



Extract from Register of Indigenous Land Use Agreements

NNTT number	QI2011/004
Short name	Hancock Alpha Coal Pty Ltd & Birri Native Title Claim Group ILUA
ILUA type	Area Agreement
Date registered	11/07/2011
State/territory	Queensland
Local government region	Whitsunday Regional Council

Description of the area covered by the agreement

Clause 1.1 Definitions:

'ILUA Area' means the land and waters described in Schedule 1. [Schedule 1 is an attachment to the Register Extract].

Clause 2.6 Area of application

The provisions of this Agreement apply to the ILUA Area.

The ILUA Area specifically excludes the land and waters contained within native title determination application QUD6230/98 Jangga People (QC98/10).

Parties to agreement

Applicant

Party name	Hancock Alpha Coal Pty Ltd
Contact address	c/- Blake Dawson Lawyers Level 38 Riverside Centre 123 Eagle Street BRISBANE QLD 4000

Other Parties

Party name	Grace Smallwod, Heather Tilberoo, Algon Walsh Jnr, Colin McLennan, David Miller and Frank Fisher on their own behalf and on behalf of the Native Title Claim Group
Contact address	c/- Michael Owens and Associates PO BOX 1989 AITKENVALE BC QLD 4814

Party name	State of Queensland
Contact address	Level 12 Executive Building 100 George Street BRISBANE QLD 4000

Period in which the agreement will operate

Start date	not specified
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Clause 2.1 Commencement and operation

Subject to clause 3.1, this Agreement commences on the Commencement Date.

Clause 2.2 Decision to Proceed

HACPL must notify the State and the Native Title Applicants of the date:

- (a) on which it makes the Decision to Proceed; or
- (b) on which it decides not to proceed with the Project, within 14 days of either of those decisions taking place.

Clause 2.3 Termination

(a) This Agreement may be terminated:

- (i) by the written consent of the Parties;
 - (ii) when HACPL gives notice to the Native Title Applicants and the State that the Project is terminated;
 - (iii) if there is a Contrary Determination and HACPL gives the Native Title Applicants and the State notice that it proposes to terminate this Agreement, the termination to take effect 5 Business Days after such notice is delivered unless otherwise agreed in writing, in which case HACPL must advise the State of such agreement;
 - (iv) if HACPL notifies the State and the Native Title Applicants that a decision has been made not to proceed with the Project; and
 - (v) in the circumstances described in clause 2.4(b)(i) and upon the date referred to in that clause.
- (b) in the event of termination of the Agreement, the Parties will do all things necessary to remove the details of this Agreement from the ILUA Register.

Clause 2.4 Termination if no Decision to Proceed

If HACPL has not notified the State and the Native Title Applicants of the Decision to Proceed by the ILUA Review Date the following processes will be undertaken:

- (a) HACPL and the State will meet within 3 months of the ILUA Review Date for the purposes of HACPL providing an update on the progress of the development of the Project, the reasons as to why a Decision to Proceed has not been made, and the likely timing of making a Decision to Proceed;
- (b) following that meeting the State and HACPL may:
 - (i) decide to terminate this Agreement on a specified date if there has not been a Decision to Proceed by that date; or
 - (ii) decide that this Agreement is to continue to be in force; and
- (c) HACPL must advise the Native Title Applicants of the outcome of the meeting.

Clause 2.5 Continuation of rights after termination

- (a) Subject to clause 2.5(b), the rights and obligations of the parties under clauses 3 to 10 will continue after termination of the Agreement.
- (b) If the Agreement terminates, the Parties' consent in clause 3, and the support and agreement given in clause 4 by the Native Title Applicants on their own behalf and on behalf of the Native Title Claim Group, continues with regard to any Future Acts, Surrender, or Taking of Native Title, Granted or done prior to the date of termination.

Clause 3.1 Commencement of 3.2 and 3.3

Clauses 3.2 and 3.3 commence on the Registration Date or the date of the Decision to Proceed, whichever is the later.

Clause 1.1 Definitions

'Commencement Date' means the day on which this Agreement is executed by the Parties and if executed on different days, the later of those days.

'Contrary Determination' means an Approved Determination of Native Title that Native Title Holders other than the Native Title Claim Group hold Native Title to all or part of the ILUA area.

'Decision to Proceed' means the decision of HACPL in its absolute discretion to proceed with the construction and operation of all or part of the Project.

'ILUA Review Date' means the date that is 5 years after the date of Registration.

'Native Title Applicants' means the living Registered Native Title Claimants in the Native Title Claim from time to time and who, as at the Commencement Date, are Grace Smallwood, Heather Tilberoo, Algon Walsh Jnr, Colin McLennan, David Miller and Frank Fisher.

'Native Title Claim' means the Claimant Application lodged in the Federal Court, and allocated number QUD6244/98.

'Native Title Claim Group' means the native title claim group represented in the Native Title Claim, being the Birri People.

'Registration Date' in relation to this Agreement means the date on which the Agreement is entered on the ILUA Register.

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

Clause 3.2 Consent to Grant of Project Approvals and undertaking of Project Activities

The Parties:

- (a) consent to the Grant or doing of all Project Approvals; and
- (b) consent to the undertaking of all Project Activities.

Clause 3.3 Consent to Surrender

The Parties:

- (a) consent to any Surrender that occurs within the ILUA Area pursuant to clause 3.4(a); and
- (b) for the purposes of section 24EB(1)(d) of the NTA agree that any Surrender that occurs pursuant to clause 3 is intended to extinguish Native Title at the time of the particular Surrender.

Clause 3.4 Process for Surrender

(a) If:

- (i) Hancock seeks a Project Approval that relates to the ILUA area; and
 - (ii) the Project Approval cannot be Granted unless a Surrender takes place, then a Surrender will occur immediately before the Project Approval is Granted in relation to Native Title that exists within that part of the ILUA Area the subject of the Project Approval.
- (b) HACPL must notify the Native Title Applicants of any Surrender that occurs pursuant to this clause and provide the State with a copy of that notification.

Clause 3.6 Consent to Future Acts

The Parties consent, for the purposes of section 24EB(1)(b) of the NTA and Regulation 7(5) of the Native Title (Indigenous Land Use Agreement) Regulations 1999 (Cth), to the doing of any of the acts referred to in this clause 3 that are Future Acts.

Clause 3.7 Acts excluded from the right to negotiate

Subdivision P, division 3 of part 2 of the NTA is not intended to apply and does not apply to the Future Acts or the Surrender authorised by this Agreement.

Clause 1.1 Definitions:

'Project' means the project proposed by Hancock comprising the following components, both within the ILUA Area and outside of the ILUA Area:

- (a) the development of thermal coal mines (known as the Alpha Coal Project and the Kevin's Corner Project), both having an approximate production capacity of 30 mtpa over a life span of more than 30 years) together with associated infrastructure and utilities;
- (b) a mine to port railway between Alpha and Abbot Point:
 - (i) of approximately 495km in length;
 - (ii) designed to initially accommodate the transportation of between 60 and 80 mtpa of coal and with potential to increase the tonnage transported with additional passing loops and selective partial duplication of track; and
 - (iii) including a load out loop at the Alpha Coal minesite, a spur and load out loop to the Kevin's Corner mine site, the main line from the mining operations to the port at Abbot Point, passing loops, maintenance tracks, maintenance and marshalling yards and port unload loops;
- (c) a coal export facility, port and material handling facility at Abbot Point with an approximate minimum capacity of 60mtpa; and
- (d) all other necessary infrastructure considered necessary or desirable by HACPL which may include:
 - (i) a mine industrial area including main workshop, warehouse, administration buildings, training and emergency services building, tyre bay, light vehicle workshop and bucket repair shop;
 - (ii) coal handling and preparation plant and associated infrastructure;
 - (iii) an airport;
 - (iv) construction camps;
 - (v) a main accommodation camp;
 - (vi) mine access and other internal roads;
 - (vii) fuel and oil explosives storage facilities;
 - (viii) fuel transportation pipeline;
 - (ix) power supply options for the power requirements including transmission lines;
 - (x) on site borefield and regional long term water supply options including water pipelines, pumping stations and associated power supply; and
 - (xi) communication cables and towers.

'Project Activity' means an activity authorised by a Project Approval and undertaken within the ILUA Area.

'Project Approval' means an Approval to any person and relating to an area that includes the ILUA Area which in HACPL's opinion is necessary or desirable for the construction, operation, use, maintenance, repair, further development, decommissioning or rehabilitation of the Project.

'Surrender' means a surrender of Native Title within the ILUA Area.

Attachments to the entry

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

[QI2011004 Hancock Alpha Coal Birri Schedule 1 Map of ILUA Area and Coordinates.pdf](#)