

# **Native Title Determination QG6002/96**

## **Schedule 3**

### **Land Tenure Agreement (Section 21 Native Title Act)**

**LAND TENURE AGREEMENT****PARTIES:**

The Native Title Holders as set out in the Determination to which this document is Schedule 3.

("Western Yalanji")

2):

Alan and Karen Pedersen

("the Pedersens")

3):

State of Queensland

("the State")

**RECITALS:**

- A. On 19 May 1995 a native title determination application was lodged with the National Native Title Tribunal ("the Tribunal") on behalf of the Western Yalanji claiming native title rights and interests in land described as OL285 Cooktown District being Lot 285 on Plan OL455, County of Dagmar, Parish of Tregoora and Gorilbee. The application was allocated reference number QC95/10 and was accepted by the Tribunal.
- B. On 21 October 1997, a claimant native title determination application was lodged with the Tribunal on behalf of the Western Yalanji over certain land, including Lot 1 on CF14, County of Chelmsford, Parish of Harbord (Area "C" shown on the Plan contained in Schedule 1 of the native title determination to which this document is Schedule 3 ("Schedule 1")), which immediately adjoins Lot 285 on Plan OL455. That application was allocated reference number QC97/46 but has not yet been accepted by the Tribunal.
- C. On or about 28 September 1998 the Federal Court of Australia in proceedings QG6002 of 1996 will be requested to make a determination that the Western Yalanji are the native title holders and hold the native rights and interests in the land the subject of application QC95/10 ("the Native Title Determination"), namely Areas "A" and "B" shown on the Plan contained in Schedule 1.
- D. Application QC97/46 has been amended by deleting from it Lot 1 on CF14, namely Area "C".
- E. A native title determination application ("the new application") has been lodged with the Tribunal on behalf of the Western Yalanji over Area "C" and the area which previously formed part of the Hurricane Preferential Pastoral Lease (Area "D" shown in the Plan contained in Schedule 1).

**F** This document records the parties' irrevocable intention to make arrangements such that initially:

- (i) the Pedersens will obtain a perpetual lease ("Pedersen Perpetual Lease") under the *Land Act 1994* for pastoral purposes namely grazing and agriculture and associated Primary Production Activity Purposes as defined in the *Native Title Act 1993* over Area "B".
- (ii) The Western Yalanji Aboriginal Corporation, once incorporated, will obtain a perpetual lease under the *Land Act 1994* over Area A.
- (iii) Western Yalanji will obtain freehold title under the *Aboriginal Land Act 1991* to Area A;

and that ultimately:

- (iv) the land, the subject of the native title determination will be expanded to include Area "C" and "D".
- (v) in so far as the law allows, the Pedersens will obtain a perpetual lease for Primary Production Activity Purposes over all of the land the subject of the expanded native title determination, with the exception of Area "A", namely Areas "B", "C" and "D".

#### AGREEMENT:

This Agreement is intended to operate as Schedule 3 to a Determination of Native Title in Federal Court Proceedings QG6002 of 1996. The parties undertake to execute this Agreement prior to the making of the Determination in those proceedings but agree that this Agreement will not commence to operate unless the Determination is made in the terms of the Determination to which this Agreement is Schedule 3, by midnight on 29 September 1998. Should the Federal Court not make a determination in those terms by that time, this Agreement will be of no force or effect. For the avoidance of doubt, the parties agree that the Land Use and Access Agreement forms part of this Agreement.

#### Part 1 - The Pedersens Dealings

##### Objective

1. The objective of this agreement for the Pedersens is to provide them with increased security of tenure, by way of a perpetual lease, over their pastoral property.

##### Implementation - Areas A and B

- 2.1 The Pedersens will surrender their interest in Area A as soon as practicable.

The relevant Minister of the State has decided for the purposes of s.121 of the *Land Act 1994* that, in respect of:

Area B;

- (i) the land is not needed for a public purpose; and
- (ii) the intended use is the most appropriate use of the land; and
- (iii) exposure to public competition is inappropriate or one or more of the priority criteria apply.

The State agrees to do all things necessary and within its power to cause the perpetual lease referred to in recital F(i) to be granted as soon as possible, such lease to be in the form and terms of that contained in Schedule 1.

For the purposes of the grant of the said perpetual lease to the Pedersens, the Pedersens agree to surrender their present interest in Area B.

2.5 In the event that one or other of the perpetual leases referred to in recitals F(i) and F(ii) is not granted within six months of the date of the Native Title Determination, then, either the Western Yalanji or the Pedersens may require the State to apply to have the said Determination revoked. In that event:

- (a) the State will make such application within 28 days of such requirement;
- (b) the parties agree that it would be in the interests of justice for the Determination to be so revoked and to consent to such revocation; and
- (c) the parties agree that each be restored to the position it was in, in all respects, prior to the making of the Determination.

Areas C and D

2.6 As soon as possible after the end of the period specified in the notice required to be given by the Native Title Registrar under s.66 of the *Native Title Act 1993*, in respect of the new application, the Pedersens will jointly with Western Yalanji and the State apply to the Federal Court for an amendment of the native title determination in QG6002/96 ("the original determination") so that the native title rights and interests determined in QG6002/96 are determined to extend to the land the subject of the new application ("the new determination").

2.7 As soon as practicable after the original determination is amended as referred to in clause 2.6, the State will do all things necessary within its power to amend the perpetual lease issued to the Pedersens pursuant to clause 2.3 so that it includes the areas the subject of the new determination.

For the purposes of their inclusion into the perpetual lease to the Pedersens, the Pedersens agree to surrender their interests in Areas C and D.

In the event that the said perpetual lease is not so amended to include Areas C and D within three months of the making of the new determination the Pedersens may require the State to apply to have the new determination varied to remove from it those parts as extended the scope and effect of the old determination beyond the land the subject of the perpetual lease. In that event:

- (a) that State will make such application within 28 days of such requirement;
- (b) the parties agree that it would be in the interests of justice for the new determination to be so varied and to consent to such variation; and
- (c) the parties agree that each be restored to the position it was in, in all respects, prior to the making of the new Determination.

2.10 If the law allows for uses in Perpetual Leases to include uses which fall within the definition of "Primary Production Activity" as defined by the *Native Title Amendment Act 1998*, the Western Yalanji hereby agree to any amendment of the Pedersens Perpetual Lease to include such additional uses, and the State agrees to do all things necessary within its power to so amend the said lease if so requested by the Pedersens.

## Part 2 - The Western Yalanji Dealings

### Objective

3. The objective of this agreement for Western Yalanji is to facilitate the recognition of Western Yalanji native title rights and interests in Areas A, B, C and D and to enable Western Yalanji to obtain a perpetual lease under the *Land Act 1994* over Area A and for there to be a grant of freehold title under the *Aboriginal Land Act 1991* to Area A.

### Implementation - Area A

- 4.1 As soon as possible after the surrender required by clause 2.1, the State will cause a regulation to be made declaring Area A to be transferable land pursuant to the *Aboriginal Land Act 1991*.
- 4.2 The State agrees to do all things necessary and within its power to cause the perpetual lease referred to in recital F(ii) to be granted as soon as possible, such lease to be in the form and terms of that contained in Schedule 2 and in particular, the State will provide to the Governor in Council at the same time on the same day, both:
  - (i) proposed perpetual leases referred to in recitals F(i) and F(ii); and

- (ii) a recommendation to the Governor in Council that both of the proposed perpetual leases be granted at the same time.

The Minister responsible for the *Aboriginal Land Act 1991* will, as soon as practicable after the grant of the perpetual lease referred to in clause 4.2, give all necessary directions under section 27 of that Act, and make all necessary appointments under section 28 of the Act in relation to the land in Area A with the intention of transferring the land in Area A to the Western Yalanji Aboriginal Corporation, once incorporated, or such other persons as the Minister considers necessary, to be the grantees, as trustees for the benefit of Aboriginal people.

### 3 - Authorisation of Future Acts

The parties pursuant to section 21 of the *Native Title Act 1993* and subject to the terms of this agreement, authorise the grant of the perpetual lease referred to in clause 2.3, the amendments thereof referred to in clauses 2.7 and 2.10, and the grant of the perpetual lease referred to in clause 4.2 and the transfer referred to in clause 4.3.

6. The Western Yalanji pursuant to section 21 of the *Native Title Act 1993* and subject to the terms of this agreement authorise the entering into of the Land Use and Access Agreement contained in Schedule 4 of the determination to which this Agreement is Schedule 3 and any act done pursuant to that Land Use and Access Agreement. The said Land Use and Access Agreement forms part of this Agreement.

### Part 4 - General

- 7.1 The people who execute this agreement on behalf of the Western Yalanji are duly authorised to do so on behalf of the Western Yalanji.
- 7.2 If at any time any land is to be vested in the Western Yalanji Aboriginal Corporation pursuant to this agreement and that corporation does not exist, the signatories to this agreement (or such of them who at the time retain legal capacity) may nominate in writing an alternative Aboriginal corporation, person or persons in whom the land is to be vested in accordance with this agreement.
- 7.3 Each party agrees to execute and deliver such documents and do such further acts and things as shall be reasonably required to give full effect to each provision of this agreement and to refrain from taking any action which is or is likely to be inconsistent with the proper fulfilment of its undertakings under each provision of this agreement.
- 7.4 The parties intend and agree that this Agreement will be effective and commence to operate as an Agreement under Section 21 of the *Native Title Act 1993* upon the making of the determination referred to in recital C.

7.5 Where a mining tenement holder has the right to enter and be upon the land within a mining tenement within the area of the native title determination or the expanded native title determination ("the determination area") the Western Yalanji agree to, if necessary, authorise access across the determination area to those mining tenements by the mining tenement holders.

**Part 5 - Registration**

8.1 The State of Queensland will secure the recording of the Determination referred to in recital C of this Agreement pursuant to section 280 of the Land Act 1994 in the Leasehold Land Register as soon as possible after the Determination is made.

EXECUTED as an agreement.

SIGNED SEALED AND DELIVERED by )  
the persons whose signature and name )  
appears hereon on behalf of themselves )  
and the NATIVE TITLE HOLDERS in )  
the presence of the witness whose )  
signature appears under the signature )  
and name of the person signing )

*Lance, Riley*  
.....  
Signature  
..... LANCE RILEY  
Print Name

*[Signature]*  
.....  
Witness

*D. R. Colless*  
.....  
Signature  
..... Daphne Rosina Colless  
Print Name

*[Signature]*  
.....  
Witness

*DWAYNE FULLERTON*  
.....  
Signature  
..... DWAYNE FULLERTON  
Print Name

*[Signature]*  
.....  
Witness

*David Castello*  
.....  
Signature  
..... David Castello  
Print Name

*[Signature]*  
.....  
Witness

*Gawron H. Brady*  
.....  
Signature  
..... Gawron Brady  
Print Name

*[Signature]*  
.....  
Witness

*[Handwritten Signature]*

Signature

*John Cummins*

Print Name

Witness

*[Handwritten Signature]*

Signature

*Sammy Levers*

Print Name

Witness

*[Handwritten Signature]*

Signature

*Joseph A. Cummins*

Print Name

Witness

*[Handwritten Signature]*

Signature

*[Handwritten Name]*

Print Name

Witness

*[Handwritten Signature]*

Signature

*Len Rosendale*

Print Name

Witness

*[Handwritten Signature]*

Signature



*Patrick Daniel O'Shane*


Print Name

Witness



SIGNED SEALED AND DELIVERED by )  
ALAN PEDERSEN and KAREN )  
PEDERSEN in the presence of )

  
.....  
  
.....

  
.....  
Signature of Witness

...HENRY... PROKUDA...  
Print full name of witness

SIGNED SEALED AND DELIVERED by )  
THE HONOURABLE MR PETER )  
BEATTIE, Premier for and on behalf )  
of the State of Queensland in the )  
presence of )

  
.....

  
.....  
Signature of Witness

...ROBERT FRANK WHIDDOW...  
Print full name of witness