



# Extract from Register of Indigenous Land Use Agreements

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<b>NNTT number</b>	SI2020/001
<b>Short name</b>	Port Spencer ILUA
<b>ILUA type</b>	Area Agreement
<b>Date registered</b>	11/09/2020
<b>State/territory</b>	South Australia
<b>Local government region</b>	District Council of Tumby Bay

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## Description of the area covered by the agreement

### ILUA Area means:

- (a) D78441AL23 & H511600SE386 (being contained in CT6037/404) and D78441AL24 & H511600SE387 (being contained in CT6066/698) over which native title has been extinguished previously;
- (b) The part of D78441AL25 (CR6029/386), immediately adjacent to CT6037/404 and CT6066/698 over which native title exists; and,
- (c) the adjacent and subjacent land within the meaning of the HNA at Port Spencer and the water thereon and thereunder immediately adjacent to the land referred to in (b), as shown in the plan attached at Schedule 1 and described in Schedule 2;

*[A map of the agreement area is contained in Schedule 1. A written description of the agreement area is contained in Schedule 2. Copies of Schedules 1 and 2 are 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 approx. 19.8 sq km and is located approx. 64 km north east of Port Lincoln, extending approx. 2 nautical miles into the Spencer Gulf.]*

## Parties to agreement

### Applicant

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<b>Party name</b>	Barngarla Determination Aboriginal Corporation RNTBC ICN 8603
<b>Contact address</b>	c/- Norman Waterhouse Lawyers Level 11, 431 King William Street Adelaide SA 5000

### Other Parties

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<b>Party name</b>	Free Eyre Limited
<b>Contact address</b>	Level 1, 33 Hutt Street Adelaide SA 5000

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<b>Party name</b>	Minister for Environment and Water
<b>Contact address</b>	Department for Environment and Water PO Box 78 Level 1, 9 Mackay Street Port Augusta SA 5700

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<b>Party name</b>	Minister for Transport, Infrastructure and Local Government
<b>Contact address</b>	Department for Planning, Transport and Infrastructure Level 7, 50 Flinders Street Adelaide SA 5000

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<b>Party name</b>	Peninsula Ports Pty Ltd
<b>Contact address</b>	c/- Free Eyre Limited Level 1, 33 Hutt Street Adelaide SA 5000

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<b>Party name</b>	South Australian Native Title Services Ltd
<b>Contact address</b>	Level 4, 345 King William Street Adelaide SA 5000

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#### Period in which the agreement will operate

<b>Start date</b>	not specified
<b>End Date</b>	not specified

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#### 5. Commencement

5.1 This Agreement commences on the date it is executed by the Parties, and if executed on different days, the later of those days.

#### 6. Duration

6.1 This Agreement continues for an indefinite period from the Commencement Date subject to earlier termination pursuant to this Agreement or by operation of law.

#### 7. Termination

7.1 This Agreement will terminate in any of the following circumstances:

7.1.1 If this Agreement is not Registered within 12 months of the Commencement Date or such other date as the Parties may agree between them in writing, then any Party may terminate this Agreement by giving 2 weeks' written notice to the other Parties.

7.1.2 If the Company is wound up or ceases operating the Project and does not assign its interest under this Agreement within 24 months, then the Agreement will terminate.

7.1.3 Where BDAC serves a notice in accordance with clause 16.7.

7.1.4 By agreement between BDAC and the Company in accordance with clause 16.6.4.3.

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

13.1 For the purpose of section 24EB(1)(b) of the NTA, BDAC and the Barngarla People consent, without conditions, to the acts referred to in clauses 9.1 and 10 (including any act or activity done pursuant to those acts) and any other act or activity on the ILUA Area reasonably necessary for the construction and operation of the Project on the ILUA Area.

15.1 For the purpose of Section 24EB(1)(c) of the NTA, the Parties agree that Subdivision P of Division 3 of Part 2 of the NTA (the right to negotiate) is not intended to apply to the acts consented to in clause 13.1.

9.1 The Parties acknowledge that the Project may require:

9.1.1 The making of regulations under the HNA to declare part or all of the ILUA Area to be a harbor under the HNA;

9.1.2 The making of regulations under the HNA to constitute part or all of the ILUA Area as a port under the HNA;

9.1.3 The Minister for Transport entering into a Port Operating Agreement in relation to the port referred to in clause 9.1.2.

10.1 The Parties acknowledge that the Project may require the grant (including the renewal, re-grant or extension) of a lease or leases over:

10.1.1 The part of D78441AL25 (CR6029/386), immediately adjacent to CT6037/404 and CT6066/698 over which native title exists;

10.1.2 The adjacent and subjacent land within the meaning of the HNA at Port Spencer and the water thereon and thereunder immediately adjacent to the land referred to in clause 10.1.1; and

10.1.3 Land or waters contained within any certificate of title granted pursuant to clause 10.2.

10.2 The Parties acknowledge that the Project may require the grant of a certificate of title in favour of the Minister for Transport pursuant to section 115A of the *Real Property Act 1886* over portions of the adjacent and subjacent land within the meaning of the HNA at Port Spencer and the water thereon and thereunder immediately adjacent to

the land referred to in clause 10.1.1.

**BDAC** means the Barngarla Determination Aboriginal Corporation RNTBC ICN 8603 or any successor as Registered Native Title Body Corporate in respect of the Barngarla People.

**Company** means Peninsula Ports Pty Ltd ACN 630 658 203 of c/- Free Eyre Limited, 33 Hutt Street, Adelaide, South Australia 5000 (**Company**).

**HNA** means the *Harbors and Navigation Act 1993 (SA)*.

**NTA** means the *Native Title Act 1993 (Cth)*.

**Port Operating Agreement** means a port operating agreement made pursuant to Division 1 of Part 5 of the HNA.

**Project** means, subject to clause 16, the construction and operation within the ILUA Area of a port facility exclusively for the shipment of grain, including:

- a) a rock causeway, jetty and wharf of up to 620m in length plus adjacent navigation aid / mooring structures; and
- b) bunker, silo and related grain handling facilities to store grain, including the unloading of trucks and the loading of ships; and
- c) administration, roads and drainage, maintenance and various other facilities associated with or incidental to the grain operations at Port Spencer.

#### **Attachments to the entry**

[Schedule 1 Map of ILUA Area.pdf](#)

[Schedule 2 Description of ILUA Area.pdf](#)