



Extract from Register of Indigenous Land Use Agreements

NNTT number	WI2023/001
Short name	El Questro Wilinggin ILUA
ILUA type	Body Corporate
Date registered	18/04/2023
State/territory	Western Australia
Local government region	Shire of Wyndham-East Kimberley

Description of the area covered by the agreement

3.11 Area to which this Agreement applies

This Agreement applies to the Agreement Area.

Agreement Area means those parts of:

- (a) Lots 4, 5 and 275 on Deposited Plan 171292;
- (b) Lot 571 on Deposited Plan 403742;
- (c) Lot 573 on Deposited Plan 403734;
- (d) Lot 575 on Deposited Plan 404314;
- (e) Lot 26 and 27 on Deposited Plan 192706;
- (f) Lot 580 on DP 413847; and
- (g) Lot 581 on Deposited Plan 413846,

that fall within the Determination Area and which areas of land are delineated on the map in Schedule 1.

Following the Subdivision, the Agreement Area includes Lots 28, 29 and 30 as depicted on Deposited Plan 424267 annexed at Schedule 12, in lieu of Lot 571 on Deposited Plan 403742. For the avoidance of doubt, the Agreement Area does not include any areas of land that are not within the Determination Area.

Determination Area means the land and waters the subject of the determination of native title in *Neowarra v State of Western Australia* [2004] FCA 1092 made by Sundberg J on 27 August 2004.

[Maps of the agreement area are contained in Schedule 1 of the agreement. A copy of Schedule 1 and Schedule 12 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 1,659 sq km and is located over parts of El Questro Pastoral Lease, about 54 km west of Kununurra.

Parties to agreement

Applicant

Party name	State of Western Australia (State)
Contact address	PO Box 1221 West Perth WA 6872

Other Parties

Party name	Discovery Holiday Parks Pty Ltd (Discovery)
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Contact address Ground Floor
60 Light Square
Adelaide SA 5000

Party name Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC (RNTBC)
Contact address 11 Gregory Street
Broome WA 6725

Party name Wilinggin Aboriginal Corporation (WAC)
Contact address 37 Rowan Street
Derby WA 6728

Period in which the agreement will operate

Start date not specified
End Date not specified

2.1 Commencement

This Agreement commences on the Execution Date, except for clauses 3 [Agreement That Future Acts May Be Done] and 4 [Implementation] which will commence on the Commencement Date, and binds each of the Parties, their successors and permitted assigns.

2.2 Term

This Agreement shall terminate on the occurrence of whichever of the following events is the first to occur:

- (a) where clause 10.6 (dealing with the consequences of non-registration) applies;
- (b) where all Parties agree in writing to end the Agreement; or
- (c) where the Agreement is removed from the ILUA Register by the Native Title Registrar in accordance with section 199C of the NTA.

Commencement Date means the date on which this Agreement is Conclusively Registered and entered on the ILUA Register.

Conclusive Registration means, once this Agreement has been Registered, that this Agreement remains Registered:

- (a) at a date that is 60 Business Days after the date on which a decision is made to Register the Agreement, provided that no Legal Proceedings have been commenced in respect of such Registration; or
 - (b) otherwise at a date that is 40 Business Days following the exhaustion of the final available Legal Proceedings in respect of such Registration,
- and **Conclusively Registered** has a corresponding meaning.

Execution Date means the date of the execution of this Agreement by the last of the Parties to execute it.

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

3.1 Future Act

Each Party acknowledges and agrees that the Land Transactions may be or may comprise Future Acts to which the provisions of Part 2, Division 3 of the NTA may apply.

3.2 Parties' consents to Future Acts

(a) Each Party consents to the Land Transactions with the intent that such statement of consent satisfies the requirements of section 24EB(1)(b) of the NTA in respect of each of them.

(b) For the avoidance of doubt, the consent in clause 3.2(a) includes consent to the doing of any and all things ancillary to the doing of the Land Transactions, with the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the NTA in respect of each of those things.

3.6 Grant of the right includes its exercise

For the avoidance of doubt, the consent to the doing of the Land Transactions referred to in clause 3.2 includes consent to the exercise of any right or obligation created by those acts on the person on whom the right or obligation

is conferred.

3.7 Non-Extinguishment Principle applies

(a) The Non-Extinguishment Principle applies to the Land Transactions.

(b) For the avoidance of doubt:

(i) the Land Transactions include any Additional Land Transactions; and

(ii) the Land Transactions and any activity required or permitted by those Land Transactions and that is done in accordance with the Land Transactions, shall prevail over any native title rights or interests and any exercise of those rights and interests, but does not extinguish them.

3.8 No Right to Negotiate

(a) The Right to Negotiate Procedure does not apply to any of the Land Transactions, with the intent that such statement satisfies the requirement of section 24EB(1)(c) of the NTA.

(b) For the avoidance of doubt:

(i) no other procedural requirements in Part 2 Division 3 of the NTA apply to the Land Transactions; and

(ii) the Land Transactions include the Additional Land Transactions.

Additional Land Transactions means:

(a) any grant of tenure consistent with the LA Act in the Agreement Area; or

(b) the variation of, or addition to, any of the Stage 1 Land Transactions or the Stage 2 Land Transactions, necessary to give effect to the intent of this Agreement and not contemplated by the Parties on the Execution Date.

Balance of Reserve Land means the Reserve Land except for the Emma Gorge Land and Welcome Centre Land.

Caveat means a caveat registered over the Conditional Freehold Land by the State under section 21(3) of the LA Act to protect the State's interest in the Conditional Freehold Land.

Conditional Freehold Area means Lots 4, 5 and 275 on Deposited Plan 171292 and Lot 571 on Deposited Plan 403742.

Conditional Freehold Land means:

(a) Lots 4, 5 and 275 on Deposited Plan 171292; and

(b) a portion of Lot 571 on Deposited Plan 403742 shown as Lot 30 on Deposited Plan 424267 annexed at Schedule 12.

Diggers Rest means Diggers Rest Station Pty Ltd (ABN 72 131 358 140).

Discharge of Mortgage — Stage 1 means the partial discharge of Mortgage 0687931M to the extent needed for the Stage 1 Surrender of Pastoral Lease.

Discharge of Mortgage — Stage 2 means the partial discharge of Mortgage 0687931M to the extent needed for the Stage 2 Surrender of Pastoral Lease.

Easement (EI Questro Station to Homestead) means the easement to be granted to Discovery by the Minister for Lands under section 144 of the LA Act for the purpose of access over the Station to Homestead Road for the benefit of the EI Questro Homestead Crown Land substantially in the form of the draft easement set out in Schedule 11.

Easement (Gibb River Road to Station) — Discovery means the easement to be granted to Discovery by the Minister for Lands under section 144 of the LA Act for the purpose of access over the Station Access Road for the benefit of the Conditional Freehold Land substantially in the form of the draft easement set out in Schedule 11.

Easement (Gibb River Road to Station) — WAC means the easement to be granted to WAC by the Minister for Lands under section 144 of the LA Act for the purpose of access over the Station Access Road for the benefit of the Conditional Freehold Land substantially in the form of the draft easement set out in Schedule 11.

EI Questro Homestead Crown Land means the whole of the land in Crown Land Titles Volume LR3102 Folio 209 and Volume LR3107 Folio 470 and being lots 26 and 27 on Deposited Plan 192706.

EI Questro Homestead Crown Lease means the lease commencing 27 February 2002 in respect of Lot 26 and Lot 27 on Diagram 192706 from the State to William Westray Burrell (subsequently assigned through a series of transactions to Discovery) with registration number 127095. For the avoidance of doubt, following the Expansion of the EI Questro Homestead Crown Lease, it is intended that the EI Questro Homestead Crown Lease will apply to Lots 26, 27, 28 and 29 as depicted on Deposited Plan 424267 annexed at Schedule 12.

Emma Gorge Access Road means the road marked 'A' as shown in Schedule 2. [A copy of Schedule 2 is attached

to this register extract.]

Emma Gorge Easement means the easement to be granted to Discovery by the Minister for Lands under section 144 of the LA Act for the purpose of access over that portion of the Emma Gorge Access Road within the Determination Area for the benefit of the whole of the land in Crown Land Title Volume LR3102 Folio 207 and being Lot 777 on Deposited Plan 192705, substantially in the form of the draft easement set out in Schedule 11.

Emma Gorge Land means lot 575 on Deposited Plan 404314.

Emma Gorge Lease means a lease of the Emma Gorge Land from WAC to Discovery subject to the terms of the Management Order and Management Order Deed for tourism and accommodation purposes and any ancillary or related purposes.

Existing Tourism Licence means the 'LICENCE — Portion of El Questro' which commenced on 1 July 2015 and was entered into between The State of Western Australia acting through the Minister for Lands and Delaware North El Questro Pty Ltd (subsequently assigned by Delaware North El Questro Pty Ltd to Discovery).

Expansion of El Questro Homestead Crown Lease means the conveyance and amalgamation order made under section 87 of the LA Act to amalgamate the New El Questro Homestead Lots into the El Questro Homestead Crown Land to be held under the El Questro Homestead Crown Lease.

Extension of El Questro Homestead Crown Lease means an extension of the El Questro Homestead Crown Lease under section 79(4) of the LA Act between the State (as lessor) and Discovery (as lessee) such that the total term of the El Questro Homestead Crown Lease will be 21 years commencing from the date of the extension with a further option to renew of 21 years.

Grant of Conditional Freehold means the transfer of the Conditional Freehold Land to WAC pursuant to section 75 of the LA Act substantially on the terms and conditions set out in Schedule 8 and Schedule 9 and on such other terms and conditions as the Minister for Lands thinks fit.

Interim Tourism Licence means a licence granted under section 91 of the LA Act to Discovery over the Reserve Land permitting tourism activities substantially in the form of the draft licence set out at Schedule 10 expiring when the New Tourism Licence becomes effective or 5 years from commencement of the Interim Tourism Licence, whichever occurs first.

LA Act means the *Land Administration Act 1997* (WA).

Land Transactions means the Stage 1 Land Transactions, the Stage 2 Land Transactions and any Additional Land Transactions.

Management Order means an order made by the Minister for Lands placing the care, control and management of the Reserve Land with WAC pursuant to section 46 of the LA Act including the power to lease, sublease or licence the Reserve Land subject to section 18 of the LAA.

Management Order Deed means a deed containing the terms and conditions on which the Minister for Lands places the care, control and management of the Reserve Land with WAC and on which WAC accepts taking the care, control and management of the Reserve Land.

New El Questro Homestead Lots means Lots 28 and 29 as depicted on Deposited Plan 424267 annexed at Schedule 12.

New Grazing Lease means a lease of the Balance of the Reserve Land (or such lesser area that may be agreed between WAC and Diggers Rest) subject to the terms of the Management Order and Management Order Deed from WAC (as lessor) to Diggers Rest (as lessee) for the purposes of pastoral activities for a total term that expires no earlier than 31 May 2029 (unless otherwise agreed between WAC and Diggers Rest).

New Mortgage — Stage 1 means a mortgage or mortgages of the Station Lease granted by Discovery in favour of Westpac Administration Pty Ltd (ACN 008 617 203) or such other party as Discovery may nominate from time to time.

New Mortgage — Stage 2 means a mortgage or mortgages granted by Discovery in favour of Westpac Administration Pty Ltd (ACN 008 617 203) or such other party as Discovery may nominate from time to time in respect of:

- (a) the Emma Gorge Lease;
- (b) the Welcome Centre Lease; and
- (c) the El Questro Homestead Crown Lease.

New Tourism Licence means a licence subject to the terms of the Management Order and Management Order Deed of the Balance of Reserve Land (or such lesser area that may be agreed between WAC and Discovery) from WAC to Discovery permitting tourism activities and which continues in operation until the later of the expiry or termination of the Station Lease, Emma Gorge Lease and Welcome Centre Lease.

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

Pastoral Lease means the pastoral lease from the State to Delaware North El Questro Pty Ltd (subsequently assigned to Discovery) with registration N50404.

Pastoral Sublease means the pastoral sublease having registration number 0215389 dated 19 June 2019 between Delaware North El Questro Pty Ltd (as sub-lessor) and Diggers Rest Station Pty Ltd (ACN 131 358 140) (as sub-lessee), subsequently assigned from Delaware North El Questro Pty Ltd to Discovery (as sub-lessor).

Reserve Creation means the creation of a reserve under section 41 of the LA Act over the Reserve Land by the Minister for Lands for the purposes of tourism, accommodation, pastoral activities, carbon, land management and any related or ancillary uses.

Reserve Land means the Agreement Area except for the Conditional Freehold Land, the El Questro Homestead Crown Land and the New El Questro Homestead Lots.

Stage 1 Easements means the Easement (Gibb River Road to Station) — Discovery; the Easement (Gibb River Road to Station) — WAC and the Easement (El Questro Station to Homestead).

Stage 1 Land Transactions means:

- (a) the Termination of Existing Tourism Licence;
- (b) the Discharge of Mortgage — Stage 1;
- (c) the Stage 1 Surrender of Pastoral Sublease;
- (d) the Stage 1 Surrender of Pastoral Lease;
- (e) the Subdivision;
- (f) the Expansion of El Questro Homestead Crown Lease;
- (g) the grant of the Stage 1 Easements;
- (h) the Grant of Conditional Freehold;
- (i) the registration of the Caveat;
- (j) the grant of the Station Lease;
- (k) the New Mortgage — Stage 1; and
- (l) the grant of the Interim Tourism Licence.

Stage 1 Surrender of Pastoral Lease means a partial surrender of the Pastoral Lease in respect of the Conditional Freehold Area pursuant to section 81 of the LA Act.

Stage 1 Surrender of Pastoral Sublease means a partial surrender of the Pastoral Sublease in respect of the Conditional Freehold Area.

Stage 2 Land Transactions means:

- (a) the Discharge of Mortgage — Stage 2;
- (b) the Stage 2 Surrender of Pastoral Sublease;
- (c) the Stage 2 Surrender of Pastoral Lease;
- (d) the Reserve Creation;
- (e) the grant of the Management Order annexing the Management Order Deed;
- (f) the Extension of El Questro Homestead Crown Lease;
- (g) the New Grazing Lease;
- (h) the Emma Gorge Easement;
- (i) the Emma Gorge Lease;
- (j) the Welcome Centre Lease;
- (k) the New Mortgage - Stage 2; and
- (l) the New Tourism Licence.

Stage 2 Surrender of Pastoral Lease means a partial surrender of the Pastoral Lease in respect of the Reserve Land.

Stage 2 Surrender of Pastoral Sublease means a partial surrender of the Pastoral Sublease in respect of the Reserve Land.

Station Access Road means the road marked 'X' as shown in Schedule 3. [A copy of Schedule 3 is attached to this register extract.]

Station Lease means a lease of the Conditional Freehold Land subject to the terms and conditions of the Grant of Conditional Freehold from WAC to Discovery for a total term of 99 years and for purposes which include tourism, accommodation and related or ancillary uses, on the terms set out in Schedule 7.

Station to Homestead Road means the road marked 'Y' as shown in Schedule 4. [A copy of Schedule 4 is attached to this register extract.]

Subdivision means the orders made under section 27 of the LA Act to subdivide Lot 571 on Deposited Plan 403742 into three lots being Lot 28, Lot 29 and Lot 30 as depicted on Deposited Plan 424267 annexed at Schedule 12.

Termination of Existing Tourism Licence means the termination of the Existing Tourism Licence by mutual

agreement between Discovery and the State.

Welcome Centre Land means lot 573 on Deposited Plan 403734.

Welcome Centre Lease means a lease subject to the terms of the Management Order and Management Order Deed of the Welcome Centre Land from WAC to Discovery for tourism purposes (including the establishment and operation of a welcome centre) and any ancillary or related purposes.

Attachments to the entry

[WI2023_001 Schedule 1 - External boundary description and maps of agreement area.pdf](#)

[WI2023_001 Schedule 2 - Emma Gorge Access Road.pdf](#)

[WI2023_001 Schedule 3 - Station Access Road.pdf](#)

[WI2023_001 Schedule 4 - Station to Homestead Road.pdf](#)

[WI2023_001 Schedule 12 - Deposited Plan 424267.pdf](#)