



# Extract from Register of Indigenous Land Use Agreements

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<b>NNTT number</b>	WI2010/011
<b>Short name</b>	Wyamba Aboriginal Corporation & Minnie Creek Pastoral Lease ILUA
<b>ILUA type</b>	Body Corporate
<b>Date registered</b>	10/09/2010
<b>State/territory</b>	Western Australia
<b>Local government region</b>	Shire of Upper Gascoyne

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## Description of the area covered by the agreement

The Agreement Area is described in Schedule B to the agreement as covering all the lands and waters subject to:

- i. That part of Pastoral Lease 3114/1055 (Minnie Creek) within the external boundary of the Determination Area as outlined in the First Schedule of the Minute of Consent Determination of Native Title for WAD 6212 of 1998 Thudgari People;
- ii. That part of Reserve 9701 bounded in the north by the prolongation of the northern most boundary of Pastoral Lease 3114/1055 (Minnie Creek) and to the south by the external boundary of the Determination Area as outlined in the First Schedule of the Minute of Consent Determination of Native Title for WAD 6212 of 1998 Thudgari People; and
- iii. That part of Reserve 711 south of the prolongation of the northern most boundary of Pastoral Lease 3114/1055 (Minnie Creek) and within the external boundary of the Determination Area as outline in the First Schedule of the Minute of Consent Determination of Native Title for WAD 6212 of 1998 Thudgari People.

The Agreement Area excludes road number 9476 and all other areas identified as "Areas Where Native Title Does Not Exist" in the Second Schedule of the Minute of Consent Determination of Native Title for WAD 6212 of 1998 Thudgari People.

The agreement area is mapped in Schedule C to the agreement.

The schedules are attached to the register extract.

## Parties to agreement

### *Applicant*

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<b>Party name</b>	Bagden Pty Ltd & K Biggs Enterprises Pty Ltd
<b>Contact address</b>	c/- Hunt & Humphry Level 2 20 Kings Park Road West Perth WA 6005

### *Other Parties*

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<b>Party name</b>	Wyamba Aboriginal Corporation
<b>Contact address</b>	c/- Yamatji Marlpa Aboriginal Corporation PO Box 2119 Geraldton WA 6531

## Period in which the agreement will operate

<b>Start date</b>	08/01/2010
<b>End Date</b>	not specified

### Clause 20.1 Term

The term of this agreement commences on Commencement Date.

Clause 1.1 defines the term 'Commencement Date' as meaning:

- (a) to the extent that this agreement has force as a contract, the date on which the agreement is executed by all the parties to it; and
- (b) to the extent that this agreement has force as an Indigenous Land Use Agreement, upon its registration as an Indigenous Land Use Agreement.

Clause 4.1 Agreement to be an Indigenous Land Use Agreement (Body Corporate) states at (a) that this agreement is:

- (i) immediately binding as an agreement; and
- (ii) intended to be a body corporate agreement upon registration of the Thudgari PBC as a Registered Native Title Body Corporate.

### Clause 20.2 Duration

Except for the obligations arising under clause 21 below and obligations accrued before termination, this agreement will come to an end and the Parties will be released from further compliance with its terms:

- (a) when the Pastoral Lease comes to an end; or
- (b) by the written mutual agreement of all the Parties, whichever happens first.

[Clause 21 sets out the parties' obligations in relation to confidentiality].

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

Clause 4.2 Consent to Doing of Future Acts – NTA subsection 24EB(1)

- (a) For the purposes of subsection 24EB(1) of the NTA, the Thudgari People and the Thudgari PBC consent to the doing of the future acts provided for in this agreement subject to its terms.
- (b) The Thudgari People and the Thudgari PBC consent to the doing of the following classes of future acts:
  - (i) the extension, renewal, re-making or re-grant or replacement of the Pastoral Lease from time to time;
  - (ii) the conversion of up to 6.25 square kilometres of the Pastoral Lease around each homestead into an estate in fee simple or a lease for any purpose and any terms;
  - (iii) the grant of a licence, permit or authorisation from time to time (including any amendment or extension, renewal, re-making, re-granting or replacement of the Pastoral Lease) to conduct activities for agricultural purposes (including the diversification and intensification of pastoral related activities) on the Pastoral Lease;
  - (iv) the grant of leases, licences and permits from time to time to conduct Low Impact Tourism activity in the Pastoral Lease; and
  - (v) the grant of Pastoral Leases from time to time in relation to all or part of the Stock Routes or Reserves (not including Reserve 26808, Barlee Range Nature Reserve), to the extent and in the terms of clause 12 of this agreement ("Agreed Future Acts").
- (c) Nothing in sub-clause (b) is intended to or will fetter the exercise of any power, function or discretion of the State or its agents and instrumentalities pursuant to any Law other than a Native Title Law.
- (d) Nothing in this clause 4.2 will affect the operation of Laws relating to the protection of Aboriginal cultural heritage or constitute the agreement of the Thudgari PBC to the damage to or destruction, alteration and/or concealment of Sites of Significance, Areas of Significance or other places, objects or things protected by those laws.
- (e) The Parties intend that Subdivision P of Division 3, Part 2 of the NTA not apply to any of the Agreed Future Acts.

### Clause 12 Future Acts

#### 12.1 Renewal of Pastoral Lease

- (a) The Thudgari PBC agrees to the extension, renewal, re-making, re-grant or replacement of the Pastoral Lease from time to time for any term, including a term longer than the existing term of the Pastoral Lease provided it does not provide any greater rights other than an extension of the length of the term and provided (subject to clauses 4.2(b)(v) and 12.4(b)(ii)) it does not cover any greater area.
- (b) The Pastoralist agrees that the rights of Thudgari People to have and exercise their native title rights and interests as defined in clause 8.1(a) may continue to be exercised in accordance with this agreement in respect of the Pastoral Lease as extended, renewed, remade, re-granted or replaced.
- (c) The Pastoralist agrees that if the Pastoral Lease is extended, renewed, remade, re-granted or replaced, the Pastoralist will request that the Minister for Lands lodge a memorial with the Registrar of Titles (under section 17(2) of the Land Administration Act 1997 (WA)) on the certificate of Crown land title which corresponds with the relevant Pastoral Lease to inform any person who conducts a search of that Crown land title of the existence of the Indigenous Land Use Agreement.

#### 12.2 Tenure Upgrades

- (a) If the Pastoralist, or a person nominated by the Pastoralist, wishes to obtain a grant of a freehold, special lease or other tenure in the area immediately surrounding each homestead existing on the Pastoral Lease at the

Commencement Date, to an area not exceeding 6.25 square kilometres they must advise the Thudgari PBC of that and, subject to clause 12.2(b), the Thudgari PBC consents to that grant;

(b) If the Thudgari PBC advises within 3 months of the notification referred to in clause 12.2(a) that the proposed use of the area chosen is likely to damage any Site of Significance, then the tenure shall not be located in that area and the Pastoralist and the Thudgari PBC will negotiate in good faith to find an alternative location for the said tenure.

(c) Upon the grant being made in accordance with the consent set out in clauses (a) and (b) above, the Pastoralist shall not assert in any forum that there has been any extinguishment effected by the construction or operation of the homestead (including any buffer zone required for its operation) over any area beyond the area the subject of such tenure.

(d) The interests to be granted in accordance with these sub-clauses may include a right to exclusive possession and consequently the Thudgari People may be excluded from those places except that the Pastoralist agrees that members of the Thudgari People will be treated no less favourably than members of the general public who wish to have access to those places.

### 12.3 Grants of Low Impact Tourism Rights

(a) Nothing in this clause abrogates, restricts or otherwise limits any right or entitlement that the Pastoralist has under any Native Title Law.

(b) If the Pastoralist, or a person nominated by the Pastoralist, seeks any of the grants in this clause, they must advise the Thudgari PBC of that and, subject to clause 12.3(c), the Thudgari PBC consents to such grant:

(i) leases, licences and permits authorising Low Impact Tourism and associated activity on the Pastoral Lease and further or alternatively on any tenure granted to the Pastoralist in accordance with sub-clause 12.2 hereof; and  
(ii) leases, licences and permits authorising the construction or renovation and operation of buildings, infrastructure and facilities for the purposes of the Low Impact Tourism.

(c) If the Thudgari PBC advises within 3 months of the notification referred to in clause 12.3(b) that the proposed use of the area chosen is likely to damage any Site of Significance, then the Low Impact Tourism activity shall not take place in that area and the Pastoralist and the Thudgari PBC will negotiate in good faith to find an alternative location for the said activity.

(d) The Thudgari People will have the same rights to enter areas of the Pastoral Lease the subject of future acts described in this sub-clause as they have in relation to the Pastoral Lease under this agreement except:

(i) to areas on which buildings and other structures are located and the areas immediately adjacent to them; and  
(ii) to any areas the exclusive use of which is reasonably necessary for the conduct of the Low Impact Tourism activities,

and in any case members of the Thudgari People will be treated no less favourably than members of the general public who wish to have access to those places.

(e) The Pastoralist agrees to provide to the Thudgari PBC Notice of any Low Impact Tourism activities proposed to be conducted by the Pastoralist on the Pastoral Lease or on any tenure granted to the Pastoralist in accordance with sub-clause 12.2 hereof prior to the first conduct of each such activity.

(f) If the Thudgari PBC is interested in pursuing (sic) opportunities for the Thudgari People to participate in the Pastoralist's Low Impact Tourism activities by undertaking commercial activities that complement those Low Impact Tourism activities (such as by offering cultural tours or other services), then the Thudgari PBC will notify the Pastoralist of its interest.

(g) Subject to the Thudgari PBC agreeing to enter into a confidentiality undertaking in a form satisfactory to both the Thudgari PBC and the Pastoralist, the Pastoralist agrees to meet with the Thudgari PBC to discuss any such interest or proposal. In conducting any such discussions, each Party will act in good faith.

(h) The Pastoralist will consider any reasonable opportunities identified by the Thudgari PBC for the Thudgari People to participate in the Pastoralist's Low Impact Tourism and associated activities on arms length commercial terms.

(i) The Pastoralist agrees to advise the Thudgari PBC whether it agrees to any commercial proposal to participate in the Pastoralist's Low Impact Tourism activities and if the Pastoralist does not agree, the reasons why not.

(j) Nothing in this agreement obliges the Pastoralist to accept any commercial proposal identified by the Thudgari PBC.

(k) The Pastoralist acknowledges that the Thudgari People are the holders of knowledge with respect to Sites of Significance or Areas of Significance and will respect any dissemination of that knowledge by them.

(l) The Pastoralist will not use any culturally sensitive information provided under this agreement (including knowledge with respect to Sites of Significance or Areas of Significance) for tourism purposes without the prior agreement of the Thudgari PBC.

### 12.4 Stock Routes and Reserves

(a) The Thudgari PBC acknowledges the Pastoralist's right to use Stock Routes and Reserves which are located on the Pastoral Lease.

(b) The Thudgari PBC agrees to:

(i) the Pastoralist continuing to use the area of the Stock Routes and Reserves for pastoral purposes; and  
(ii) the grant of the Pastoral Lease or other non-extinguishing tenure from time to time in respect of the area of the Stock Routes and Reserves (not including Reserve 26808, Barlee Range Nature Reserve).

### 12.5 Notification of Grants and Renewals

The Pastoralist will notify the Thudgari PBC of any grant or renewal dealt within this clause 12 within a reasonable time of being advised of it.

### 12.6 Non-Extinguishment Principle to apply to Future Acts

The Non-Extinguishment Principle will apply to each future act that is done pursuant to this agreement and to each

Future Improvement.

To this end, and without limiting the generality of the foregoing, the Pastoralist will request and use their reasonable endeavours to ensure that the appropriate document (the lease, licence, permit) authorising the future act expressly provides that the Non-Extinguishment Principle applies.

#### 12.7 Further documents

Each of the Pastoralist and the Thudgari PBC will, on the request of the other Party, execute agreements, deeds and other documents and do everything reasonably necessary or desirable to give effect to this clause and the matters contemplated by it from time to time including (without limitation) entering into a further Indigenous Land Use Agreement with the State to give effect to the provisions of this clause 12.

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

[WI2010\\_011 Schedule B - Description of Agreement Area.pdf](#)

[WI2010\\_011 Schedule C - Map of Agreement Area.pdf](#)