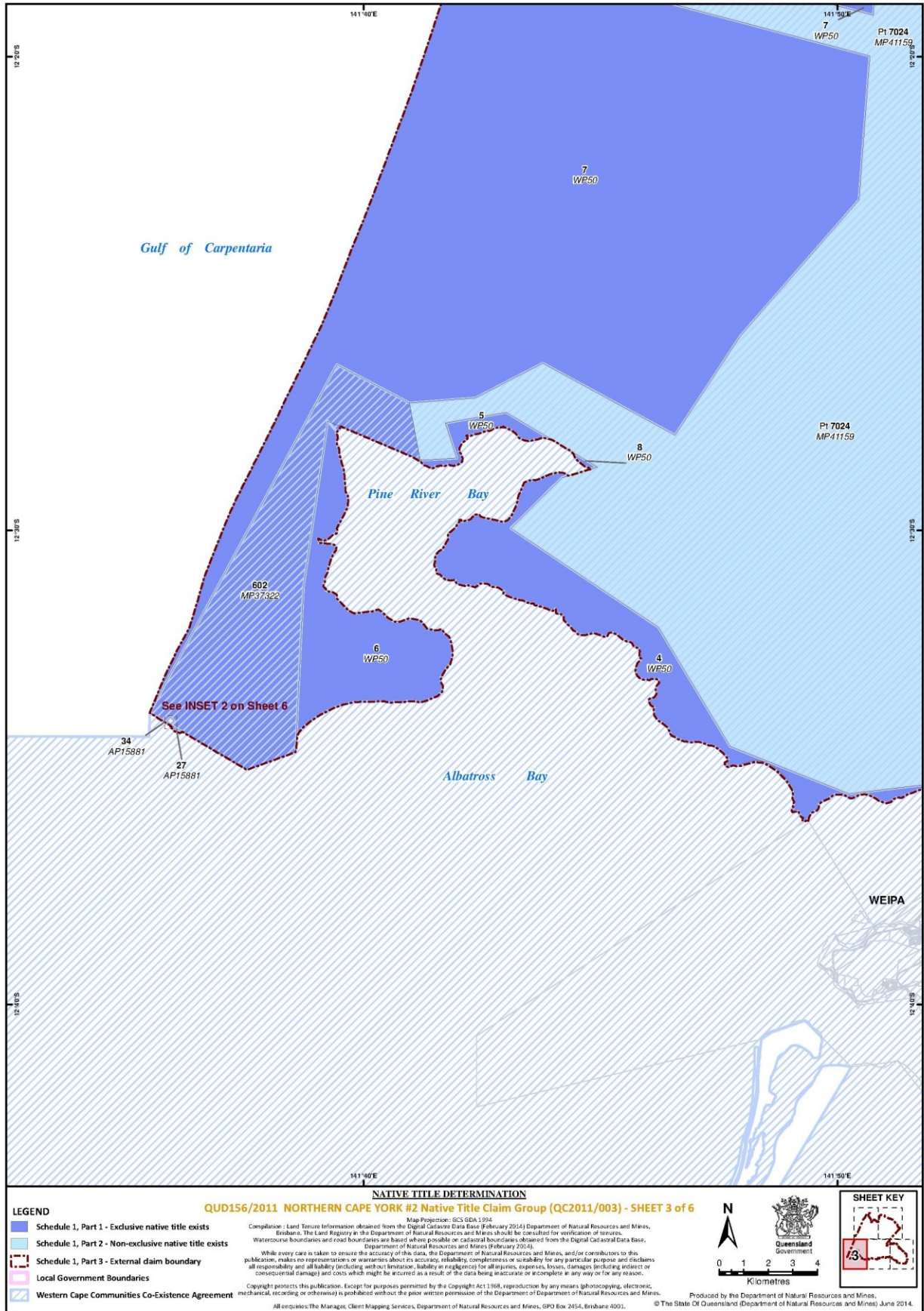
of again that Lot to a northern boundary of Lot 7024 on MP41159; then north easterly along that boundary to the southernmost corner of Lot 8 on WP50; then generally north westerly along the southern boundaries of that Lot to a southern boundary of again Lot 7024 on MP41159; then north westerly along that boundary to the easternmost corner of Lot 5 on WP50; then generally westerly along the southern boundaries of that Lot to a southern boundary of Lot 602 on MP37322; then north westerly along that boundary to an eastern boundary of Lot 6 on WP50; then generally southerly, generally south easterly and generally south westerly along the eastern boundaries of that Lot to again Lot 602 on MP37322; then generally westerly along the southern boundaries of that Lot, Lot 27 on AP15881, Lot 3 on WP28 and Lot 34 on AP15881 to the southernmost corner of Lot 7 on WP50; then generally north easterly along the coastline of the Gulf of Carpentaria at the High Water Mark and across the mouths of any waterways flowing into the Gulf of Carpentaria between the seaward extremities at High Water Mark of each of the opposite banks of each such waterway to the mouth of Port Musgrave; then generally southerly and generally easterly along the coastline of Port Musgrave at the High Water Mark and across the mouths of any waterways flowing into that port between the port extremities at High Water Mark of each of the opposite banks of each such waterway to the centreline of the Ducie River; then generally north easterly and generally south easterly along the centreline of that river to a point at Longitude 142.326059° then south westerly to the eastern most corner of Lot 1 on SP252492; then south westerly along the boundary of that lot back to the commencement point.

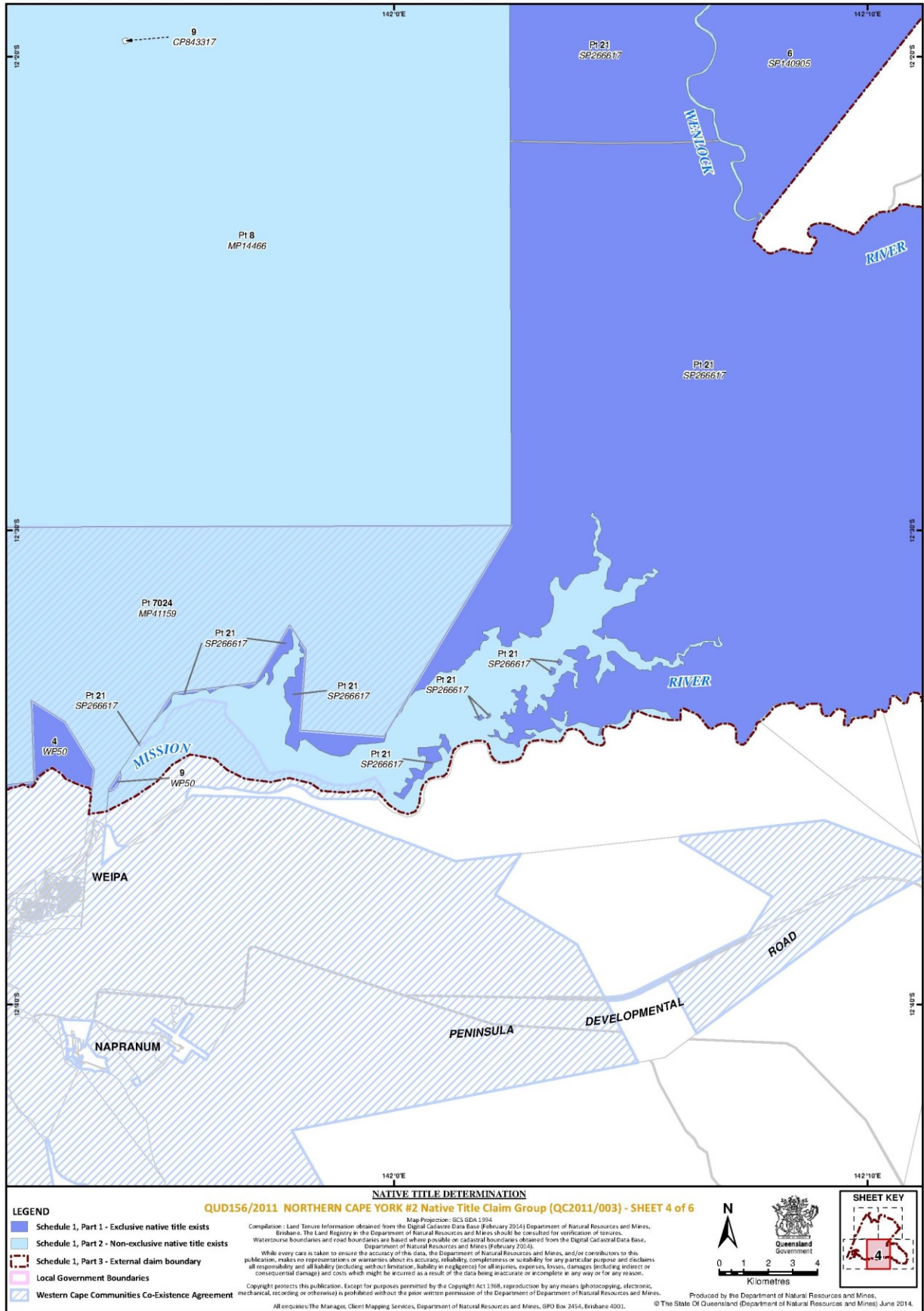
B. Map of Determination Area

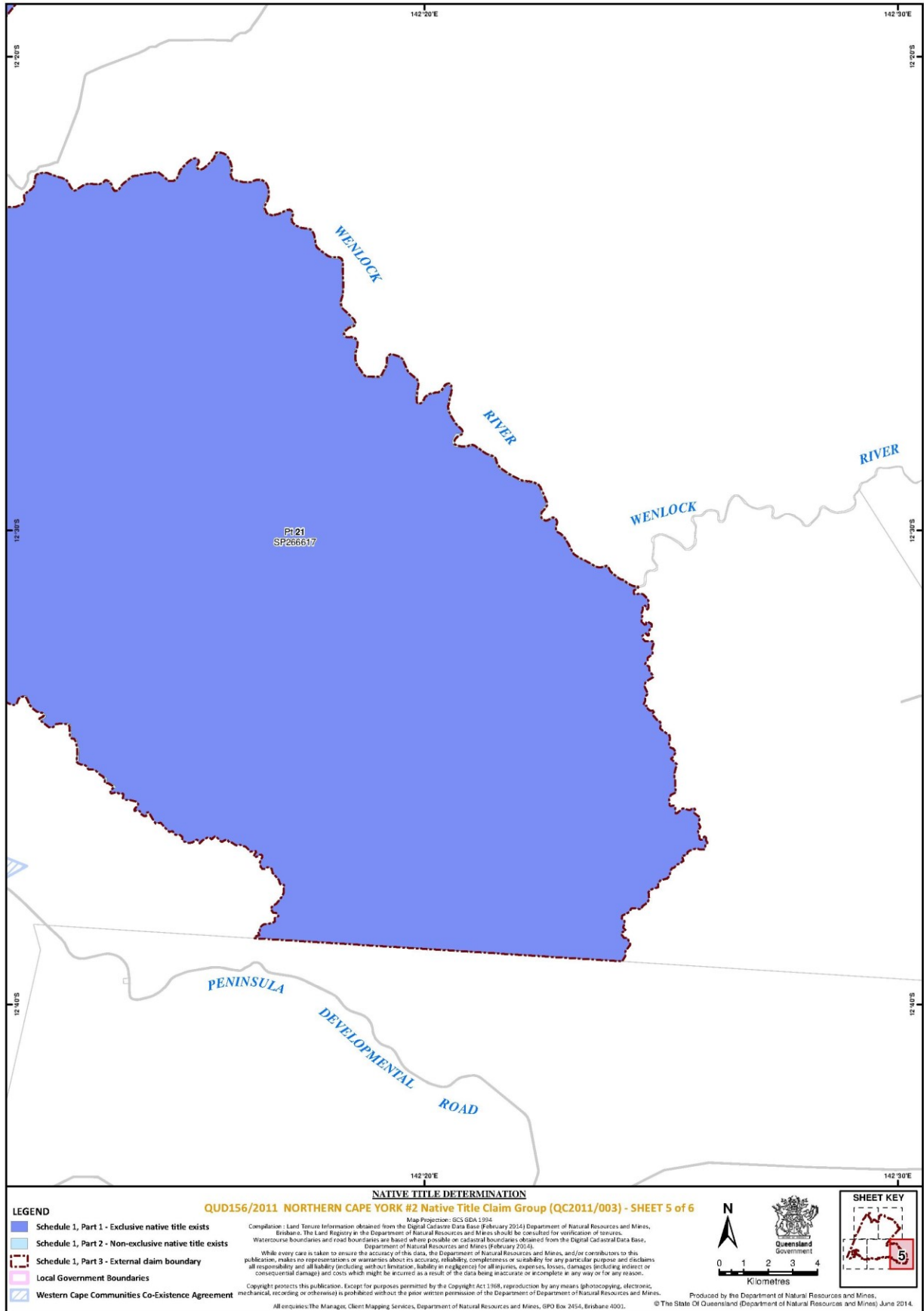


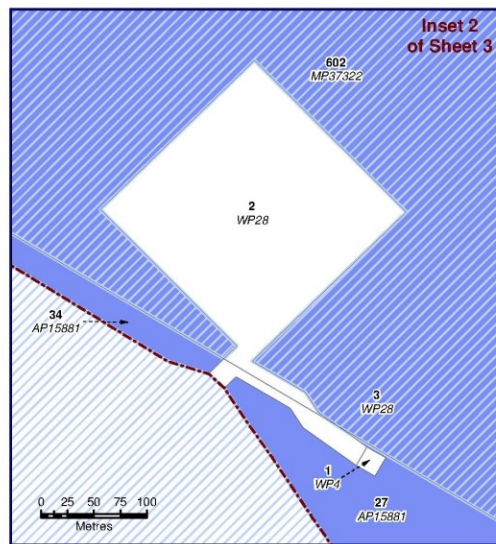
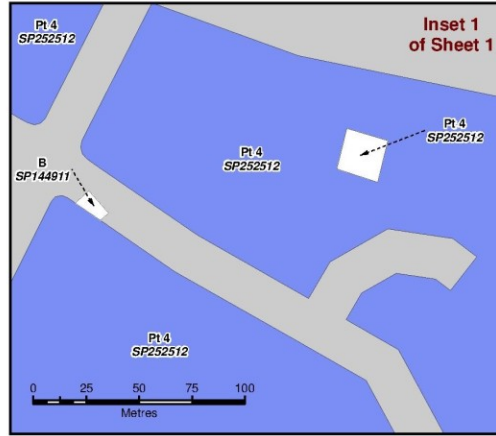












NATIVE TITLE DETERMINATION

QUD156/2011 NORTHERN CAPE YORK #2 Native Title Claim Group (QC2011/003) - SHEET 6 OF 6

Map Projection: GCS GDA 1994

LEGEND

- Schedule 1, Part 1 - Exclusive native title exists
- Schedule 1, Part 2 - Non-exclusive native title exists
- Schedule 1, Part 3 - External daim boundary
- Local Government Boundaries
- Western Cape Communities Co-Existence Agreement

INSET KEY

1 2

COMPILATION: Land Tenure Information obtained from the Digital Cadastral Data Base (February 2014) Department of Natural Resources and Mines, Brisbane. The Land Registry in the Department of Natural Resources and Mines should be consulted for verification of tenures. Watercourse boundaries and road boundaries are based where possible on cadastral boundaries obtained from the Digital Cadastral Data Base, Department of Natural Resources and Mines (February 2014).

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All enquiries: The Manager, Client Mapping Services, Department of Natural Resources and Mines, GPO Box 2454, Brisbane 4001.

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SCHEDULE 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area.

1. Those land and waters within the External Boundary, which at the time the native title determination application was made:
 - (i) were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth); and
 - (ii) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied at the time of the native title determination application;

are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. In addition to the land and waters described in cl 1 above, those land and waters within the External Boundary where native title has otherwise been validly extinguished by operation of the laws of the State and the Commonwealth are excluded from the Determination Area.
3. Specifically, and to avoid doubt, the land and waters described in cl 1 above includes the tenure based exclusions under ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies, and includes but is not limited to, the whole of the land and waters described as:

Area Description (at date of Determination)	Determination Map Sheet Number
Lot 9 on CP843317	Sheet 4
Lot 2 on WP28	Inset 2 of Sheet 3 as shown on Sheet 6
Lot 3 on WP28	Inset 2 of Sheet 3 as shown on Sheet 6
Lot 1 on WP4	Inset 2 of Sheet 3 as shown on Sheet 6
Part of Lot 4 on SP252512	Inset 1 of Sheet 1 as shown on Sheet 6

4. Specifically, and to avoid doubt, the land and waters described in cl 1 above includes the land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established or situated prior to 23 December 1996, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and to which s 21 of the

Native Title (Queensland) Act 1993 (Qld), applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth), and includes, but is not limited to, the whole of the land and waters described as that part of Lot 4 on SP252512 shown on Inset 1 of Sheet 1 of the Determination Map, which inset is depicted in detail on Sheet 6 of the Determination Map.

SCHEDULE 3 - NATIVE TITLE HOLDERS

1. The native title holders are the Northern Cape York #2 Native Title Claim Group, being the persons descended from the following apical ancestors:
 - (a) Jimmy Pine River;
 - (b) Ardirramina (father of Toeboy);
 - (c) Bosen;
 - (d) Tjantayn;
 - (e) Henry Mailman Brown;
 - (f) Peter Cockatoo;
 - (g) Mammus Aorotwan;
 - (h) Charlie Hall;
 - (i) York Downs Mammus aka Olkolkon;
 - (j) Charlie Fletcher;
 - (k) Nuarutty;
 - (l) Jack Batavia aka Jack Bellyfull;
 - (m) Bob Andoran (the father of Catfish/Joseph Andoran);
 - (n) Douglas;
 - (o) Mary Price;
 - (p) Bumu, Mother of Condia;
 - (q) Grace;
 - (r) Bullock;
 - (s) Alec Red Beach;
 - (t) Peter;
 - (u) Archie;
 - (v) Charlie Cooktown;
 - (w) Lorna;
 - (x) Billy Barkley/Wombi;

- (y) Maffra Reid;
- (z) Cockatoo;
- (aa) Mona;
- (bb) Victor;
- (cc) James Andrews;
- (dd) Billy Bigfoot (Miller).

SCHEDULE 4 - OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of the other interests in relation to the Determination Area are the following as they exist as at the date of the determination:

1. The rights and interests of the beneficiaries under Deed of Grant Title Reference No. 50911383.
2. The rights and interests of the beneficiaries under Deed of Grant Title Reference No. 50948514.
3. The rights and interests of the grantee and beneficiaries of an estate in fee simple under Deed of Grant Title Reference No. 50914995.
4. The rights and interests of the parties under the following agreements:
 - (a) the WCCCA;
 - (b) the rights and interests of the native title holders and Mapoon Aboriginal Shire Council as parties to the Northern Cape York Group People #2 ILUA dated 3 June 2014;
 - (c) the rights and interests of the parties under the Indigenous Land Use Agreement between Maryanne Coconut, Grace John, Malcolm Callope, Charles Budby, Gabriel Mairu, Florence Hector, Ivy Gordon, Andrea Toby, Maurice Woodley, Victoria Kennedy, Celia Fletcher, Agnes Mark, Alma Day, Harriet Flinders, Florence Luff, Neville Motton, Rhonda Parry, Allison Sailor, Raymond AhMat, Linda McLachlan, Michelle Kostecki (nee AhMat) as the applicant for Native Title Determination Application Northern Cape York Group No. 2 QUD 156/2011 and Napranum Aboriginal Shire Council dated 23 May 2014;
 - (d) the rights and interests of the native title holders and Ergon Energy Corporation Limited as parties to the Northern Cape York People #2 and Ergon Energy ILUA dated 28 May 2014.

5. The rights and interests of RTA Weipa Pty Ltd and Rio Tinto Aluminium Limited (and any successors in title) under:
 - (a) the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* (Qld) (“Comalco Act”) and the Commonwealth Aluminium Corporation Pty Limited Agreement (which is given statutory force by the Comalco Act) (“Comalco Agreement”) to mine and/or perform other activities on the Determination Area, including the Comalco Interests and the rights to perform the Comalco Activities;
 - (b) the WCCCA; and
 - (c) Mining Lease No. 7024.
6. The rights and interests of Alcan South Pacific Pty Ltd (and any successors in title) under:
 - (a) the *Alcan Queensland Pty Limited Agreement Act 1965* (Qld) (“Alcan Act”) and the agreement made and varied pursuant to the Alcan Act (which is given statutory force by the Alcan Act) to mine and/or perform other activities on, and to obtain other rights and interests with respect to, the Determination Area; and
 - (b) Mining Lease No. 7031.
7. The rights and interests of Telstra Corporation Limited ACN 051 775 556:
 - (a) as the owner or operator of telecommunications facilities installed within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunication facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (c) for its employees, agents or contractors to access its telecommunication facilities;
 - (d) under any licences, leases, access agreements or easements relating to its telecommunications facilities in the Determination Area.
8. The rights and interests of Ergon Energy Corporation Limited ACN 087 646 062:

- (a) as the owner and operator of and “works” as that term is defined the *Electricity Act 1994* (Qld) within the Determination Area;
 - (b) created under the terms of the trustee lease described as Lease C on SP109761, commencing 1 July 2000, and granted pursuant to s 57 of the *Land Act 1994* (Qld);
 - (c) as a Distribution Entity and the holder of a Distribution Authority under the *Electricity Act 1994* (Qld);
 - (d) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld), including:
 - (i) rights in relation to any agreements relating to the Determination Area existing or entered into before the date on which these orders are made;
 - (ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph; and
 - (iii) to inspect, maintain and manage any works in the Determination Area.
9. The rights and interests of Cook Shire Council (the “Council”) including any rights the Council, its employees, agents or contractors have:
- (a) under its local government jurisdiction and functions under the *Local Government Act 2009* (Qld), under the *Land Protection (Pests and Stock Route Management) Act 2002* (Qld) and under any other legislation, for that part of the Determination Area within its local government area, as defined in the *Local Government Act 2009* (Qld);
 - (b) to enter the land described in para 9(a) to:
 - (i) exercise any of the rights and interests referred to in para 9(a);
 - (ii) inspect, maintain and repair infrastructure, facilities and other improvements; and
 - (iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.
10. The rights and interests of Mapoon Aboriginal Shire Council (the “Council”) including any rights the Council, its employees, agents or contractors have:

- (a) under its local government jurisdiction and functions under the *Local Government Act 2009* (Qld), under the *Land Protection (Pests and Stock Route Management) Act 2002* (Qld) and under any other legislation, for that part of the Determination Area within its local government area, as defined in the *Local Government Act 2009* (Qld);
- (b) as the:
 - (i) lessor under any leases which were entered into as at the date of the Determination;
 - (ii) grantor of any licences or other rights and interests which were granted as at the date of the Determination;
 - (iii) holder of any estate or interest in land, and as trustee of any reserves, that exist in the Determination Area as at the date of the Determination;
- (c) as the owner and operator of infrastructure, facilities and other improvements located in the Determination Area as at the date of the Determination, including but not limited to:
 - (i) dedicated roads operated by Council;
 - (ii) gravel pits operated by Council;
 - (iii) undedicated but constructed roads except for those not operated by Council;
 - (iv) water pipelines and other water supply infrastructure;
 - (v) drainage facilities; and
 - (vi) cemetery and cemetery related facilities; and
- (d) to enter the land described in paras 10(a) to 10(c) to:
 - (i) exercise any of the rights and interests referred to in paras 10(a) to 10(c);
 - (ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in para 10(c); and
 - (iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.

11. The rights and interests of Napranum Aboriginal Shire Council as the Local Government for that part of the Determination Area within its local government area, including:
 - (a) its rights and interests in land and waters within the Determination Area including as the trustee of the Deed of Grant in Trust over land described as Lot 21 on SP266617, Lot 4 on Plan WP50, Lot 5 on Plan WP50, Lot 6 on Plan WP50, Lot 7 on Plan WP50, Lot 8 on Plan WP50 and Lot 9 on Plan WP50 being part of the land described in Title Reference 50948514;
 - (b) its powers, functions, responsibilities and jurisdiction under the *Local Government Act 2009* (Qld);
 - (c) the rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owner and operator of valid infrastructure, roads, structures, earthworks, access works, facilities and other improvements within the Determination Area;
 - (d) the rights under any valid agreements between Council and any third party which relate to land or water in the Determination Area; and
 - (e) the rights of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing its powers and responsibilities under paras 11(a) to 11(d).
12. The rights and interests of the Australian Maritime Safety Authority as the holder of rights as a statutory authority exercising powers and functions under the *Navigation Act 2012* (Cth).
13. The rights and interests of the holders of any leases, licences, reservations, permits, easements or authorities granted under the *Land Act 1994* (Qld), and any relevant regulations or subordinate legislation made under that Act.
14. The rights and interests of members of the public arising under the common law, including but not limited to the following:
 - (a) any subsisting public right to fish; and
 - (b) the public right to navigate.
15. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title (Queensland) Act 1993* (Qld) as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:

- (a) waterways;
- (b) beds and banks or foreshores of waterways;
- (c) coastal waters;
- (d) beaches;
- (e) stock routes; and
- (f) areas that were public places at the end of 31 December 1993.

16. Any other rights and interests:

- (a) held by the State of Queensland or Commonwealth of Australia; or
- (b) existing by reason of the force and operation of the Laws of the State or the Commonwealth.

**SCHEDULE 5 - EXTRACTS OF THE WESTERN CAPE COMMUNITIES
CO-EXISTENCE AGREEMENT DATED 14 MARCH 2001**

"1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

When used in this Agreement, including the Recitals, the following terms will have the following meanings unless the subject or the context otherwise requires:

Term	Meaning
	...
Additional Native Title Parties	The applicants in Non-conforming Applications or Conforming Applications in respect of any part of the ILUA Area who as at the Commencement Date have not signed this Agreement.
	...
Associate	An employee, servant, agent or contractor of, or person providing or receiving goods or services to or from, Comalco, a Related Body Corporate of Comalco, a person having any right or interest in relation to any Comalco Interest that is derived from, or granted by, Comalco (for example, a sublessee of part of ML 7024), or a person exercising rights with the permission or authority of Comalco and includes a Comalco Contractor.
Aurukun Community	Aboriginal people who are ordinarily resident in or around the Shire of Aurukun.
	...
Claim	In relation to any person, a demand, claim, action, proceeding, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.
Claim Area	The land the subject of a Conforming Application.
Comalco	Comalco Aluminium Limited (ACN 009 679 127).
Comalco Act	The <i>Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957</i> (Qld)
Comalco Activities	Any activity or operation authorised, reasonably contemplated, permitted or required by the Comalco Interests and includes the Weipa Operations.
Comalco Agreement	The agreement between Queensland and Comalco referred to in s2 of the Comalco Act, as varied from time to time pursuant to s4 of that Act.
	...

Term	Meaning
Comalco Interests	<p>Each of the following as they relate to the ILUA Area:</p> <ul style="list-style-type: none"> (a) the Comalco Act; (b) the Comalco Agreement; (c) the Mining Leases; (d) various property interests held by Comalco now or, as of right pursuant to any other interest listed in paragraphs (a)-(c) and (e)-(l) of this definition, in the future (for example, SPMPs) located inside the boundaries of ML 7024; (e) land within the ILUA Area leased by Comalco from the Ports Corporation; (f) any area of land within the ILUA Area over which Comalco has any continuing right or interest and which land has been excised from ML 7024 (since its grant), including Other Interests; (g) any area of land (not subject to a Mining Lease) on which Comalco or an Associate has a right to place plant, facilities, infrastructure or property in connection with the Weipa Operations (for example, the wharves and related structures at Lorim Point, Humbug Point and Evans Landing); (h) any past act (as the term is defined in the NTA), or any Pre-Existing Right-Based Act the basis for which is the Comalco Act or the Comalco Agreement or any other Comalco Interest and which is conferred on Comalco; (i) any right of Comalco under the Comalco Act or the Comalco Agreement to obtain a further right or interest; (j) any right or interest of Comalco under any law in connection with any other Comalco Interest; (k) any other right or interest that Comalco is entitled to exercise, or have granted to it, in accordance with or as permitted by this Agreement; and (l) any right of renewal, extension, regrant or replacement of the Comalco Interests, and the renewals, extensions, regrants and replacements so obtained. <p>...</p>

Term	Meaning
Communities	<p>Each of the following:</p> <ul style="list-style-type: none"> (a) the signatories to this Agreement other than Comalco, Queensland and CYLC; (b) Possible Native Title Holders (including the Native Title Parties); (c) Traditional Owners; (d) members of the following Aboriginal peoples, traditional owner groups, associations and communities (which are believed to comprise all the Aboriginal communities with traditional or historic connections to lands within the ILUA Area) and Aboriginal communities in the vicinity of such lands: <ul style="list-style-type: none"> (i) the Aurukun Community; (ii) the Mapoon Community; (ii) the Napranum Community; and (iii) the New Mapoon Community; and (e) all other Aboriginal persons who ordinarily reside in and around the land the subject of the Mining Leases.
Conforming Application	<p>A claimant application made or to be made pursuant to this Agreement by a Native Title Party or other applicants on behalf of a Traditional Owner Group for a Model Determination to part of the ILUA Area and certified by CYLC pursuant to s203BE of the NTA, a proforma for which appears as Schedule 13.</p> <p>...</p>
CYLC	<p>Any entity that is determined to be a representative Aboriginal body under the NTA for any part, or all, of the ILUA Area, which at the Commencement Date is Cape York Land Council Aboriginal Corporation.</p> <p>...</p>
Designated Minerals	<p>Bauxite and kaolin and does not include minerals that are subsequently designated pursuant to clause 1 of the Comalco Agreement.</p> <p>...</p>
Hindering Action	<p>An act or omission of a Traditional Owner Group or a Traditional Owner or any person on their behalf which causes or contributes to, directly or indirectly, the cessation of the registration of this Agreement or the non-registration of this Agreement (whichever is relevant).</p> <p>...</p>

Term	Meaning
ILUA	An indigenous land use agreement (area agreement) under subdivision C, division 3 of part 2 of the NTA to which the Native Title Parties are parties as registered native title claimants, applicants or proposed applicants in relation to areas totalling the ILUA Area, but a reference to a separate ILUA is taken to be a reference to such an agreement to which the Native Title Parties are the registered native title claimants, applicants or proposed applicants to the "Claim Area or such other area within the ILUA Area determined by Comalco" as referred to in clause 2.5.1.
ILUA Area	The land within the area shown on the map in Attachment 1, subject to the area being decreased under clauses 2.5 or 5.5.
ILUA Area B	The area marked as area B in the plan of the ILUA Area.
...	...
Mining Leases	ML 6024 (formerly ML 3), ML 7024, any other mining lease (or lease that is ancillary to mining) granted to Comalco in accordance with the Comalco Act and the Comalco Agreement and any renewal, extension, regrant or replacement of any of them within the ILUA Area.
Model Determination	A native title determination in favour of a Native Title Party in the terms of the draft determination set out in Schedule 1. ...
Native Title Application	An application, claim or proceedings in relation to native title (including any application claiming native title or seeking a native title determination), whether under the NTA or otherwise.
Native Title Parties	Those Possible Native Title Holders who: <ul style="list-style-type: none"> (a) are authorised, in accordance with s251 A of the NTA, by the Possible Native Title Holders in each of the Traditional Owner Groups to make and sign this Agreement as an ILUA on behalf of each of the Traditional Owner Groups; (b) pursuant to obligations contained in this Agreement: <ul style="list-style-type: none"> (i) either are or will be the applicants in Conforming Applications; or (ii) must endeavour to procure other applicants to amend their Non-conforming Applications to render them Conforming Applications; and

Term	Meaning
	<p>(c) have signed this Agreement on the Commencement Date namely:</p> <ul style="list-style-type: none"> (i) the current registered native title claimants; and (ii) authorised signatories for each Traditional Owner Group, <p>being those persons named in Schedule 16; and</p> <p>(d) from their respective dates of signing, those Additional Native Title Parties who sign this Agreement pursuant to clause 2.4.5.</p> <p>...</p>
New SPMPL	<p>Any SPMPL granted or purported to be granted, on or after 23 December 1996, or to be granted in the future, for any land within the Weipa Township.</p> <p>...</p>
Non-conforming Application	<p>A claimant application which is:</p> <ul style="list-style-type: none"> (a) made on behalf of a Traditional Owner Group; (b) not a Conforming Application; and (c) made before the registration of this Agreement.
NTA	<p><i>Native Title Act 1993 (Cth).</i></p>
Other Interests	<p>Any SPMPL granted for any land within the Weipa Township and any title into which it may have been converted, whether held by Comalco or not.</p> <p>...</p>
Parties	<p>Comalco, the State of Queensland, CYLC and each other person signing this Agreement, every member of the Communities and all persons to whom s24EA(1)(b) of the NTA applies.</p> <p>...</p>
Ports Corporation	<p>The Ports Corporation of Queensland.</p>
Possible Native Title Holders	<p>All persons who hold or may hold native title in the ILUA Area.</p>
Pre-Existing Right-Based Act	<p>Has the meaning in s24IB of the NTA, and to the extent they are not covered by that definition, includes the acts under the Comalco Act or the Comalco Agreement as they relate to the ILUA Area which are listed in Schedule 12.</p> <p>...</p>
Procedural Requirements	<p>The procedural rights (as that term is defined in s253 of the NTA) set out in s241D of the NTA but excluding those relating to compensation.</p>

Term	Meaning
...	...
SBML 1	Special Bauxite Mining Lease 1 granted pursuant to the Comalco Act and the Comalco Agreement.
Short Term Non-registration Event	Where there has been a Hindering Action relating to the non-registration of this Agreement and this Agreement has not been registered within 12 months from the Commencement Date.
...	...
SPMPL	A Special Perpetual Mining Purposes Lease granted or to be granted pursuant to clause 27 of the Comalco Agreement.
...	...
Traditional Owner Groups	<p>The native title claim groups of the ILUA Area on whose behalf Conforming Applications have been made or are required to be made pursuant to the obligations in the Agreement, namely:</p> <ul style="list-style-type: none"> (a) the Alngith People; (b) the Anathangayth People; (c) the Ankamuthi People; (d) the Peppan People; (e) the Taepadhighi People; (f) the Thanikwithi People; (g) the Tjungundji People; (h) the Warrangu People; (i) the Wathayn People; (j) the Wik and Wik-Way Peoples; and (k) the Yupungathi People.
Trustee	The trustee of the WCCT.
...	...
Weipa Operations	<p>The activities and operations carried on and things done, from time to time, by Comalco or an Associate:</p> <ul style="list-style-type: none"> (a) within the ILUA Area pursuant to or in connection with any of the Comalco Interests; or (b) outside the ILUA Area, but which relate to the matters referred to in (a) including shipping cargo and minerals to and from the ILUA Area and use of the Port of Weipa or any other port within the ILUA Area and shipping channels.
...	...

1.2 Interpretation

In this Agreement, including the Recitals, except to the extent that the subject or the context otherwise requires:

- 1.2.1 the following terms have the meanings respectively assigned to them in the NTA:
- 1.2.1.1 applicant;
 - 1.2.1.2 claimant application;
 - 1.2.1.3 native title claim group;
 - 1.2.1.4 registered native title claimant;
 - 1.2.1.5 representative body;
 - 1.2.1.6 native title;
 - 1.2.1.7 native title group;
 - 1.2.1.8 native title holder;
 - 1.2.1.9 native title rights and interests; and
 - 1.2.1.10 for the purposes of any provisions in this Agreement concerning native title or native title rights and interests:
 - 1.2.1.10.1 land; and
 - 1.2.1.10.2 waters.
- 1.2.2 a reference to Aborigines, Aboriginal People or Aboriginals is a reference to Aboriginal peoples as defined in s253 of the NTA;
- 1.2.3 reference to any legislation or to any provision of any legislation includes any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under, such legislation or such provision and includes the corresponding legislation in such other State or Territory of the Commonwealth of Australia as may be relevant from time to time;
- 1.2.4 words (including words defined in this Agreement) denoting the singular number include the plural and vice versa;
- 1.2.5 words importing natural persons (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.2.6 words denoting any gender include all genders;
- 1.2.7 words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently viable form;
- 1.2.8 reference to a "right" includes an entitlement, remedy, discretion and power;
- 1.2.9 reference to "interest" includes any estate or interest, legal or beneficial, and

whether real or personal;

1.2.10 reference to "permit" includes consent to, authorise and allow;

1.2.11 reference to "valid" includes having full force and effect and reference to "invalid" includes not having full force and effect;

1.2.12 reference to a "People" in the list of the Parties on page 1 of this Agreement is a reference to the Native Title Parties for those People, as detailed in the definition of Native Title Parties in clause 1.1;

1.2.13 reference to a "native title determination" means a native title determination as defined in s 225 of the NTA;

1.2.14 reference to "registration" in relation to applications for native title determinations refers to registration on the Register of Native Title Claims and in relation to this Agreement refers to registration on the Register;

1.2.15 when referring to native title, "affects" has the same meaning as in s227 of the NTA;

1.2.16 when referring to native title or native title rights and interests, a "surrender" takes place on the later of:

1.2.16.1 immediately after the registration of this Agreement; or

1.2.16.2 the event on the occurrence of which the Parties have agreed the surrender is to occur,

and means a surrender of those native title rights and interests to Queensland;

1.2.17 reference to "consent" to an act after the Registration Date by the Communities or the Native Title Parties means that the Communities or the Native Title Parties also give that consent from the Commencement Date by virtue of the operation of this Agreement at common law;

1.2.18 if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;

1.2.19 reference to anything (including a right, obligation or concept) includes each part of it;

1.2.20 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

1.2.21 reference to a Schedule or an Attachment is a reference to a schedule or attachment to this Agreement;

1.2.22 reference to a sub-clause is a reference to the sub-clause of the clause in which it appears, reference to a paragraph is a reference to a paragraph of the sub-clause in

which it appears and reference to a sub-paragraph is a reference to a sub-paragraph of a paragraph in which it appears;

- 1.2.23 reference to a document or agreement, or provision of a document or agreement, is to that document, agreement or provision as novated, supplemented, varied or replaced from time to time;
- 1.2.24 a recital, schedule, annexure or a description of the Parties forms part of this Agreement;
- 1.2.25 a reference to any party to this Agreement or any other document or arrangement or other party identified in this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns and agents;
- 1.2.26 a reference to a Minister, Department, authority, body or person includes the Minister, Department, authority, body or person for the time being performing the functions performed by the Minister, Department, authority, body or person at the Commencement Date;
- 1.2.27 unless otherwise stated, a reference to "dollars" or "\$" is to Australian currency;
- 1.2.28 a reference in the body of this Agreement or in a Schedule to a clause is a reference to a clause in the body of this Agreement or that Schedule, respectively;
- 1.2.29 ...
- 1.2.30 where under this Agreement, Comalco commits to discriminate positively in favour of Aboriginal persons, Comalco will use its best endeavours to obtain such authorisations, if any, as may be necessary to allow it to lawfully discriminate in the manner outlined in this Agreement but Comalco's commitments are only activated once Comalco has obtained those authorisations;
- 1.2.31 a reference to "relevant Traditional Owner Groups" is to those Traditional Owner Groups whose Claim Areas include the land to which the operation of a provision applies and if there is uncertainty as to their identity those nominated by the Co-ordinating Committee;
- 1.2.32 a reference to land is to be taken to be also a reference to waters;
- 1.2.33 ...
- 1.2.34 "extension" refers to an extension of term; and
- 1.2.35 consents in this Agreement when given on behalf of a native title holder are deemed to have been authorised in accordance with s251A of the NTA.

1.3 Headings

The headings in this Agreement are for the purpose of more convenient reference only and will not form part of this Agreement or affect its construction or interpretation.

1.4 Parts of agreement applying to Queensland

1.4.1 Queensland will not be:

1.4.1.1 bound by any obligations under this Agreement expressed to be obligations of a Party or the Parties; and

1.4.1.2 entitled to exercise any rights under this Agreement expressed to be a right of a Party or the Parties,

unless they are expressly stated to apply to Queensland. Further, Queensland is not entitled to rely on any acknowledgment in this Agreement unless it is expressly stated to be for the benefit of Queensland.

1.4.2 Queensland is bound by, entitled to exercise rights under, and receives the benefits of clauses 1, 2 (but it is not bound by any provisions, including clauses 2.3.11, 2.4, 2.7, 2.8, 2.9 and 2.11.1, to the extent those provisions require it to accept the terms of the Model Determination or its operation), 4, 5, 11.4, 19, 20, 21, 22 and 26 to 46 inclusive and the corresponding schedules.

1.5 Interpretation for Native Title

1.5.1 Despite any other provision of this Agreement, the provisions of this Agreement which deal with the co-existence of native title and the Comalco Interests, the Other Interests, or the performance of the Comalco Activities on any land the subject of SBML 1 when it was originally granted apply only to those parts of the ILUA Area where native title was not extinguished by:

1.5.1.1 the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, or the grant of SBML 1; or

1.5.1.2 any other rights or interests granted pursuant to the Comalco Act, the Comalco Agreement or SBML 1; or

1.5.1.3 any other legislation,

and nothing in this Agreement compromises the rights of any Party to contend that native title has been extinguished, either fully or partially, in all or any part of the ILUA Area but Comalco will only contend such extinguishment if any member of the Communities or any person on their behalf makes a Claim contending that native title survives to:

1.5.1.4 the Designated Minerals within or taken from the Mining Leases; or

1.5.1.5 New SPMPs or Other Interests.

1.5.2 Neither Comalco nor any other Party may rely on the surrenders or extinguishments referred to in clauses 2.2.3 and 2.2.4 in any court proceedings:

1.5.2.1 prior to the Registration Date in relation to surrenders within clause

1.2.16.1; and

1.5.2.2 prior to the date of surrender in relation to surrenders within clause 1.2.16.2 except for the specified purposes of the surrender,

except in proceedings relating to the enforcement of this Agreement or any native title determination or claimant application to the extent that it relates to the ILUA Area.

1.5.3 Where this Agreement states that the native title rights and interests have "no effect", it means that the traditional rights and interests comprising native title are not able to be enjoyed or exercised but, where applicable and subject to the other provisions of this Agreement, the Communities are able to exercise the rights given to them under the NTA, such as the right to negotiate¹ and the right to be consulted about various activities.

1.5.4 Where this Agreement provides that native title rights and interests have "no effect" in relation to the Comalco Interests or the performance of the Comalco Activities, but "again have effect", the Communities have no cause of action against Comalco:

1.5.4.1 for the lawful performance of the Comalco Activities; and

1.5.4.2 for things lawfully done under the authority of the Comalco Interests,

regardless of whether the Comalco Activities could have been done in a manner which would have had a lesser effect on the native title rights and interests, either temporarily or permanently.

...

2 NATIVE TITLE

2.1 Agreement Procedures

2.1.1 The Communities are making this Agreement as occupants and residents of western Cape York Peninsula and, to the extent that they hold or may hold native title, they have authorised the making of this Agreement for the purpose of it constituting an ILUA for the whole of the ILUA Area, and as separate ILUAs as contemplated under clause 2.5.

2.1.2 The Parties agree that this Agreement is to be registered as one ILUA or separate ILUAs.

¹

The "right to negotiate" procedures are set out in subdivision P, division 3 of part 2 of the NTA.

2.2 Acknowledgments of Past Matters and Present and Future Consents

The Parties make the following acknowledgments and agree to the stated effects of the acknowledgments and, subject to this Agreement, give the stated consents.

2.2.1 The Comalco Interests, the Other Interests, and the performance of the Comalco Activities to the Registration Date are valid. If any of the Comalco Interests and Other Interests, or the performance of any of the Comalco Activities, have ever been invalid to any extent, the Parties agree to their validation, and that they are taken to be valid and always to have been valid.

2.2.2 On the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, or the grant of SBML 1, any native title rights which may have existed yielded to the extent of any inconsistency between them and the Comalco Act, the Comalco Agreement, the conferral of any of the Comalco Interests and the performance of the Comalco Activities, whether done before or after the Registration Date. The yielded native title rights therefore do not and would not affect, by preventing, inhibiting, restricting, or otherwise qualifying, the conferral of the Comalco Interests or the performance of the Comalco Activities in any way at any time.

2.2.3 In relation to Other Interests and New SPMPLs:

2.2.3.1 at the times of the grants, or purported grants of any Other Interests or any New SPMPLs prior to the Registration Date; and

2.2.3.2 at the time of the grants of any New SPMPLs after the Registration Date,

native title has been, or will be, whichever is relevant, extinguished to the land the subject of the grants, and any that has otherwise survived or would otherwise have survived, is surrendered with that intention. The Communities consent to the grant of any New SPMPLs after the Registration Date.

2.2.4 In recognition of the benefits Comalco and Queensland has agreed to make available to the Communities under this Agreement and the position Comalco is adopting regarding the possible survival of native title to the ILUA Area, to allay doubt, if any native title rights presently subsist to all, or a portion of, the Designated Minerals either presently within, or previously taken from, the Mining Leases, those native title rights are surrendered with the intention that they be extinguished. The effect of this clause applies notwithstanding any decision of any Court regarding the extinguishment or otherwise of native title in minerals generally. The Communities will not contend the existence or survival of native title to any of the Designated Minerals, or a portion of the Designated Minerals as resources taken from the Mining Leases, either presently within, or previously taken from, the Mining Leases, from the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, or the grant of SBML 1. Comalco and Queensland may plead this clause in bar to any Claim brought by the Communities, any member of the Communities or any person on or for their behalf, so contending the existence or survival of native title to the Designated

Minerals. The Communities by entering into this Agreement consent to Comalco or Queensland becoming a party in any matter where such a Claim is made.

2.2.5 For resources taken by Comalco under the authority of the Comalco Interests from the ILUA Area (other than the Designated Minerals), the Communities' native title rights and interests do not include a right to a portion of those resources. However to allay doubt, if any native title rights and interests comprise those rights, the Communities waive any entitlement to enforce those native title rights which may have arisen on or before the Commencement Date as against Comalco or Queensland and agree not to exercise such rights after the Commencement Date against Comalco or Queensland.

2.2.6 The Communities consent to all acts conferring upon Comalco any of the Comalco Interests listed in subparagraphs (c), (d) and (g) to (l) inclusive of the definition of "Comalco Interests" in clause 1.1 after the Registration Date and the performance of the Comalco Activities, regardless of whether those acts affect, or would but for this Agreement, affect native title.

2.2.7 If, but for this Agreement, Procedural Requirements would have applied to the conferral of a Comalco Interest, Comalco must perform those Procedural Requirements as if they still applied.

2.2.8 In relation to the Ports Corporation, the Communities consent to, after the Registration Date:

2.2.8.1 the vesting or grant of any land within the ILUA Area to the Ports Corporation; and

2.2.8.2 the conferral on the Ports Corporation or Comalco of all rights necessary to enable:

2.2.8.2.1 the grant of the Comalco Interests, including the grant of any such interest by the Ports Corporation; and

2.2.8.2.2 Comalco to perform the Comalco Activities,

and nothing in this clause is intended to preclude the application of any law concerned with the protection of Aboriginal cultural heritage or environmental protection.

2.2.9 After the Registration Date, the Communities consent to the shipping of goods in and out of Weipa, and to any other points in the Comalco Interests near or adjacent to the sea or any waterway, but only pursuant to the Comalco Interests or for the performance of the Comalco Activities and nothing in this clause is intended to preclude the application of any law concerned with the protection of Aboriginal cultural heritage or environmental protection.

2.2.10 Public Services for Weipa Township

2.2.10.1 The Communities consent to:

2.2.10.1.1 the construction, operation, use, maintenance or repair of;
and

2.2.10.1.2 the conferral of rights or interests on any person with respect
to

facilities (including but not limited to the facilities listed in Schedule 2)
for public purposes in Weipa Township.

2.2.10.2 For the purposes of Queensland, the Director-General, Department of
Natural Resources and Mines will be responsible for the administration
of this clause.

2.3 Acknowledgments – Present and Future Matters

The Parties also make the following acknowledgments and agree to the stated effects of
the acknowledgments.

2.3.1 Subject to this Agreement, Comalco is entitled to exercise all rights and interests
conferred by the Comalco Interests and to perform the Comalco Activities lawfully
in the manner Comalco, in its absolute discretion, deems fit and without incurring
any liability to the Communities.

2.3.2 The Comalco Activities constitute activities for the purposes of s44H of the NTA.

2.3.3 Comalco is entitled to exercise a right to exclude any persons from those parts of
the ILUA Area required by Comalco in exercise of the rights conferred by the
Comalco Interests, the performance of the Comalco Activities, or this Agreement
from time to time for operational, safety or security reasons or as required by any
law.

2.3.4 For the areas where Comalco exercises a right to exclude persons:

2.3.4.1 any native title rights and interests are wholly inconsistent with the
performance of the Comalco Activities and the exercise of rights under the
Comalco Interests and may not be exercised by the Communities for the
duration of the inconsistency;

2.3.4.2 despite any invitations or licences given by Comalco to others to enter
those areas, Comalco's right to exclusive possession includes an entitlement
to exclude all others from those areas; and

2.3.4.3 the native title rights and interests will continue to exist in their entirety but
will have no effect in relation to the exercise of rights under the Comalco
Interests or the performance of the Comalco Activities.

2.3.5 For the areas where Comalco does not exercise a right to exclude persons as
acknowledged in this Agreement:

2.3.5.1 where any Comalco Interest or the performance of any Comalco Activity is
partly inconsistent with the continued existence, enjoyment or exercise of

the native title rights and interests, the native title continues to exist in its entirety but the native title rights and interests have no effect on the exercise of rights pursuant to the Comalco Interests or the performance of the Comalco Activities to the extent of any inconsistency; and

2.3.5.2 to the extent that the native title rights and interests are not inconsistent with the Comalco Interests or the performance of the Comalco Activities, the native title rights and interests are exercisable to their full extent in respect of the ILUA Area.

2.3.6 After land ceased or ceases to be subject to the Comalco Interests, native title rights and interests again had effect or can again have effect to the extent possible having regard to the effect of the Comalco Interests and the performance of the Comalco Activities. This clause is not intended to limit the operation of ss 47, 47A or 47B of the NTA.

2.3.7 Despite the acknowledgments by the Communities in clause 2.2, to the extent that native title rights and interests continue to exist, the interaction between them and the Comalco Interests and the performance of the Comalco Activities is as described in this Agreement.

2.3.8 Subdivision P, division 3 of part 2 of the NTA² is not intended to apply, and does not apply, to any of the acts consented to or supported in this Agreement including to the renewal, regrant, extension or replacement of the Mining Leases, the grant of any Comalco Interests, or any alterations to any "right to mine" (as the term is used in subdivision P) resulting from environmental requirements, after the Registration Date.

2.3.9 Subject to clause 2.3.10, Comalco has the right (subject to obtaining any necessary Government approvals) to permit (including by way of lease, sublease, licence, delegation, assignment, invitation, or any other dealing) third parties to do any or all of the following:

2.3.9.1 exercise any of the rights conferred by the Comalco Interests or this Agreement;

2.3.9.2 perform the Comalco Activities; or

2.3.9.3 enter and remain on any area of the Comalco Interests for any purpose related to the maintenance or promotion by Comalco of its business interests, and

in exercising the rights described in this clause, Comalco will be mindful of the cultural sensitivities of the Communities.

²

This is the subdivision which provides the "right to negotiate" procedures of the NTA.

- 2.3.10 In permitting third parties to carry out the activities referred to in clause 2.3.9, Comalco must require the third parties to abide by the provisions of this Agreement which would apply to Comalco if it was carrying out the activities, including the provisions dealing with cultural heritage. Comalco will remain liable to the Communities for the performance of Comalco's obligations under this Agreement by such third parties as though the acts or omissions of such third parties were the acts or omissions of Comalco.
- 2.3.11 Subject to this Agreement and the rights under the Comalco Interests, the native title rights and interests to the ILUA Area that might be possessed by the Possible Native Title Holders for the duration of the Comalco Interests are as specified in Order 3 in the Model Determination.
- 2.3.12 In relation to the ILUA Area, until the termination of the Comalco Interests the native title rights and interests of the Possible Native Title Holders do not confer possession, occupation, use and enjoyment of the land of any part of the ILUA Area to the exclusion of all others.

2.4 Registering this Agreement as an ILUA

- 2.4.1 In addition to all other effects that this Agreement may have at law, it constitutes an ILUA, and by execution of this Agreement, the Parties agree to its registration and to take the following steps as applicable to each of them.
- 2.4.1.1 As soon as practicable after the Commencement Date, the Native Title Parties who are not applicants in relation to any part of the ILUA Area at the Commencement Date will either:
- 2.4.1.1.1 lodge Conforming Applications in which they are the applicants; or
 - 2.4.1.1.2 procure applicants from their respective Traditional Owner Groups to lodge Conforming Applications,
- so that, subject to clause 2.4.1.2 and to the extent permitted by law, all parts of the ILUA Area are subject to Conforming Applications.
- 2.4.1.2 As soon as practicable, but in any event no later than 6 months after the Commencement Date, the Native Title Parties who are applicants in relation to any part of the ILUA Area at the Commencement Date or who have been Additional Native Title Parties will either amend their claimant applications, in respect of the ILUA Area, to render them Conforming Applications or withdraw that part of their claimant application, in respect of the ILUA Area, and lodge Conforming Applications in accordance with clause 2.4.1.1.
- 2.4.1.3 A failure by a Native Title Party to comply with clause 2.4.1.2 will be deemed to give rise to a Determination that there has been a Short Term Non-registration Event and Comalco may exercise its rights under clause 2.6.3.1 accordingly.

- 2.4.1.4 The Native Title Parties must use their best endeavours to procure:
- 2.4.1.4.1 the applicants in any Non-conforming Applications to amend their Non-conforming Application to render them Conforming Applications; and
 - 2.4.1.4.2 any Additional Native Title Parties who become registered native title claimants to sign and agree to be bound by the terms of this Agreement.
- 2.4.1.5 The Native Title Parties will ensure that the applicants have, in accordance with s251B of the NTA, proper authorisation for the making of their Conforming Applications.
- 2.4.1.6 If a Conforming Application is not registered on the Register of Native Title Claims, then the Native Title Parties must use their best endeavours to ensure that the claimant applications made on behalf of their respective Traditional Owner Groups are registered on the Register of Native Title Claims, including by making such amendments, as agreed by Comalco, as may be necessary for registration; providing such material in support of the amended application as the Registrar or the Federal Court may require; and making such application to the Federal Court as may be necessary to achieve registration.
- ...
- 2.4.1.11 The Communities will not object to the registration of this Agreement, will use their best endeavours to have an objector withdraw any objection to registration of this Agreement and, once this Agreement is registered, will not apply to any Court, under the NTA or otherwise, to have this Agreement removed from the Register.
- 2.4.1.12 CYLC and the Communities will each use their best endeavours to ensure that this Agreement remains registered.
- 2.4.1.13 Notwithstanding clause 2.4.1.1 but subject to clause 2.4.1.14, the Native Title Parties will not be required to lodge a Conforming Application for ILUA Area B.
- 2.4.1.14 If a person other than a Native Title Party or an applicant authorised by a Traditional Owner Group lodges a claimant application that includes any part of the ILUA Area, then the Native Title Parties, who are the Possible Native Title Holders for that part of the ILUA Area, must, as soon as practicable after the claimant application is made, lodge or procure the lodgement of, on behalf of their Traditional Owner Group, a Conforming Application in relation to that area in accordance with this clause 2.4.1.
- ...

2.4.5 The Parties acknowledge that some Additional Native Title Parties might agree to be bound by the terms of this Agreement after the Commencement Date. The Parties agree to the amendment of this Agreement:

2.4.5.1 by the addition of the names of those Additional Native Title Parties in Schedule 16; and

2.4.5.2 the signing of this Agreement by those Additional Native Title Parties, without the necessity for the Parties, other than the Additional Native Title Parties whose names are being added, to sign the amendment. On signing this Agreement as amended in accordance with this clause 2.4.5, an Additional Native Title Party is bound by, entitled to exercise rights under, and receives the benefits of this Agreement from the date of signing.

2.5 Separate ILUAs for Separate Areas

2.5.1 For the purposes of s199C of the NTA and despite anything else contained in this Agreement or any rule of law to the contrary:

2.5.1.1 subject to clause 2.5.2, this Agreement may be registered as a separate ILUA for each Claim Area or such other area within the ILUA Area determined by Comalco after consultation with CYLC and Attachment 1 will be amended accordingly; and

2.5.1.2 for each such separate ILUA a reference to "ILUA Area" will be taken to be a reference to that Claim Area or such other area within the ILUA Area determined by Comalco after consultation with CYLC.

2.5.2 Although this Agreement embodies what may become a number of separate ILUAs (see clause 2.5.1), Comalco may, for convenience, exercise its rights or perform its obligations as if all such ILUAs were the one agreement. The performance by Comalco of its obligations or the exercise of its rights as described under this Agreement will be deemed to be the performance of obligations or the exercise of rights for all of the ILUAs referred to in clause 2.5.1.

2.5.3 If at any time:

2.5.3.1 it appears to Comalco that it is likely that a native title determination will be made; or

2.5.3.2 a native title determination is made,

in relation to any part of the ILUA Area (referred to in clause 2.5 as the "**Relevant Part**") in favour of any Aboriginal person not a party to, or bound by, this Agreement (referred to in this clause 2.5 as the "**New Native Title Holder**") which will cause s199C(1)(b) of the NTA to apply:

2.5.3.3 then Comalco is entitled to notify the Native Title Registrar that the ILUA Area is reduced by the Relevant Part and does not include, and is taken not to relate to, the Relevant Part (and if the native title

determination is made as contemplated in clause 2.5.3.2, the notification will be deemed to have been given); and

2.5.3.4 CYLC and the Communities will use their respective best endeavours to ensure that the New Native Title Holder:

2.5.3.4.1 adopts and enters into this Agreement as a Native Title Party; and

2.5.3.4.2 makes the appropriate applications to the Federal Court under s199C(1A) of the NTA seeking an order that the Federal Court not remove the details of this Agreement from the Register or, if removal is inevitable, only the minimum area possible.

2.5.4 During any period of time that this Agreement is not registered over a Relevant Part upon the Register under clause 2.5.3, then the provisions of this Agreement (other than clauses 1, 2, 3, 4, 16, 17, 18, 19, 20, 21, 22, 24, 27 and 31 through to 46 (inclusive) and the related Schedules and Attachments) will cease to apply to the Relevant Part during the relevant period.

2.5.5 If this Agreement is (or its details are) removed from the Register, and the New Native Title Holder declines to become a party to this Agreement, or it is reasonably clear, from the circumstances, that the holder does not wish to become a party to this Agreement, the Parties will use their best endeavours to ensure that this Agreement is again registered in respect of the ILUA Area except for the Relevant Part, and for the purposes of this Agreement:

2.5.5.1 "ILUA Area" is taken to exclude the Relevant Part;

2.5.5.2 (for the avoidance of doubt) clause 2 will, to the extent practicable, apply again.

...

2.11 Commitments related to clause 2

2.11.1 Except where it is allowed by this Agreement, no Party may at any time:

2.11.1.1 make a Claim in relation to the ILUA Area or the subject matter of this Agreement (whether a part of any application or other proceedings in a court, tribunal, arbitral body or other judicial or semi-judicial forum) that any matter or thing is contrary to a Model Determination or any other provision in clause 2; or

2.11.1.2 commence or prosecute any Native Title Application in connection with the ILUA Area other than a Conforming Application.

2.11.2 Unless otherwise agreed in writing by the Parties, the Communities must not, at any time, take any action to:

- 2.11.2.1 except as contemplated by clauses 5.4, 5.6, 11.1 and 11.2, seek the conversion of the underlying tenure of any land the subject of any Comalco Interest into Aboriginal Land;
- 2.11.2.2 except as contemplated by clauses 5.4, 5.6, 11.1 and 11.2 and the Weipa Township Agreement, seek any other grants of freehold or leasehold title within the ILUA Area which would impede, interfere with or prejudicially affect any of Comalco's rights or interests under the Comalco Interests or this Agreement; or
- 2.11.2.3 commence or prosecute any claim or other legal action relating to cultural heritage in connection with the land the subject of the Comalco Interests, except in accordance with clause 27.

2.11.3 If any Party (other than Comalco or Queensland) materially breaches the condition referred to in clause 2.11.1, Comalco may, at its discretion (and without limiting its other rights) oppose any Native Title Application in so far as it relates to that Party in any manner it sees fit (including by contending that native title to or part of, the ILUA Area has been extinguished).

2.12 Warranties by the Communities

The Communities represent and warrant to Comalco that:

2.12.1 the native title groups (other than CYLC), on whose behalf the Native Title Parties have been authorised to sign this Agreement, in respect of all parts of the ILUA Area have been identified and are as identified in the:

...; and

2.12.2 the members of each of the Traditional Owner Groups to make Conforming Applications in respect of all parts of the ILUA Area have, in accordance with s251A of the NTA, properly authorised the making of this Agreement.

...

2.14 NTA Authorisation

2.14.1 The Parties acknowledge that, but for this Agreement, certain activities may nevertheless be permitted by provisions of the NTA (other than by subdivision C, division 3 of part 2 of the NTA).

2.14.2 If a Government proposes to do any of the things the subject of the sections referred to in s24AA(4)(e), (f) and (i) of the NTA, in relation to the ILUA Area and those things directly relate to the Comalco Interests or the performance of the Comalco Activities, then such things are consented to, valid and permitted under and covered by this Agreement.

3 SUPPORT FOR COMALCO INTERESTS AND COMALCO ACTIVITIES

3.1 General support

- 3.1.1 The Communities agree to, and support, Comalco's having and obtaining the Comalco Interests and the performance of the Comalco Activities.
- 3.1.2 The Communities will support the grant, from time to time, to Comalco of such Government approvals and authorisations in the future that are necessary for the performance of the Comalco Activities or as may be required for Comalco Activities. The Communities are not required to incur any expense in the performance of their obligations.
- 3.1.3 If after the Commencement Date, Comalco lawfully acquires any new rights or interests in relation to the ILUA Area (including after, where relevant, following any processes under the NTA), the Communities agree to support such rights as if they were part of the Comalco Interests under this Agreement.
- 3.1.4 Comalco, or any of its Associates, may carry out any act or activity, directly or indirectly, permitted or supported by clauses 3.1.1 and 3.1.2 as of right and without any payment to any other Party under this Agreement.

3.2 Specific Support

- 3.2.1 The support contemplated in clause 3.1 includes, subject to this Agreement, requirements that the Communities will:
- 3.2.1.1 support the same or similar activities carried out in parts of the Comalco Interests not previously used (for example, mining in, or transportation or access over, new areas) and construction of plant, facilities and infrastructure for the performance of the Comalco Activities;
- 3.2.1.2 as an alternative to ML 6024, consent to the grant of any interests that may be necessary for Comalco for access to or to transport materials between the areas of land the subject of ML 7024 which are north and south of the Embley River and to enable the construction of any infrastructure required for that access or transportation; or
- 3.2.1.3 if required, consent to any extensions, renewals or replacements of ML 7024 or ML 6024,
- even though such rights and interests may, notwithstanding the provisions of this Agreement, be Pre-Existing Right-Based Acts.
- 3.2.2 Nothing in this clause 3 is intended to preclude the application of any law concerned with the protection of Aboriginal cultural heritage or environmental protection.

3.3 Support for Gas or Energy Supply

3.3.1 Subject to the payment under clause 3.3.2, the Communities consent to the grant of any rights over the ILUA Area necessary to enable the supply of gas to the Weipa Operations and to lay any related gas pipelines or provide any storage installations and other facilities and these rights must:

3.3.1.1 be substantially similar to the rights granted over native title rights and interests for the provision of gas spur pipelines in Cape York but outside the ILUA Area (for example the gas spur lines from the proposed PNG/Queensland Gas pipeline);

3.3.1.2 have a substantially similar effect on native title rights and interests as those referred to in clause 3.3.1.1 and any compensation referred to in clause 3.3.2 will be substantially similar to that paid for the effect on native title rights and interests of the grant of the provision of gas spur pipelines in Cape York but outside the ILUA Area.

3.3.2 The nature of the rights, their effect on native title rights and interests and any compensation will be agreed by Comalco and the Co-ordinating Committee following consultation with the relevant Traditional Owner Groups. The amount of compensation must be paid to the Trustee and applied in accordance with this Agreement.

3.3.3 If the Co-ordinating Committee and Comalco cannot agree on the amount referred to in clause 3.3.2 within a reasonable time, then either may give the other notice that there is a Dispute. Clause 27 will apply to the Dispute subject to the dispute being determined by the person whom the Co-ordinating Committee and Comalco agree has, under other agreements, determined, or been appointed to determine, the amount payable as compensation for the effect on native title rights and interests of the grant of similar rights within Cape York but outside the ILUA Area. Where they cannot agree on the appointment or there is no such person, then the appointment will be made by the President of the Institute of Arbitrators.

3.4 Change in circumstances

The commitments of the Parties under this Agreement (in particular, clauses 2 and 3) are intended to provide long-term benefits for the Parties, even if the law or circumstances change over time. Without any limitation:

3.4.1 the commitments continue even if, for some reason at some time in the future, any of the Parties obtain further rights or interests or new rights or interests are given to any of the Parties (for example, by future legislation), in relation to the ILUA Area; and

3.4.2 if the Parties obtain further or new rights or interests in relation to the ILUA Area that, if exercised, might hinder or impede the rights of any other Party, the Parties agree to exercise those rights in a way that is consistent with this Agreement.

...

10 THIRD PARTY ACCESS TO AND ACTIVITIES ON THE MINING LEASES

10.1 Towns upon ML7024

The Native Title Parties and the Communities acknowledge that the following activities may be conducted on any part of any ML7024 Town for purposes of or incidental to a town:

10.1.1 residential, commercial, industrial, municipal, airport, road, transportation, social, tourist, sporting, recreational, health, educational, charitable, community and other similar purposes; and

10.1.2 activities typically conducted by or for residents, and their invitees, of similar sized towns elsewhere in Queensland.

10.2 Infrastructure

10.2.1 The Communities agree to public use of the following infrastructure within the Mining Leases:

10.2.1.1 roads intended for public use, aerodromes, airports, bridges and other transport related infrastructure in existence as at the date of this Agreement, which (for the avoidance of doubt) includes the Weipa-Mapoon Road, the Weipa-Coen Road (where it joins the Peninsula Development Road at the boundary of ML7024), the Weipa-Aurukun Road and the Weipa Aerodrome; and

10.2.1.2 any infrastructure of the kind referred to in clause 10.2.1 established upon any of the Mining Leases in the future.

10.2.2 Comalco will consult with the Co-ordinating Committee and the Co-ordinating Committee or its authorised representative must consult with the relevant Traditional Owner Groups about any proposal by it to establish infrastructure of the kind referred to in clause 10.2.1.

10.3 Permit System

10.3.1 The Parties acknowledge the existence of the permit system for access by tourists and residents of ML7024 Towns for sporting, recreational, community or similar purposes to parts of the ILUA Area, compiled by Comalco with the assistance of the Aurukun Shire Council, Napranum Aboriginal Council, Marpuna Corporation (now Mapoon Aboriginal Council), Alspac and the Weipa Citizens Advisory Committee. The Co-ordinating Committee will review the Permit System as soon as practicable but in any event within 6 months of the Commencement Date.

10.3.2 Comalco will, to the extent it is reasonably able to do so, assist the Communities to implement the Permit System.

10.3.3 Comalco will not authorise the establishment or use of any camp site for sporting, recreational, community or similar purposes on the Mining Leases other than those

camp sites governed by the Permit System, without the consent of the Co-ordinating Committee. The consent of the Co-ordinating Committee may only be given after it has consulted with the Traditional Owner Groups who are traditional owners of the land on which the camp site is to be established or used.

10.3.4 The Permit System may be amended by the Co-ordinating Committee from time to time, provided the amendment has been consented to by the relevant Traditional Owner Groups and each of the relevant Councils and, to the extent it applies to the ILUA Area, Comalco. Such consent by Comalco will not be unreasonably withheld having regard to the Comalco Interests and Comalco Activities.

10.3.5 Comalco will not (other than for safety or in an emergency) authorise, under the Permit System, the discharge of firearms or the lighting of campfires.

10.3.6 The Permit System, its operation and any obligations of Comalco in relation to the Permit System, are subject to any rights of access or use or any right to carry out activities authorised by the operation of clauses 2.3.9, 10.1, 10.2 and 10.4 or the principles referred to in them.

10.3.7 The Co-ordinating Committee and Comalco may agree on the roads within the Mining Leases that are not to be used by the public as contemplated under clause 10.2.1 but which are to be subject to the Permit System eg tracks or roads to Outstations or Significant Aboriginal Sites or areas that have been surrendered from the Mining Leases in accordance with clauses 5.1 or 5.2.

...

10.5 Avoidance of doubt

For the avoidance of doubt:

10.5.1 nothing in this clause 10 affects any Parties' rights elsewhere in this Agreement; and

10.5.2 the Parties acknowledge that Comalco cannot control any use a third party might make of any part of the Mining Leases if that third party's right to enter or be upon the land, use or occupy it or erect any buildings or structures or make any other improvements is lawfully authorised, independently of Comalco, for example:

10.5.2.1 by or under the Mineral Resources Act 1989, any other statute relating to mining or any other law; or

10.5.2.2 under any permission given by the Minister for access across ML7024 pursuant to clause 56(a) of the Comalco Agreement.

...

19 BENEFITS PROVIDED BY COMALCO AND QUEENSLAND

19.1 No other Benefits

19.1.1 The benefits provided by Comalco and Queensland under this Agreement are in full satisfaction of:

19.1.1.1 any and all payments or benefits that may be or may have been, payable or provided, and any other right, under any laws (including common law, equity or statute) about the enjoyment by Comalco (or any Associate) of the Comalco Interests, or the performance of the Comalco Activities; and

19.1.1.2 any claims, under any laws (including common law, equity or statute), that may be made by any native title holders, or any person on their behalf, against Queensland, Comalco, or its predecessors in title, or any person acquiring property from Comalco, on the basis of any derogation of their rights or interests in relation to the land the subject of the Comalco Interests or the effect of the performance of the Comalco Activities.

19.1.2 Clause 19.1.1 includes amounts that might otherwise have been, or become, payable under the NTA, Native Title (Queensland) Act 1993 (Qld), Racial Discrimination Act 1975 (Cth), the Aboriginal Land Act 1991 (Qld), the Mineral Resources Act 1989 (Qld), the Acquisition of Land Act 1967 (Qld), any other relevant legislation and any new legal principles established from time to time (including by the decisions of any court or tribunal).

19.1.3 The Communities and each member of the Communities and CYLC release Queensland, Comalco and its Related Bodies Corporate from any Claim in relation to the Comalco Interests or the performance of the Comalco Activities.

19.2 Protection of Benefits

If any person, other than the members of the Communities who are bound by this Agreement:

19.2.1 is able to establish that they have native title rights or interests in relation to any part of the ILUA Area and, as a result, is entitled to payment or provision of benefits or compensation from Queensland or Comalco (whichever is relevant) (directly or indirectly) under any law (including common law, equity or statute) including any payment for interference with such rights or interests; or

19.2.2 they are entitled to damages against Queensland or Comalco (whichever is relevant) on the basis of any derogation of the rights or interests of a native title holder,

Queensland or Comalco (whichever is relevant) may elect to suspend (in whole or in part) its obligation to make the payments or contributions under this Agreement until the amount that would have been paid but for the suspension is equivalent to any such

payment, contribution, provision of benefits or damages and its costs in defending any action by the person asserting those rights or interests.

19.3 Benefits to Possible Native Title Holders

In addition to the benefits which Comalco has agreed to make available under other provisions of this Agreement, CYLC acknowledges the receipt of the sum of \$1.00 paid by Comalco and \$1.00 paid by Queensland on the Commencement Date which is to be held in trust by CYLC on behalf of all Possible Native Title Holders.

...

ATTACHMENT 1 ILUA AREA (clause 1.1 of Agreement)

The map showing the ILUA Area follows the ILUA Area description below. To the extent of any inconsistency, the written description prevails over the area indicated on the map.

ILUA AREA DESCRIPTION

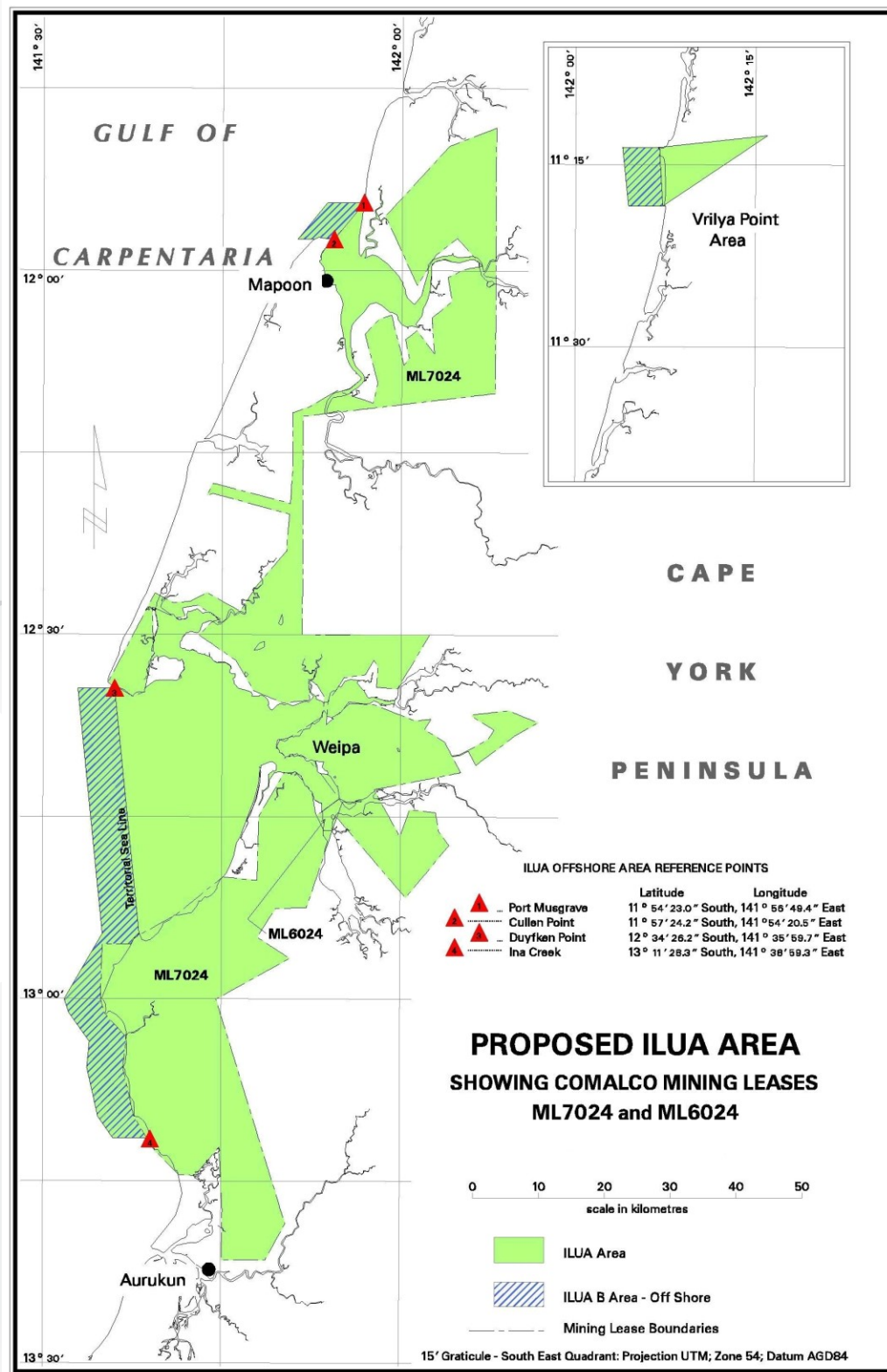
The ILUA Area is comprised of the following areas:

1. all land and waters within the ML 6024 Area and the ML 7024 Area but subject to the removal of particular areas from the ILUA Area from time to time as specifically provided in this Agreement;
2. the land and waters of Albatross Bay and the rivers and creeks running into it (below the high water mark) from the Territorial Sea Baseline of Albatross Bay eastward to the most easterly of:
 - (a) the coastline;
 - (b) the western boundary of ML 7024;
 - (c) the north-western boundary of ML 6024;
 - (d) in the Mission River, longitude 141° 59' 30.5",but excluding any areas within the Shire of Aurukun as shown on Plan SC 211;
3. the land and waters of Port Musgrave and the rivers and creeks running into it (below the high water mark) from the Territorial Sea Baseline of Port Musgrave easterly along the Ducie River to the boundary of ML 7024 and southerly along the Wenlock River to the boundary of ML 7024;
4. the land and waters within the Weipa Township boundary irrespective of whether the land and waters are also within ML 7024;

5. the following lots outside of the Weipa Township boundary which have been surrendered from ML 7024 but which are generally located within the area defined by the outer boundaries of the ML 7024 Area:
 - (a) Lot 342 on MP 36486;
 - (b) Lot 22 on MP 32268;
 - (c) Lot 15 on SP 116851 (WP 7);
 - (d) Lot 29 on SP 116854 (WP 18);
 - (e) Lot 17 on SP 116853 (WP 12);
 - (f) Lot 2 on MP 26144 (WP 6);
 - (g) Lot 25 on MP 26155 (WP 15);
 - (h) Lot 37 on MP 30227 (WP 23);
 - (i) Lot 39 on MP 30554 (WP 26); and
 - (j) Lot 30 on MP 30144 (WP 21); and

6. ILUA Area B which is the land and waters extending 3 nautical miles from the coastline or the Territorial Sea Baseline as applicable between:
 - (a) latitudes 12° 54' 23.0" South and 11° 57' 24.2" South (between Port Musgrave and Cullen Point);
 - (b) latitudes 12° 34' 26.2" South and 13° 11' 28.3" South (between Duyfken Point and Ina Creek); and
 - (c) latitudes 11° 13' 35.3" South and 11° 18' 24.8" South (off the Vrilya Point Area),irrespective of whether the land and waters are also within ML 7024.

ILUA AREA MAP



Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION**

QUD 156 of 2011

BETWEEN:

**MARYANNE COCONUT, GRACE JOHN, MALCOLM CALLOPE, CHARLES BUDBY, GABRIEL MAIRU, FLORENCE HECTOR, IVY GORDON, ANDREA TOBY, MAURICE WOODLEY, VICTORIA KENNEDY, CELIA FLETCHER, AGNES MARK, ALMA DAY, HARRIET FLINDERS, FLORENCE LUFF, NEVILLE MOTTON, RHONDA PARRY, ALLISON SAILOR, RAYMOND AH MAT, LINDA MCLACHLAN, MICHELLE KOSTECKI (NEE AH MAT) ON BEHALF OF THE NORTHERN CAPE YORK #2 NATIVE TITLE CLAIM GROUP
Applicant**

AND:

**STATE OF QUEENSLAND
First Respondent**

**COOK SHIRE COUNCIL
Second Respondent**

**MAPOON ABORIGINAL SHIRE COUNCIL
Third Respondent**

**OLD MAPOON ABORIGINAL CORPORATION
Fourth Respondent**

**AUSTRALIAN MARITIME SAFETY AUTHORITY
Fifth Respondent**

**ERGON ENERGY CORPORATION LIMITED
Sixth Respondent**

**TELSTRA CORPORATION LIMITED
Seventh Respondent**

**ALCAN SOUTH PACIFIC PTY LTD
Eighth Respondent**

**RTA WEIPA PTY LTD
Ninth Respondent**

**SUNRISE MINERALS PTY LTD
Tenth Respondent**

JUDGE: GREENWOOD J
DATE: 20 JUNE 2014
PLACE: WEIPA

REASONS FOR JUDGMENT

1 The Federal Court of Australia convenes here on country today to make, and explain the reasons for making, orders under s 87 of the *Native Title Act 1993* (Cth) (the “Act”) that take effect as a determination of the traditional native title rights and interests of the native title claim group described, for the purposes of these proceedings, as the Northern Cape York #2 Native Title Claim Group.

2 The application for a determination of native title was filed on 1 July 2011. The application was amended on 6 June 2014.

3 The applicants who bring the proceeding on behalf of the claim group are these individuals: Maryanne Coconut, Grace John, Malcolm Callope, Charles Budby, Gabriel Mairu, Florence Hector, Ivy Gordon, Andrea Toby, Maurice Woodley, Victoria Kennedy, Celia Fletcher, Agnes Mark, Alma Day, Harriet Flinders, Florence Luff, Neville Motton, Rhonda Parry, Allison Sailor, Raymond AhMat, Linda McLachlan and Michelle Kostecki (nee AhMat).

4 The group comprising the native title claim group is made up of all persons descended from 30 identified apical ancestors whose names are set out in Sch 3 to the orders made today particularly having regard to Order 6 of those orders, and I will say something more about the apical ancestors and their primary language affiliations, shortly.

5 The area of land and waters the subject of this determination is identified by reference to the description set out in Pts 1, 2 and 3 of Sch 1 to these orders and as depicted in the maps of the determination area set out in Section B of Sch 1. Put simply, the determination relates to an area of land and waters in the north west of Cape York Peninsula that lies generally between the Ducie and Wenlock Rivers and Cox Creek in the northern part of the Determination Area, and Mission River and Myall Creek in the southern part of the Determination Area.

6 On 16 December 2011, the application passed the registration test pursuant to s 190A of the Act and since that date the application has remained on the Register of Native Title

Claims. The application was notified by the Native Title Registrar and the notification period for the purposes of s 66 of the Act ended on 15 August 2012.

7 The parties who remain respondents to the application are the State of Queensland, the Cook Shire Council, the Mapoon Aboriginal Shire Council, the Old Mapoon Aboriginal Corporation, the Australian Maritime Safety Authority, Ergon Energy Corporation Limited, Telstra Corporation Limited, Alcan South Pacific Pty Ltd, RTA Weipa Pty Ltd and Sunrise Minerals Pty Ltd.

8 The Commonwealth of Australia is no longer a party to these proceedings.

9 From almost the very outset of the filing of these proceedings, the applicant claim group and the State of Queensland and other respondents have been in discussions and negotiations with a view to seeking to resolve a number of the issues raised by the proceeding. Moreover, this proceeding has been the subject of quite intensive case management with a view to isolating issues which remained in controversy from time to time. A number of these issues were made the subject of mediation processes. Much effort has been dedicated by the representatives of the various parties in seeking to efficiently narrow and then resolve all of the matters in issue necessarily raised by an application for determination of native title made under ss 13(1) and s 61(1) of the Act.

10 The parties and their legal representatives are to be congratulated on the way in which these steps have been undertaken and the Court recognises and acknowledges their efforts in this regard.

11 On 12 June 2014, the parties filed an agreement under s 87 of the Act by which they proposed a draft consent determination.

12 The parties, by consent, now seek the orders published today.

13 Section 87 provides, relevantly, that the section applies if, at any stage of the proceedings (after the expiration of the period specified in the notice given under s 66 of the Act), an agreement is reached between the parties on the terms of an order the Federal Court might make in relation to the proceedings; and the terms of the agreement in writing signed by, or on behalf of, the parties are filed with the Court; and the Court is satisfied that an order in, or consistent with, those terms would be within the *power* of the Court.

14 Once those preconditions are satisfied, the Court may, if it appears to the Court *appropriate* to do so, make an order in, or consistent with, the terms of the agreement without holding a hearing of questions of fact and law in relation to the application: s 87(1)(a), (b) and (c); s 87(1A); and s 87(2).

15 The Court is satisfied, on the affidavit evidence filed by the parties, that orders consistent with the terms of the s 87 Agreement would be within power and that it would be appropriate to make orders in and consistent with those terms without holding a hearing.

16 The Court is also satisfied for the purposes of s 13(1) and s 61(1) (which falls within Pt 3 of the Act) that there is no approved determination of native title in relation to the land and waters the subject of this proceeding.

17 I am satisfied that in determining whether it is appropriate to make the proposed orders, emphasis is to be placed upon whether the s 87 Agreement has been genuinely and freely made on an informed basis by all parties represented by experienced independent lawyers and, in the case of the State of Queensland, whether appropriate consideration has been given to the precise content of the applicant's claim. As to this latter matter, I note that the State has been a participant in all of the processes earlier described and has raised questions which have been the subject of a supplementary expert anthropological report. Having regard to the history of the State's engagement in the analysis of native title rights and interests in relation to land and waters throughout Queensland and the resources and expertise available to the State in determining the legal status of particular land and waters, the State's legal advisers are in a strong position to examine the precise content of an applicant's determination application under the Act. Although, in my view, it is not necessary for the applicant claimant group to file a substantial body of evidence that would otherwise be required to satisfy the Court of the merits of the claim as though findings of fact and law were required to be made, it remains necessary, in my view, for the Court to be satisfied that the terms of the agreement reached between the parties (which provide the foundation for the determination orders) are, as Chief Justice French has observed, "rooted in reality": *Native Title – A Constitutional Shift?*, University of Melbourne Law School, JD Lecture Series, French CJ, 24 March 2009; *Kerindun v Queensland* (2009) 258 ALR 306 at [16]; *Kuuku Ya'u People v State of Queensland* [2009] FCA 679 at [12] – [15].

18 The question of whether the terms of the agreement are rooted in reality simply requires *some material* to be before the Court upon which it can act in reaching the statutory

state of satisfaction as to the appropriateness of the making of the orders. In this case, all of the parties have been represented by experienced lawyers other than Sunrise Minerals Pty Ltd which is not legally represented but has participated in the negotiations through Mr Barry Woodhouse. The terms of the s 87 Agreement have emerged out of the processes earlier described undertaken by the participants as represented.

19 Section 94A of the Act requires that an order for determination of native title must set out details of the matters mentioned in s 225 of the Act which must be read together with s 223 of the Act. These sections give meaning to the terms “determination of native title” and “native title” and “native title rights and interests”. In *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 at [76], Gleeson CJ, Gummow and Hayne JJ treated the statutory elements contained in s 223 as central. The mandatory requirements for a determination of native title are these. The native title rights and interests must be communal, group or individual rights and interests. They must be rights and interests in relation to land or waters. They must be possessed under the traditional laws acknowledged, and the traditional customs observed, by Aboriginal peoples, relevantly, for these proceedings. Aboriginal peoples by their law and customs must have a connection with the land or waters, and the rights and interests must be recognised by the common law of Australia. Orders under s 87 of the Act take effect not only inter-parties in the resolution of claims made in the proceedings but represent an independent judicial determination, in the exercise of the judicial power of the Commonwealth, that may be asserted, as a matter of law, against anyone.

20 A determination of native title expresses the recognition and protection of those rights and interests in relation to land and waters defined and described in s 223 of the Act which find their *origin* in traditional laws and customs acknowledged and observed by aboriginal peoples: *Members of the Yorta Yorta Aboriginal Community v Victoria* at [75] and [76], Gleeson CJ, Gummow and Hayne JJ.

21 A determination of native title requires the Court to determine who are the persons or group of persons who hold the common or group rights comprising the native title; the nature and extent of those rights and interests in the Determination Area; the nature and extent of any other interests; and the relationship between the native title rights and interests and those other interests, in the Determination Area (s 225 of the NT Act).

22 In determining those matters and the matters mentioned earlier at [17] of these reasons, I have had the benefit of reading the following reports: *A Northern Cape York Peninsula Regional Society*, Dr Anthony Redmond, June 2012; *The Northern Cape York #2 Native Title Claim Connection Report*, Dr Brendan Corrigan, 9 August 2012; *NCYP #1 and #2 Native Title Claims: Supplementary Report*, Dr Anthony Redmond, 26 June 2013; *Summary of Evidence and Opinions on Northern Cape York #2 Anthropology Research*, Dr Brendan Corrigan, 30 May 2014 (Annexure “BMC2” to Dr Corrigan’s affidavit affirmed 30 May 2014); and *Northern Cape York Peninsula Regional Aboriginal Society: Summary of Evidence and Opinion*, Dr Anthony Redmond, 21 May 2014 (Annexure “AJR2” to Dr Redmond’s affidavit affirmed 26 May 2014).

23 I have also had the benefit of reading the applicant’s submissions dated 30 November 2012, 1 July 2013 and 2 June 2014. Having regard to the nature of the claim and its basis, I propose to make these observations about some aspects of the evidence.

24 Dr Redmond is a Visiting Research Fellow at the Centre for Aboriginal Economic Policy Research at the Australian National University. He is an Australian Research Council Fellow who undertook a joint project entitled “Aboriginal Involvement in the inter-cultural frontier Economy”. Dr Redmond has conducted a wide-range of research activities in the discipline of anthropology with particular emphasis upon the foundation for communal, group or individual cultural rights, practises and interests of Aboriginal people. Dr Redmond has undertaken extensive research on this topic in Northern Cape York. Dr Redmond has conducted research in relation to native title claims on behalf of the Northern Cape York Group #2 (“NCY #2”) and also in relation to the claim made by the Northern Cape York Group #1 (“NCY #1”) claimants.

25 Having regard to that research, Dr Redmond says this:

I came to the professional opinion that the set of *regionally shared* socio-cultural features and *regular interactive patterns* characteristic of the groups traditionally associated with the NCY #1 and #2 claim areas indicated that the claimants’ predecessors *shared membership of a single society* constituted through a body of *shared traditional laws and customs*, all of which had degrees of bearing upon the allocation of landed rights and interests. ...

[emphasis added]

26 Dr Redmond sets out extensive analysis which represents the foundation for that view. It is not necessary to repeat in these reasons the content of that analysis. Dr Redmond,

in forming his professional opinion, also had regard to a wide body of anthropological research work concerning the peoples of Northern Cape York. That body of anthropological research work includes the work of Lauriston Sharp in 1933, 1934 and 1935. It includes the results of field research expeditions to Cape York in 1928 and in 1932/1933 by Donald Thomson including fieldwork in Weipa and Mapoon, with particular reference to Thomson's papers in 1934, 1939 and 1972. It includes reference to the work of Ursula McConnel who travelled extensively throughout Cape York between 1927 and 1934 and conducted fieldwork to produce a series of reference papers in 1936, 1939 and 1950. It also includes reference to the work of Terrence Crowley, a linguist who undertook field work in Cape York in the 1970s and who produced two publications in 1981 and 1983 of relevance to regionally shared socio-cultural features and patterns of interaction of Aboriginal peoples within the Determination Area the subject of the present claim.

27 More contemporary work has also been reviewed by Dr Redmond and that work includes the work of Thompson and Chase of 2006 and 2009; the work of Chase, Smith and Thompson of 2005 and the work of Rigsby in 1995 and 1999.

28 As a result of an analysis of all of this work and Dr Redmond's own work, he has prepared a map which demonstrates an "overlay" of anthropological data demonstrating considerable overlap of Northern Cape York Peninsula "socio-cultural-linguistic features" and, from the research and data, Dr Redmond identifies an area in which the indigenous people of Northern Cape York shared "an overwhelming preponderance of shared laws and customs in regard to local and social organisation, language affinities, kinship and marriage customs, ceremonial and cosmological beliefs, ritual prohibitions on eating of totemic species, emic perspectives on their relative sameness and difference with their neighbours [perspectives on the language and culture of the peoples in terms of their internal functioning within the group] and regional dispute resolution practices".

29 Dr Redmond reaches these further conclusions:

In my opinion, these data all point towards the existence of a single regional society uniting the NCY #1 and #2 claimant groups under a shared body of laws and customs. ...

My field research with contemporary claimants in the NCY #1 claim, in conjunction with my study of the research materials pertaining to the NCY #2 claim, strongly indicate that a continuing observance and acknowledgement of the traditional laws and customs of the region continues to unite the peoples of both the NCY #1 and #2 claim areas within a single society. This contemporary social unity is entirely

congruent with my findings regarding the [Northern Cape York Peninsula] regional society at the time of sovereignty.

30 Dr Corrigan has provided extensive anthropological expert reports specifically focused upon the Determination Area in question and the relationship between the Northern Cape York #2 claimants and that area of land and waters.

31 Like Dr Redmond, Dr Corrigan has also conducted extensive anthropological research in relation to the communal, group and individual rights and interests of aboriginal peoples in Northern Cape York. He has been the Huygens Visiting Fellow at Leiden University. He has also published extensively in the discipline. Dr Corrigan has also had regard to the published work of Sharp, Thomson, McConnel and Crowley. He has also had regard to the significant ethnographic writings concerning Cape York of Walter E. Roth from 1897, 1903, 1904 and 1910 and the work of Daniel S. Davidson who conducted fieldwork in Northern Australia in 1930-1931 and 1938-1940 (apart from other related research). Dr Corrigan has also had regard to the language maps of Norman Tindale who relied heavily upon the published materials of Roth, Thomson, McConnel and Sharp in the vicinity of the Determination Area the subject of this claim. Dr Corrigan has also had regard to the extensive work of Dr Frank McKeown from 1996 to 2004. Dr Corrigan has also had regard to the thorough review of regional ethnography undertaken by Dr Redmond.

32 More fundamentally, Dr Corrigan has undertaken extensive research on the apical ancestors of the NCY #2 claimant group in these proceedings and in his reports he sets out, in very considerable detail, the nature and extent of that research engagement.

33 In the result, Dr Corrigan concludes that the land holding group or groups of persons, who possessed rights and interests under traditional laws and customs in relation to each part of the Determination Area at the time of “effective [sovereignty]” were composed of the ancestors of persons who today identify as members of six language affiliated groups described as the **Yupungathi**, **Tjungundji**, **Taepadhighi**, **Mbakwithi**, **Thankakwithi** and **Anathangayth** language affiliated groups.

34 The term effective sovereignty is described at paras 46 to 49 of Dr Corrigan’s report of 30 May 2014 and derives from the following consideration. For the reasons identified extensively by Dr Corrigan, it is likely that the “claimant’s forebears only first encountered significant external influences to their pre-sovereignty laws and customs with the establishment of the Mapoon Mission, when the first permanent European presence

commenced, albeit in small numbers”. Dr Corrigan concludes that effective sovereignty should be considered to have occurred in 1891 with the establishment of the Mapoon Mission rather than 26 January 1788 or any time earlier than 1891.

35 Dr Corrigan identifies much of the early history of engagement between Aboriginal peoples and European explorers in Cape York and in and adjacent to the Determination Area. He also identifies aspects of the archaeological record relating to substantial human habitation in parts of Cape York which suggests an ancient presence of peoples for at least 37,000 years and shell mounds demonstrating human habitation in the Determination Area for at least 2,700 years.

36 As to engagement with early explorers, in 1606 the Dutch vessel *Duyfken* sailed down the west coast of Cape York Peninsula and sighted land at the Pennefather River in the Determination Area and entered Port Musgrave and the Wenlock River where particular interactions occurred with Aboriginal peoples. In April and May 1623, Jan Carstenzoon led the Dutch vessels *Pera* and *Arnhem* on an exploratory mission from Torres Strait down the west coast of Cape York Peninsula to about the Staaten River in the south. Carstenzoon named the river now known as the Wenlock River as the Carpentier River. Carstenzoon’s diaries provide some detail of huts and weaponry and native dwellings seen at the Skardon River. In 1802, Matthew Flinders in the *Investigator* sailed down the western side of Cape York Peninsula passing Port Musgrave and making particular observations.

37 As to the description of the rights and interests and the “underlying normative system of Aboriginal people of the region at first settlement”, Dr Corrigan accepts and adopts Dr Redmond’s view as to the existence and nature of a Northern Cape York “society” of which:

... the NCY #2 native title claim group forms an *identifiable sub-set* – whose lawful use and occupation of the country has been *perpetuated across succeeding generations to the present day* through a body of *shared* traditional laws and customs.

[emphasis added]

38 At para 51 of his report of 30 May 2014, Dr Corrigan says this:

... while the shared laws and customs from which rights and interests in land arise are held at a *regional* as well as a *local level*, this does not require that all members of this wider regional society hold equal and identical rights and interests across the whole of the area subject to its jurisdiction. Indeed, there is a strong and abiding

sense amongst claimants that specific areas are most rightfully theirs to determine the use of, yet it is the case that the rights they enjoy *emerge* from (as well as being *recognised* by) the *system of wider societal laws and customs applicable to the region and the wider Aboriginal jural public*. In this way, it is the *local instantiation of regional laws and customs* which *create* the ability for local persons to take and use the resources of their country and *exclude others* from doing the same (or provide agreement for that to happen) ...

[emphasis added]

39 Each of the six “language affiliated groups” identified by Dr Corrigan as earlier mentioned at [33] of these reasons is associated with a particular language that is, in turn, associated with a particular area of land and waters, in Dr Corrigan’s view. Dr Corrigan has undertaken research into the apical ancestors of the claimant group and has identified the primary language affiliation of each of them as well as the contemporary family surnames associated with each apical ancestor. The methodology underlying that analysis is set out in Dr Corrigan’s reports. Having regard to his report of 30 May 2014 at paras 70 to 105 and the tables at paras 51 and 52 of his report of 9 August 2012, the apical ancestors of the claim group and the primary language affiliation for each apical ancestor is this:

Apical Ancestor	Primary Language Affiliation
Jimmy Pine River	Thanakwithi
Arrdirramina (father of Toeboy)	Thanakwithi
Bosen	Thanakwithi
Tjantayn	Thanakwithi
Henry Mailman Brown	Thanakwithi
Peter Cockatoo	Thanakwithi
Mammus Aorotwan	Thanakwithi
Charlie Hall	Thanakwithi
York Downs Mammus aka Okolkon	Anathangayth
Charlie Fletcher	Mbakwithi
Nuarutty	Mbakwithi
Jack Batavia aka Jack Bellyfull	Taepadhighi
Bob Andoran (father of Catfish/Joseph Andoran)	Taepadhighi
Douglas	Taepadhighi
Mary Price	Taepadhighi
Bumu (mother of Condia)	Taepadhighi
Billy Bigfoot/Miller	Taepadhighi
Grace	Tjungundji

Apical Ancestor	Primary Language Affiliation
Bullock	Tjungundji
Alec Red Beach	Tjungundji
Peter	Tjungundji
Archie	Tjungundji
Charlie Cooktown	Yupungathi
Lorna	Yupungathi
Billy Barkley/Wombi	Yupungathi
Maffra Reid	Yupungathi
Cockatoo	Yupungathi
Mona	Yupungathi
Victor	Yupungathi
James Andrews	Yupungathi

40 Having regard to the schedule at [39], the claim group comprises the contemporary descendant families of these apical ancestors, grouped according to language affiliations, and in turn related to particular parts of the country within the Determination Area. Dr Corrigan's maps numbered 3 to 14 are maps of the region within which the Determination Area lies. The maps are the work of a range of ethnographers and researchers including Walter Roth's 1910 Map/Plate 31 of the Determination Area (Corrigan, Map 3), McConnel's 1939 map (Map 8), Sharp's 1939 map (Map 9), Thomson's 1972 map (Map 11), Tindale's 1974 map (Map 12), Crowley's 1981 map (Map 13) and the McKeown "Estates" mapped by John Taylor in 2008/2009. What emerges for Dr Corrigan at para 68 of the 30 May 2014 report from his analysis of the maps and data showing a distribution of settlements and estates and geographic affiliations in the region is this:

I note that the *ascription* of *language affiliated* areas in the above-mentioned early *ethno-historic maps* on the whole are in agreement with *each other* and also in agreement with the *information* provided by *claimants* in *my research*, and when taken as a whole certainly show a *clear continuity* with the *geographic affiliations* I have arrived at through consideration of the current claimant's perspectives.

[emphasis added]

41 The research also leads Dr Corrigan to conclude at para 71 of his 30 May 2014 report that the vast majority of the apical ancestors were born prior to the establishment of the Mapoon Mission which represents the event of effective sovereignty.

42 As to the traditional laws and customs and their adaptation since sovereignty, Dr Corrigan notes that Sharp's classification that the social organisation throughout the whole of the Determination Area is characterised by "geographically regionalised exogamous [that is, the custom of marrying outside a community, clan or tribe] *patrilineal clans*, with a person's various totems being inherited through descent and their 'homeland' being determined by divination [that is, seeking knowledge of the future or the unknown by supernatural means] of the characteristics of umbilical cords performed at birth and burial of same cord in that homeland" [emphasis added]. This central organising principle identified by Sharp of patrilineal clans in the pre-sovereignty Cape York Aboriginal society is consistent with Thomson's observations from 1934, in Dr Corrigan's view.

43 Dr Corrigan also notes, however, that a central organising principle of patrilineal clans "does not of course negate other lines of kinship connections, including to one's matrilineal kin".

44 Dr Corrigan observes that changes began occurring in social organisation not long after effective sovereignty, and over time *affiliations* to country have come to be routinely reckoned on a *cognatic* (that is, based on related linguistic derivation) rather than a unilineal basis.

45 Dr Corrigan concludes that totemic affiliations persist amongst the older members of the claimant group but are also intermixed with the traditional personal totemic identities derived from *divination* or from *matrilineal kin* (Dr Corrigan's 30 May 2014 report, para 111).

46 Dr Corrigan observes that although the impact of a European presence in the claim area led to changes such as a prevalence of non-Aboriginal fathers and residential patterns which were either adopted or forced upon the claim group's forebears, the "pre-existing forms of social organisation amongst the claimants continues to inform and provide the *scheme* for the *contemporary* claimants' laws and customs" (Dr Corrigan's 30 May 2014 report, paras 112-113).

47 Clearly, there has been some change in the central social organising principle of the claim group of patrilineal descent such that affiliations to country now rest more commonly on *cognatic* grounds with *matrilineal kinship* being recognised as a feature of social organisation. Nevertheless, the pre-existing forms of social organisation continue, in

Dr Corrigan's view, to inform and provide the scheme for the laws and customs of the contemporary descendent claim group. As to continuity in the pre-existing forms of social organisation, Dr Corrigan says this at para 122 of his report of 30 May 2014:

... the pre-existing forms of social organisation, with regards to inheritance of rights and interests in country, continue to be directly informed and constrained by pre-existing laws and customs, drawn directly from at sovereignty laws and customs.

48 Having extensively reviewed in his report the content of his discussions with members of the claimants in the age range 25 to 80, Dr Corrigan concludes at para 152 of his 30 May 2014 report:

I rely on the above to confirm the existence of traditional laws and customs in regular and current use amongst the claimant group, including across a range of generations and ages and in a manner explicitly derived from pre-sovereignty forms.

49 As to the issue of continuity of acknowledgement and observance of traditional laws and customs without substantial interruption, Dr Corrigan relies on all of the matters already discussed in these reasons concerning social organisation and the extent to which pre-existing traditional laws and customs are expressed in current use among the claimant group. However, that matter is further discussed at paras 153 to 176 of his report of 30 May 2014.

50 Continuity is expressed in terms of adherence to particular laws, customs, practices and beliefs including the matters already mentioned at para 111 of the 30 May 2014 report concerning totemic affiliations amongst the older members of the claimant group; visitation and ongoing use of country, harvesting resources, instruction in relation to physical and spiritual resources concerning the Determination Area, introduction to spirits of the country and the establishment of outstations on country: see paras 125 to 126, 129 to 141, 145 and 147 to 149; rules about accessing country belonging to others: para 146; the prominent role of older people and the instruction of younger people: paras 142, 145, 147, 161 to 168; marriage practices: paras 154 to 161; the closure and opening of country following death: paras 166 and 167; the handing down of responsibility for story places: paras 169 and 170; the regional narrative about Sivrri and Ernyongo: paras 172 and 175; and trade and exchange of resources taken from country: paras 181 to 183 and 186 to 190.

51 At paras 177 to 183, Dr Corrigan discusses the topic of exclusive native title rights and interests in terms of exclusive possession and at para 185 and following, Dr Corrigan identifies the content of particular discussions with nominated individuals about that topic.

Dr Corrigan reaches a conclusion at para 177 of the report which derives from much of the discussion throughout the earlier part of the report much of which has already been mentioned. At para 177, Dr Corrigan observes that the research mentioned confirms “the principles and practices of *exclusive possession* and evidence of occupation by the NCY #2 claimants within the [Determination Area]”. Dr Corrigan then discusses the trade and exchange practices amongst the claimants and their ancestors. Dr Corrigan describes the material as establishing “evidence of a pervasive ideology of exclusive possession, evidence of occupation and evidence of trade and exchange” (Dr Corrigan’s 30 May 2014 report, para 204).

52 However, in relation to parts of the Determination Area, exclusive native title rights are not available as a result of various extinguishing acts concerning, particularly, the grant of interests to third parties. Dr Corrigan has considered a description of the contended native title rights and interests the subject of the s 87 Agreement and at para 199 expresses the view that “it is the case that these described rights and interests are consistent with the rights and interests the claimant group enjoy through their observance of their traditional laws and customs”.

53 I am satisfied having regard to the anthropological reports in evidence that the nature and extent of the native title rights and interests in relation to the land and waters of the Determination Area are these.

54 As to the land and waters described in **Pt 1 of Sch 1**, otherwise known as the “Exclusive Areas” of exercise of the native title rights and interests, those rights and interests are as follows:

- (a) *other than in relation to **Water***, the rights to possession, occupation, use and enjoyment of the area to the *exclusion* of all others; and
- (b) in relation to **Water**, the *non-exclusive* rights to:
 - (i) hunt, fish and gather from the Water of the area; and
 - (ii) take and use the Natural Resources of the Water in the area;
 - (iii) take and use the Water of the area,for cultural, personal, domestic and communal purposes.

55 Water has the definition attributed to it as set out in Order 17 of the orders published today.

56 As to the land and waters described in **Pt 2 of Sch 1**, otherwise known as the “Non-Exclusive Areas” of exercise of the native title rights and interests, those rights and interests are the *non-exclusive* rights to:

- (a) access, be present on, move about on and travel over the area;
- (b) hunt and fish in or on, and gather from, the area;
- (c) take, use, share and exchange Natural Resources on the area;
- (d) take and use Water from the area for cultural, personal, domestic and communal purposes;
- (e) live and camp on the area and for those purposes to erect shelters and other structures thereon;
- (f) light fires on the area for cultural, spiritual or domestic purposes, including cooking, but not for the purpose of hunting or clearing vegetation;
- (g) be buried and to bury native title holders within the area;
- (h) conduct ceremonies on the area;
- (i) hold meetings on the area;
- (j) teach on the area the physical and spiritual attributes of the area;
- (k) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs on the area and to protect those places and areas from harm;
- (l) be accompanied on to the area by those persons who, though not native title holders, are:
 - (i) spouses or partners of native title holders;
 - (ii) people who are members of the immediate family of a spouse or partner of a native title holder; or
 - (iii) people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the area.

57 The native title rights and interests so described are subject to and exercisable in accordance with the laws of the State of Queensland and the Commonwealth, the traditional laws acknowledged and traditional customs observed by the native title holders, and the terms

and conditions of the agreements referred to in para 4 of Sch 4 relating to other interests in the Determination Area.

58 The orders published today precisely set out the conditions upon which Orders 7 and 8 of the orders setting out the nature, scope and content of the native title rights and interests, rest, and, in particular, Orders 10, 11 and 12. Order 13 sets out the nature and extent of other interests in relation to the Determination Area or parts of it, described by reference to Sch 4 and where applicable Sch 5 of the orders. Order 14 sets out the relationship between the native title rights and interests described in Orders 7 and 8 and the other interests described in Sch 4 and, where applicable, Sch 5 to the orders. Matters of clarification concerning that relationship are set out in Orders 15 and 16 of the orders published today.

59 The NCY #2 applicant has resolved that the native title rights and interests are to be held in trust by Mokwiri Aboriginal Corporation (ICN 7972) ("MAC") as prescribed body corporate. A written nomination and written consent required by s 56(2)(a) of the Act has been filed with the Federal Court. The orders provide that upon the determination taking effect, the native title is to be held in trust for the common law holders and MAC is to be the prescribed body corporate for the purposes of ss 56(2)(b) and 56(3) of the Act and is to perform the functions mentioned in s 57(1) of the Act after becoming a registered native title body corporate. The common law native title holders have notified the Court by an affidavit of Gabriel Albert Mairu filed 10 June 2014 that MAC is nominated as the prescribed body corporate to be the trustee of the native title determined in this proceeding. The determination will take effect according to the terms of Order 2 of the orders. No determination under s 57 of the Act is required having regard to the operation of s 56 of the Act.

60 On the basis of all of the matters described in these reasons, I am satisfied that the Court has power to make the determination in the terms proposed and that it will be appropriate to do so in all the circumstances. The orders made today give recognition within the Australian legal system to the native title rights and interests of the claim group described as the Northern Cape York No. 2 claim group in relation to the Determination Area, borne out of traditions honoured and customs practiced by the ancestors of the claimants and observed and practiced by their descendants continuously over time as described in the reports of Dr Corrigan and Dr Redmond having regard to the detailed anthropological record

of Aboriginal peoples and their engagement with the land and waters of the Determination Area.

61 The Court now publishes the orders comprising the determination.

I certify that the preceding sixty-one (61) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Greenwood.

Associate:

Dated: 20 June 2014