



Extract from Register of Indigenous Land Use Agreements

NNTT number	QI2018/030
Short name	Badu Infrastructure and Housing ILUA
ILUA type	Body Corporate
Date registered	26/02/2019
State/territory	Queensland
Local government region	Torres Strait Island Regional Council

Description of the area covered by the agreement

"**ILUA Area**" means the area described in writing in Schedule 2 being all of the land and waters shown on the map in Schedule 3.

[Schedule 2 provides a written description of the ILUA Area. A copy of Schedule 2 is attached to this register extract. Maps of the ILUA area are contained in Schedule 3. A copy of Schedule 3 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 95 sq km and extends across the Torres Strait island of Badu.]

Parties to agreement

Applicant

Party name	State of Queensland
Contact address	c/- Department of Aboriginal and Torres Strait Islander Partnerships PO Box 5461 Cairns QLD 4870

Other Parties

Party name	Mura Badulgal (Torres Strait Islanders) Corporation RNTBC
Contact address	PO Box 198 Badu Island QLD 4875

Party name	Torres Strait Island Regional Council
Contact address	PO Box 7336 Cairns QLD 4870

Party name	Torres Strait Regional Authority
Contact address	PO Box 261 Thursday Island QLD 4875

Period in which the agreement will operate

Start date	not specified
End Date	not specified

3.1 This *Agreement* commences:-

- (a) from the *Execution Date* in relation to Parts 1, 3 and 4 of the *Agreement*; and
- (b) from the *Registration Date* in relation to Part 2 of the *Agreement*.

3.2 Subject to it being earlier *Terminated*, this *Agreement* continues on an indefinite basis.

3.3 This *Agreement* may be *Terminated* at any time by agreement in writing between the *Parties*.

"**Agreement**" means this Deed and all schedules to it.

"**Execution Date**" means the date that the last Party signs this *Agreement*.

"**Party**" or "**Parties**" means the *Body Corporate*, the *TSIRC*, the *TSRA* and the *State*.

"**Registration Date**" means the date on which details of this *Agreement* are entered in the *Register of Indigenous Land Use Agreements*.

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

[*Explanatory notes in brackets inserted by the National Native Title Tribunal*]

6.2 Part 2 Division 3 Subdivision P of the *Native Title Act* (which relates to the right to negotiate), does not apply to any *Future Acts* covered by this *Agreement*.

8.1 The purpose of clause 8 is to provide the consent of the *Parties* for the purposes of the *Native Title Act* to the doing subject to conditions of *Future Acts* included in classes. The classes of *Future Acts* are set out in clause 8.2. The conditions of the consent are set out in clauses 8.3, 8.4, 8.5, 8.6, 8.7, and 8.8 respectively.

8.2 The Parties agree that the classes of *Future Acts* are as follows: (a) *Class 1 MIP Future Acts* are *Future Acts* which meet all of the following criteria: (i) they are undertaken by a *Proponent*; (ii) they are completely or substantially funded through the joint State and Commonwealth of Australia program known as the Major Infrastructure Program and/or any successor program of the same intent; and (iii) they are undertaken in a *Project Area* of up to 30,000m² in size, not including any *Ancillary Project Area*; and (iv) they permit, require or consist of the construction, operation, use, maintenance or repair of an *Infrastructure Facility* in the *Project Area*; (v) they may involve access being gained to the *Project Area* by the *Proponent* through one or more *Ancillary Project Area*; (vi) they may involve the construction, operation, use, maintenance or repair by the *Proponent* of *Ancillary Project Area Infrastructure* in one or more *Ancillary Project Area*; and (vii) they do not involve the grant of *Freehold Title*. (b) *Class 2 Non-MIP Future Acts* are *Future Acts* which meet all of the following criteria: (i) they are undertaken by a *Proponent*; (ii) they are not *Future Acts* covered by clauses 8.2(a), 8.2(c), 8.2(d), or 8.2(e); (iii) they are undertaken in a *Project Area* of up to 30,000m² in size, not including any *Ancillary Project Area*; (iv) they permit, require or consist of the construction, operation, use, maintenance or repair of an *Infrastructure Facility* in the *Project Area*; (v) they may involve access being gained to the *Project Area* by the *Proponent* through one or more *Ancillary Project Areas*; (vi) they may involve the construction, operation, use, maintenance or repair by the *Proponent* of *Ancillary Project Area Infrastructure* in one or more *Ancillary Project Areas*; and (vii) they do not involve the grant of *Freehold Title*. (c) *Class 3 Housing – Home Ownership Future Acts* are *Future Acts* which meet all of the following criteria: (i) they are undertaken by a *Proponent*; (ii) they are undertaken in a *Project Area* of up to 30,000m² in size; and (iii) they involve the grant of one or more leases for a term of more than 30 years but not more than 99 years for private residential purposes or a grant of freehold title for home ownership purposes. (d) *Class 4 Housing – Renovation Acts* are acts which meet all of the following criteria: (i) they are undertaken by a *Proponent*; (ii) they are undertaken in a *Project Area* of up to 30,000m² in size; and (iii) they involve the maintenance, repair, renovation, refurbishment or *Extension* of one or more dwelling houses in the *Project Area* – A. that is or are *Social Houses*; or B. that has or have been the subject of a project involving *Class 3 Housing - Home Ownership Future Acts* consented to under this *Agreement*. (e) *Class 5 Transfer-Related Future* are *Future Acts* which meet all of the following criteria:- (i) they are undertaken by a *Proponent*; (ii) they are undertaken in a *Project Area* of any size (it being acknowledged that the *Project Area* must be wholly within the *Agreement Area*); (iii) they permit, require or consist of the construction, operation, use, maintenance or repair of one or more *Infrastructure Facility* in the *Project Area*; (iv) they are undertaken in connection with a proposed grant of transferable land in fee simple to the *Body Corporate* under *TSILA* [*Torres Strait Islander Land Act 1991 (Qld)*]; (v) they are undertaken for the purpose of satisfying the Minister under *TSILA* in respect of the proposed grant of transferable land in fee simple to the *Body Corporate* under *TSILA* that arrangements are in place to ensure *TSIRC* can continue to provide local government services to communities on the land after it is granted; and (vi) they do not involve the grant of *Freehold Title*.

8.3 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing of any *Class 1 MIP Future Acts* to which this *Agreement* applies. [*Clause 9.1(d) provides for the issuing of Project Consent*]

Certificates]

8.4 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing any *Class 2 Non-MIP Future Acts* to which this *Agreement* applies.

8.5 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing of any *Class 3 Housing - Home Ownership Future Acts* to which this *Agreement* applies.

8.6 Subject to the issue of a *Final Project Notice* under clause 9.1(c), the *Parties* consent to of any *Class 4 Housing - Renovation Acts* to which this *Agreement* applies to the extent that those acts are *Future Acts*. [Clause 9.1(c) provides for the issuing of *Final Project Notices*]

8.8 Subject to the issue of a *Project Consent Certificate* under clause 9.1(d), the *Parties* consent to the doing any *Class 5 Transfer-Related Future Acts* to which this *Agreement* applies.

8.10 The *Parties* agree to the validating under clause 8.11 of any *Future Act* covered by this *Agreement*, where that *Future Act* is done by a *Proponent*:- (a) prior to the *Registration Date*; and (b) after the date the *Proponent* gives an *Initial Project Notice* under clause 9.1(a) but prior to the *Body Corporate* giving a *Project Consent Certificate* under 9.1(d).

8.11 A *Future Act* of the kind referred to in clause 8.10 is validated for *Native Title* purposes (even if already done invalidly for *Native Title* purposes) on the condition that:- (a) *Registration* occurs; and (b) the *Project Consent Certificate* for the *Future Act* is given.

8.13 Where the *Future Acts* consented to under clause 8.5 involve the grant of freehold title for home ownership purposes other than the grant of transferrable land in fee simple under *TSILA*, the native title rights and interests in the *Project Area* are surrendered to the *State* from and including the date the *Project Consent Certificate* is issued. It is intended that the native title rights and interests in the *Project Area* will be extinguished upon the surrender taking effect.

“Ancillary Project Area” means any area shown as such on a *Project Plan* and which is one or more of the following:- (a) an area on which an access route to a *Project Area* will be located for the purpose of construction relating to a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts*; (b) an area on which *Ancillary Project Area Infrastructure* will be constructed, operated, used, maintained or replaced for the purpose of providing services in connection a particular project involving *Class 1 MIP Future Acts* or *Class 2 Non-MIP Future Acts*; or (c) any other area which a *Proponent* and the *Body Corporate* agree in writing is an *Ancillary Project Area*.

“Ancillary Project Area Infrastructure” means reticulation or distribution infrastructure generally located above the surface of the ground (such as overhead power lines and/or power poles/towers, street and public place lighting and/or the poles/towers for such lighting, telephone lines and/or telephone poles/towers and data cables and/or data poles/towers) or located below the surface of the ground (such as buried power lines, telephone lines, data cables, gas pipelines, water pipelines, sewers and drains), that does not prevent the common law native title holders in relation to the land or waters where the infrastructure is to be located from having reasonable access to such land or waters in the vicinity of the infrastructure except:- (a) while the infrastructure is being constructed; or (b) for reasons of health and safety.

“Freehold Title” means an estate in fee simple other than any estate in fee simple which coexists with *Native Title*.

“Housing Future Acts” depending on the context in which it is used, means *Class 3 Housing - Home Ownership Future Acts* and *Class 4 Housing - Renovation Acts*.

“Infrastructure Facility” means any works, structures or improvements to land or waters other than *Ancillary Project Area Infrastructure* which directly or indirectly provide a service or any other benefit to:- (a) the general public; or (b) the Island community, including – (c) offices, depots and staff housing by or for the benefit of the Commonwealth of Australia, the *State*, any local government, statutory authority or government owned corporation, (d) any electricity generation, distribution or transmission facility; (e) public education facilities; (f) public health facilities; (g) police facilities; (h) emergency facilities; (i) transport facilities (including pedestrian paths, cycle ways, transfer facilities, freight storage and logistic areas, bus stops and layovers, ferry stops, taxi stops); (j) sewage pump stations and sewerage treatments facilities; (k) solid waste transfer and treatment facilities; (l) water supply pump stations, raw water storage, clear water storage, dams, weirs, bore field infrastructure; (m) the things listed in section 24KA(2) of the *Native Title Act* to the extent that they are not *Ancillary Project Area Infrastructure*; and (n) any *IBIS Store*; but not including – (o) *Social Housing*.

“Opt-in Party” means any person who: (a) has been determined in writing by the *Body Corporate* in its absolute discretion to be accepted by it as an Opt-In Party for a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Class 3 Housing – Home Ownership Future Acts*, *Class 4 Housing - Renovation Acts* or *Class 5 Transfer-Related Future Acts*; and (b) has executed a deed in the form of Schedule 13; and (c) has provided a copy of the executed deed to the *Parties*.

“Project Area” means an area shown as such on a *Project Plan* and which is an area where one or more of the following are proposed to take place:- (a) there is to be the grant of a lease over any land or waters for the purposes

of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; (b) any building, structure or other thing that is a fixture (other than fencing or a gate and other than *Ancillary Project Infrastructure*) is to be constructed, for the purposes of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or (c) a road reserve is to be dedicated or a permanent publically accessible road is to be constructed for purposes of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*.

“Project Plan” means a written plan of an area proposed for a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* which shows:- (a) the general location where the particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* will be undertaken; (b) the boundaries of the *Project Area* where the particular *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts* will be undertaken and the total area in square metres of that *Project Area*; and (c) the boundaries of any *Ancillary Project Area* for the particular project and the total area in square metres of such area or areas.

“Proponent” means:- (a) *TSIRC* where it is acting as the proponent of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*, or where *TSIRC* is the lessor (seller) of a lease for home ownership purposes (including any improvements on the lease area) of the kind involving *Class 3 Housing – Home Ownership Future Acts*; or (b) the *State* where it is acting as the proponent of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or (c) *TSIRC* and the *State* where they are acting jointly as the proponent of a particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*; or (d) any *Opt-in Party* where it is acting as the proponent of particular project involving *Class 1 MIP Future Acts*, *Class 2 Non-MIP Future Acts*, *Housing Future Acts* or *Class 5 Transfer-Related Future Acts*.

“Social Housing” means housing - (a) funded or provided by the Queensland Government; or (b) funded or provided by the Australian Government; or (c) jointly funded or provided by the Queensland Government and the Australian Government; (d) funded or provided - (i) directly or indirectly; or (ii) in whole or in part, by the *Body Corporate*, and includes housing provided under the *Housing Act 2003* (Qld).

“TSIRC” means the Torres Strait Island Regional Council in its capacity as a local government under the *Local Government Act* and in its capacity as the trustee of any Deed of Grant in Trust.

Attachments to the entry

[QI2018_030 Schedule 2 Written Description of ILUA Area.pdf](#)

[QI2018_030 Schedule 3 Maps of ILUA Area.pdf](#)