



Extract from Register of Indigenous Land Use Agreements

NNTT number	WI2022/010
Short name	The Cockatoo Island Co-Existence Indigenous Land Use Agreement
ILUA type	Body Corporate
Date registered	24/01/2023
State/territory	Western Australia
Local government region	Shire of Derby/West Kimberley

Description of the area covered by the agreement

Agreement Area means the area described in Schedule 4 (with map) which overlies Cockatoo Island and surrounding seas and comprises both the Contract Area and the ILUA Area combined.

Contract Area means all areas within the Agreement Area where native title has been found not to exist, as set out in Schedule 4.

ILUA Area means all areas within the Agreement Area where native title has been found to exist, as set out in Schedule 4.

[A copy of Schedule 4 of the agreement 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 an area of about 64 sq km and is located over Cockatoo and Usborne Islands and surrounding seas, in the Buccaneer Archipelago.]

Parties to agreement

Applicant

Party name	Cockatoo Island Mining Pty Ltd (ACN 628 239 065) on its own behalf and as agent for Cockatoo Island Mining Infrastructure Pty Ltd and Cockatoo Island Prospecting Pty Ltd and all other related bodies corporate from time to time nominated by Cockatoo Island Mining (together, including Cockatoo Island Mining "CIM")
Contact address	c/- Pragma Lawyers PO Box 529 Subiaco WA 6904

Other Parties

Party name	Dambimangari Aboriginal Corporation (ICN 4691) ("DAC")
Contact address	c/- Johnston Withers Lawyers PO Box 6321 Halifax Street Adelaide SA 5000

Party name Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC (ICN 4692) ("PBC")

Contact address c/- Kimberley Land Council
PO Box 2145
Broome WA 6725

Period in which the agreement will operate

Start date not specified

End Date not specified

4.1 Force and Effect of this Agreement

- (a) Clauses 1.1 to 1.4, 2, 4, 6, 7.5, 24, 26, 28 to 32, 34 and 35 have force and effect from the Execution Date.
- (b) Clauses 1.5, 3, 5, 8.1(a), 12, 13.1, 13.2 and 25 have force and effect on receipt of notice as referred to in clause 4.3(e) or when all the requirements of clause 4.3 are to be treated as fully satisfied in accordance with the proviso to that clause ("notice of satisfaction of the Conditions Precedent").
- (c) The provisions of this Agreement, other than those referred to in clauses 4.1(a) and 4.1(b) have force and effect from the Commencement Date.

4.2 Term

Subject to clause 4.1, this Agreement commences on the Commencement Date and continues unless and until it is terminated in accordance with clause 28 ("**Term**").

4.3 Conditions Precedent

The Parties agree that:

- (a) they must all act in good faith with a view to promoting the fulfilment of the Conditions Precedent;
- (b) subject to clause 24 and without limiting the right and/or obligation to protect Aboriginal cultural heritage from harm, they must not take any action that would, or would likely, prevent or hinder the fulfilment of any of the Conditions Precedent;
- (c) DAC must provide prompt notice to CIM and the PBC upon fulfilment of the first of the Conditions Precedent;
- (d) DAC must inform CIM and the PBC if anything occurs which may affect the fulfilment of any of the Conditions Precedent; and
- (e) DAC must provide prompt notice to CIM and the PBC when the Conditions Precedent have been satisfied in full, Provided Always that if at any time prior to 30 September 2022 DAC gives notice to CIM to the effect that the Conditions attached to the Clearance given in respect of the Reef Area referred to in the Pre-ILUA Survey Report no longer apply (and accordingly the Clearance in respect of the Reef Area has become unconditional), the Conditions Precedent shall be treated as fulfilled and all the requirements of clause 4.3 (including paragraph (e)) fully satisfied.

5. REGISTRATION

(c) Each Party shall use its reasonable endeavours and do all things reasonably necessary to assist with the timely Registration of this Agreement in respect of the ILUA Area and to maintain its Registration on the Register of Indigenous Land Use Agreements. Where this Agreement is unable to be registered, the Parties will negotiate in good faith with a view to agreeing amendments to this Agreement such that it becomes registrable.

28.1 Termination

This Agreement shall terminate only on the occurrence of one of the following events, whichever is the first to occur (the **Termination Date**):

- (a) the Agreement is not accepted for Registration within 12 months of the Execution Date or such longer period as may be agreed in writing between the Parties (subject always to clause 5(c)); or
- (b) all Parties agree in writing to end the Agreement; or
- (c) the Agreement is removed from the Register of Indigenous Land Use Agreements by the Native Title Registrar in accordance with section 199C of the NTA; or
- (d) the Conditions Precedent are not fulfilled within 6 months of the Execution Date or such longer period as may be agreed in writing between the Parties.

Commencement Date means the date of on which this Agreement is registered on the Register of Indigenous Land Use Agreements, pursuant to section 24BG of the NTA.

Conditions Precedent means each of the conditions precedent set out in Schedule 6. [A copy of Schedule 6 is attached to this Register extract.]

Execution Date means the date on which this Agreement is executed by all Parties.

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

Reef Area means the reef area immediately adjacent to the existing mine pit on Mining Lease 04/448, and as referred to in numbered point 6 on page 39 (as per Fig 29) of the DAC document titled "Report to: Cockatoo Island Mining Pty Ltd, Work Clearance Survey, Ambagaramba (Balanyoo / Cockatoo Island) 1st to 4th November 2021" dated January 2022 (ie the area Cleared with Conditions) ("**Reef Area**").

Registration means acceptance of the Agreement upon the Register of Indigenous Land Use Agreements pursuant to the NTA in respect of the ILUA Area.

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

2.2 Registration as ILUA

The Parties acknowledge their intention that:

(b) Subdivision P of Division 3 of Part 2 of the NTA does not apply to 'future acts' consented to in clause 7 of this ILUA.

7.1 Future Acts

In consideration of the financial and other benefits provided for in this Agreement, the PBC and DAC hereby (subject to clauses 1.5, 7.2, 7.3, 7.4 and 7.5):

(a) consent to, and agree to do all reasonable acts, matters and things to facilitate, the Grant and (where applicable) the transfer, to a CIM Entity, of all Agreement Tenure to the extent that the Agreement Tenure lies within the Agreement Area; and

(b) agree not to object to the Grant of any Further Mining Tenements or Ancillary Tenure to a CIM Entity.

7.2 Condition applicable to Further Mining Tenements applied for by Pluton

The consent given in clause 7.1, to the extent that it relates to the Grant to Pluton of Further Mining Tenements applied for by Pluton, is conditional upon those Further Mining Tenements being transferred forthwith to a CIM Entity.

7.4 Where Consent Does Not Apply

For the avoidance of doubt:

(a) the consent given in clause 7.1 does not apply to the Grant to a CIM Entity of any Agreement Tenure (other than miscellaneous licence 04/117) in relation to the area covered by mining lease M04/235 (or a successor mining lease to that mining lease) whilst or to the extent that it continues in force and to be held by Pearl Gull Iron Limited or any successor or assignee of that corporation (other than a CIM Entity); and

(b) the consent given in clause 7.1 does not apply to the Grant to a CIM Entity of any new Agreement Tenure applied for by a CIM Entity at any time after the Execution Date which is not Further Mining Tenement or Ancillary Tenure.

Agreement Tenure means the:

(a) Granted Mining Tenements;

(b) Further Mining Tenements; and

(c) Ancillary Tenure,

to the extent that they relate to land or waters within the Agreement Area.

Ancillary Activities means any activity associated with or ancillary to Mining or Mining Operations, including accommodation, air and sea transport, that is carried out by or on behalf of Cockatoo Island Mining or any related body corporate nominated by Cockatoo Island Mining within the Agreement Area.

Ancillary Tenure means any right, licence or tenure, (other than a Mining Tenement) relating to services or ancillary facilities for the Cockatoo Island Operations (including water or gas pipelines, communications facilities, power infrastructure, haul roads and minor roads and tracks, power generation) whether existing on, or applied for, acquired or granted after the date of this ILUA by Cockatoo Island Mining or any related body corporate nominated by Cockatoo Island Mining including:

(a) the grant of a licence under section 91 of the *Land Administration Act 1997* (WA);

(b) the grant or creation of any Interest under the *Rights in Water & Irrigation Act 1914* (WA); or

(c) the grant of any jetty licence under section 7 of the *Jetties Act 1926* (WA); or

(d) the grant of a seabed lease under section 12(2a) of the *Marine and Harbours Act 1981* (WA),

to the extent that those rights, licences or tenure lie within the Agreement Area.

CIM Entity means Cockatoo Island Mining, Cockatoo Island Mining Infrastructure Pty Ltd, Cockatoo Island Prospecting Pty Ltd or such other related body corporate as Cockatoo Island Mining may nominate from time to time.

Cockatoo Island Operations means all activities related to mining or mineral exploration done from time to time by or on behalf of Cockatoo Island Mining or any related bodies corporate nominated by Cockatoo Island Mining within the Agreement Area, including Mining Operations and all Ancillary Activities.

Further Mining Tenements means the Mining Tenements specified in Part 2 of Schedule 2 and any other Mining Tenements applied for or acquired by Cockatoo Island Mining or a related body corporate of and nominated for the purpose of clause 1.5(b) by Cockatoo Island Mining at any time after the Execution Date to the extent that they lie within the Agreement Area. [A copy of Schedule 2 is attached to this Register extract.]

Grant includes renew, extend and regrant.

Granted Mining Tenements means the Mining Tenements currently held by Cockatoo Island Mining within the Agreement Area, which are specified in Part 1 of Schedule 2.

Mining Act means the *Mining Act 1978* (WA).

Mining Operations has the meaning given to that term in the Mining Act.

Mining Tenement has the same meaning as in the Mining Act.

Attachments to the entry

[Schedule 2 - Granted and Further Mining Tenements .pdf](#)

[Schedule 4 - Descriptions and Map of Agreement Area, Contract Area and ILUA Area.pdf](#)

[Schedule 6 - Conditions Precedent .pdf](#)