



# Extract from Register of Indigenous Land Use Agreements

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<b>NNTT number</b>	NI2018/004
<b>Short name</b>	Gumbaynggirr (Boney) Settlement ILUA
<b>ILUA type</b>	Area Agreement
<b>Date registered</b>	26/07/2018
<b>State/territory</b>	New South Wales
<b>Local government region</b>	Bellingen Shire Council

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## Description of the area covered by the agreement

'Agreement Area' means the land and waters as described in Part 1 of Schedule B - Land and waters subject to this Agreement.

[A map and written description of the agreement area is contained in Part 1 of Schedule B of the agreement. A copy of Part 1 Schedule B is attached to this register extract.

The following general description of the agreement area has been provided by the National Native Title Tribunal to assist people to understand the location of the agreement area. It is provided for information only and should not be considered part of the Register of ILUAs:

The agreement area covers about 1.3 sq km and is located 24 km south of Coffs Harbour, in the vicinity of Wenonah Heads, east of the North Coast Railway].

## Parties to agreement

### *Applicant*

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<b>Party name</b>	Christine Witt, Marion Witt, Frances Witt, Laurie (Larry) Kelly and Richard Pacey as the Registered Native Title Claimant for and on behalf of the Gumbaynggirr People
<b>Contact address</b>	c/- NTSCORP Limited PO Box 2105 Strawberry Hills NSW 2012

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<b>Party name</b>	Mark Speakman SC, Attorney General of New South Wales
<b>Contact address</b>	c/- Crown Solicitor's Office GPO Box 19 Sydney NSW 2001

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### *Other Parties*

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<b>Party name</b>	Anthony Lean, as Chief Executive of the Office of Environment and Heritage
<b>Contact address</b>	c/- Crown Solicitor's Office GPO Box 19 Sydney NSW 2001

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<b>Party name</b>	Gabrielle Upton, as the Minister administering the National Parks and Wildlife Act 1974 (NSW)
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**Contact address** c/- Crown Solicitors Office  
GPO Box 19  
Sydney NSW 2001

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**Party name** Gumbaynggirr Wenonah Head Aboriginal Corporation  
**Contact address** c/- NTSCORP Limited  
PO Box 2105  
Strawberry Hills NSW 2012

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**Party name** Paul Toole, as the Minister administering the Crown Lands Act 1989 (NSW)  
**Contact address** c/- Crown Solicitors Office  
GPO Box 19  
Sydney NSW 2001

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**Period in which the agreement will operate**

**Start date** 06/11/2017  
**End Date** not specified

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Clauses 1, 2, 3, 4, 6, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30 and 31 commenced on 6 November 2017, and the remainder of the Agreement commences on the date the Agreement is registered on the Register of Indigenous Land Use Agreements.

**Statements of the kind mentioned in ss. 24EB(1) or 24EBA(1) or (4)**

8.1 For the purposes of section 24EBA(1)(a)(i) of the Native Title Act [1993 (Cth)], and paragraph 7(5)(d) of the [Native Title (Indigenous Land Use Agreement) Regulations 1999], all Future Acts (other than Intermediate Period Acts) that were done in relation to land or waters in the Agreement Area after 1 January 1994 and before the Execution Date, are valid, to the extent that they were done invalidly because of the existence of Native Title.

8.2 Any Future Act done on and after the Execution Date and before the Registration Date which is invalid, is validated to the extent that it is invalid because of the existence of Native Title, provided that it is done in accordance with this Agreement.

10. For the purposes of section 24EB of the Native Title Act and to the extent that they are Future Acts, the Parties, including the Native Title Holders, consent to the doing of the following acts:

- (a) the subdivision of Lot 4 in DP 1193053 (ID Area 7 North) for the Recreation Reserve,
- (b) the reservation of the Recreation Reserve and subsequent appointment of a reserve trust and reserve trust manager of the Recreation Reserve under Part 5 of the Crown Lands Act,
- (c) the creation of the Agreement Area Easements under Division 5 of Part 4 of the Crown Lands Act,
- (d) the grant of a licence to the Urunga Amateur Anglers Club over the proposed licensed area located within part of the Recreation Reserve for the use of fishing and any purpose that is ancillary or incidental to that use,
- (e) surrender all Native Title in relation to the land and waters covered by ID Area 5A (east) in accordance with clause 5 of Schedule E - Transfer of Freehold Lands,
- (f) transfer of the Freehold Lands to the RNTBC under section 34 of the Crown Lands Act,
- (g) access rights for the Coffs Harbour LALC [Local Aboriginal Land Council] in accordance with the Aboriginal Land Agreement, and
- (h) transfer of Coffs Harbour LALC Land to the Coffs Harbour LALC in accordance with the Aboriginal Land Agreement.

11.2 For the purposes of section 24EB of the Native Title Act and to the extent that they are Future Acts, the Parties, including the Native Title Holders, consent to Future Acts done in accordance with this clause in relation to the land and waters to which this clause applies.

Note: Sub-clause 6.1 of this Agreement (Application of this Agreement to land or waters) and Schedule B - Land and waters subject to this Agreement describe the land and waters to which, from time to time, clause 11 (Alternative Future Acts Regime) applies.

11.3 Subject to sub-clause 11.2:

- (a) on and after the Registration Date, a proposed Future Act covered by a class under Schedule D - Alternative Future Acts Regime must be done in accordance with Schedule D.
- (b) without limiting the rights of the Native Title Parties set out in Schedule D - Alternative Future Acts Regime, the Parties consent to the doing of a Future Act that is in a class covered by Schedule D and the Future Act is valid, provided the procedures in Schedule D have been complied with.

'Aboriginal Land Agreement' means the agreement under section 36AA of the Aboriginal Land Rights Act [1983 (NSW)] dated 6 November 2017 made between the Minister administering the Crown Lands Act [1989 (NSW)],

Coffs Harbour LALC and NSWALC.

'Recreation Reserve' refers to that part of ID Area 7 North to be subdivided and reserved for the public purpose of public recreation, the site of which is described and depicted on maps in Part 5 of Annexure A to Schedule F - DI Lands and depicted on the map in that Part.

'RNTBC' means the Gumbaynggirr Wenonah Head Aboriginal Corporation ICN 7376 or any replacement Registered Native Title Body Corporate.

#### Schedule D

4.1 An Emergency Act is a Future Act to the extent that it affects Native Title.

4.2 An Emergency Act is any of the following acts done in relation to land or waters in those parts of the Agreement Area to which this Schedule applies:

- (a) fire suppression and fire prevention management activities, including hazard reduction burning and back-burning, and closure of Jagun Nature Reserve and Crown lands for any such purpose, that is done by a State Agency for the objective of preventing, controlling or extinguishing a fire or protecting persons endangered by fire from injury or death or property endangered by fire from damage,
- (b) any Urgent Activity, and
- (c) the grant of an Interest by a State Agency to a Third Party for the purpose of Emergency Occupation.

4.3 The State Agency must give Notice to the RNTBC of any Emergency Act before doing the Emergency Act when it is reasonably practicable. However, when circumstances do not permit the provision of a Notice, the State Agency shall make all efforts to provide verbal notice to the RNTBC at the earliest opportunity.

4.4 If the State Agency has given Notice of an Emergency Act, where reasonably practicable, it must give the RNTBC an opportunity to comment on, or to discuss the Emergency Act in accordance clause 15 (Notice) of this Schedule.

4.5 If this clause applies in relation to an Emergency Act and the relevant State Agency has complied with its obligations under sub-clause 4.3 to 4.4, then that Emergency Act is valid pursuant to section 24EB(2) of the Native Title Act.

5.1 An Act of Remediation is a Future Act to the extent that it affects Native Title.

5.2 If an Act of Remediation is done under Compulsion, the State Agency must give Notice to the RNTBC of the Act of Remediation before doing the Act of Remediation, where reasonably practicable.

5.3 Where, due to urgency and the nature of the Compulsion, it is not possible for the State Agency to provide Notice of an Act of Remediation to the RNTBC before doing the act, the State Agency must, make all reasonable efforts to provide verbal notice to the RNTBC at the earliest opportunity.

5.4 If an Act of Remediation is not done under Compulsion, the State Agency shall provide Notice of the act to and must consult with the RNTBC at a Consultation Meeting arranged in accordance with Schedule C - Consultation Protocol to this Agreement with the aim of reaching an agreement in writing that sets out:

- (a) the nature and extent of the Act of Remediation,
- (b) the method or methods to carry out the Act of Remediation,
- (c) the consent of the Parties to the Act of Remediation and whether the Act of Remediation may be done, and
- (d) the signatures of authorised representatives of the RNTBC and the State Agency.

5.5 If this clause applies in relation to an Act of Remediation and the relevant State Agency has complied with its obligations under sub-clause 5.2 to 5.4, that Act of Remediation is valid pursuant to section 24EB(2) of the Native Title Act.

6.1 For the purposes of this clause, Reservation means:

- (a) the Jagun Nature Reserve, or
- (b) the Recreation Reserve.

6.2 A Future Act done under a Reservation in good faith under or in accordance with the Reservation is an "Act under a Reservation".

6.3 The State Agency must give Notice to the RNTBC before it does an Act under Reservation that consists of:

- (a) the construction or establishment of a Public Work, or
- (b) the creation or amendment of a Plan of Management.

6.4 Subject to sub-clause 6.5, when the State Agency has given Notice of an Act under a Reservation under sub-clause 6.3, the RNTBC has an opportunity to comment on, or to discuss, the act in accordance with clause 15 (Notice) of this Schedule.

6.5 When a Notice of an Act under a Reservation is given under paragraph 6.3(b), clause 13 (Plans of Management) of Schedule C - Consultation Protocol applies.

6.6 Where an Act under a Reservation:

(a) forms part of a Forward Program of Work, and

(b) consists of, authorises or involves:

(i) environmental and assessment activities including research, survey and monitoring of species, regeneration and rehabilitation,

(iii) the control of noxious or introduced species,

(iv) pest animal control,

(v) Consultation Level Clearing and Low Level Clearing, but not Minor Clearing,

(vi) Consultation Level Excavation and Low Level Excavation, but not Minor Excavation, or

(vii) the erection of signage pertaining to Aboriginal Cultural Heritage,

then the relevant State Agency shall comply with the requirements set out in sub-clauses 8.2 - 8.7 of this Schedule, as if references to a "Notice and Consultation Act" in those paragraphs were references to an "Act under a Reservation" within the meaning of this clause.

6.7 A Future Act is valid pursuant to section 24EB(2) of the Native Title Act if this clause applies to the Future Act and the State Agency has complied with obligations under this clause.

7.1 This clause applies to a Future Act done by, or on behalf of, a State Agency in relation to an ICOLL in those parts of the Agreement Area to which this Schedule applies if the act consists of, authorises or involves the manual or artificial opening of an ICOLL.

7.2 If this clause applies to a Future Act, the State Agency must provide Notice to and consult with the RNTBC in accordance with this clause before doing the act in accordance with clause 15 (Notice) of this Schedule.

8.1 This clause applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land and waters in those parts of the Agreement Area to which this Schedule applies if the act:

(a) forms part of a Forward Program of Work which authorises:

(i) the control of noxious or introduced species,

(ii) pest animal control, or

(iii) signage,

(b) authorises, involves or is regeneration or environmental assessment or protection activities,

(c) is Consultation Level Clearing, or

(d) is Consultation Level Excavation.

8.2 If this clause applies to a Low Level Future Act ("Notice and Consultation Act"), the State Agency shall provide Notice to and consult with the RNTBC in accordance with this clause before doing the act.

9.1 This clause applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land and waters in those parts of the Agreement Area to which this Schedule applies if the act consists of, authorises or involves:

(a) an event or activity that endures for a period of less than one (24-hour) day,

(b) the maintenance or repair of public infrastructure, so long as the maintenance or repair does not take place outside the area on which the Infrastructure is constructed, established or situated,

(c) the maintenance or repair of a Public Work, so long as the maintenance or repair does not take place outside the area on which the Public Work is constructed, established or situated, including by operation of section 251D of the Native Title Act,

(d) Minor Excavation,

(e) Minor Clearing, or

(f) the maintenance and repair of facilities for service to the public, so long as the maintenance or repair does not take place outside the area on which the facilities are constructed, established or situated.

9.2 If this clause applies to a Low Level Future Act, the State Agency may do the act without providing notice of the act to the RNTBC.

9.3 If this clause 9 applies to a Future Act, that Future Act is valid pursuant to section 24EB(2) of the Native Title Act.

10.1 This clause applies to a Low Level Future Act done by, or on behalf of, a State Agency in relation to land and waters in those parts of the Agreement Area to which this Schedule applies if the act consists of, authorises or involves:

(a) works which require Low Level Excavation and/or Low Level Clearing,

(b) river reclamation works that are reasonably necessary for the protection of public health or public safety, and

(c) the grant of a licence or permit to hold a cultural, sporting, recreational, educational or civic event that endures for a period of more than one day and less than seven days.

Note 2: This paragraph does not apply in relation to cultural events held by one or more of the Native Title Parties.

10.2 If this clause applies to a Low Level Future Act, the State Agency shall provide Notice to the RNTBC before doing that act, and the RNTBC shall have an opportunity to comment on, or to discuss, the act in accordance with the procedure set out in clause 15 (Notice) of this Schedule.

11.1 Once this Agreement is Registered, Low Level Future Acts that take place in those parts of the Agreement

Area to which this Schedule applies before and continue after the Registration Date are valid pursuant to section 24EB(2) of the Native Title Act.

Note: Sub-clause 6.1 of this Agreement (Application of this Agreement to land or waters) and Schedule B - Land and waters subject to this Agreement describe the land and waters to which, from time to time, clause 11 of the Agreement (Alternative Future Acts Regime) and this Schedule apply.

12.1 If clauses 8 (Low Level Future Acts requiring Notice in writing and Consultation), 9 (Low Level Future Acts requiring No Notice) or 10 (Low Level Future Acts requiring Notice in writing) applies in relation to a Low Level Future Act and the relevant State Agency has complied with its obligations under the relevant clause, that Low Level Future Act is valid pursuant to section 24EB(2) of the Native Title Act.

'Acts of Remediation' means activities to reverse, stop or prevent environmental damage.

Note. Examples include removal of abandoned cars, illegal garbage dumping and the removal of asbestos.

'Emergency Occupation' includes temporary occupation of land in response to bushfire, flood or other major natural disaster or emergency, including, but not limited to, a storm event, search and rescue operations, response to a siege and biosecurity risks.

'Forward Program of Work' means a formalised plan of work that a State Agency makes in advance, and includes a program of annual works that a State Agency intends to tender, seek expressions of interest or advertise for, or engage a non-Government body to perform (other than under contracts in force at the Registration Date), but does not include routine, day-to-day activities or acts that are impromptu or ad hoc.

'ICOLL' means intermittently closed and open lake or lagoon.

'Interest' includes any licence, permit, agreement or other authority granted by the State, but does not include the following:

- (a) any interest granted under the Mining Act 1992 (NSW),
- (b) any interest granted under the Petroleum (Onshore) Act 1991 (NSW),
- (c) a lease, and
- (d) an estate in freehold.

'Urgent Activity' means an act urgently required for public health or public safety whether done by a State Agency or its agent, or by an Agent of the State authorised under legislation, in response to a bushfire, flood or other major natural disaster or emergency including, but not limited to, a storm event, a search and rescue operation, a response to a siege, the protection of human life, property and highly valued assets from bushfire, a biosecurity risk a chemical or oil spill, protection of wildlife, and any urgent action required for public health and safety.

## Schedule E

5.1 Immediately before the transfer of the ID Area 5A (east) from the Minister to the RNTBC, the Native Title Holders, by force of this clause, surrender all Native Title in relation to that parcel. A written description and map of ID Area 5A (east) is provided at Annexure B to this Schedule.

5.2 For the purposes of section 24EB(1)(d) of the Native Title Act and clause 7(5)(c) of the ILUA Regulations, the surrender of the Native Title under this clause is intended to extinguish the Native Title in relation to ID Area 5A (east).

5.4 For the avoidance of doubt, to the extent that any act done by the Minister or the State in preparing or lodging a Transfer of Freehold Lands referred to in Annexure A is a Future Act done before the surrender of the Native Title in relation to ID Area 5A (east) that act is valid and the Native Title Holders are not entitled to any Compensation for that act.

## Attachments to the entry

[NI2018\\_004 Schedule B Part 1 Attachment.pdf](#)

[NI2018\\_004 Map and Description of Surrender Area, Annexure B of Schedule E.pdf](#)