

Native Title Determination QG6002/96

Schedule 4

Land Use and Access Agreement (Section 21 Native Title Act)

LAND USE AND ACCESS AGREEMENT

PARTIES:

THE NATIVE TITLE HOLDERS as set out in the Determination to which this document is Schedule 4 ("Western Yalanji")

AND

ALAN and KAREN PEDERSEN ("the Pedersens")

1 GENERAL

- 1.1 The Pedersens recognise and respect the native title holders' cultural and traditional association with the land in accordance with Aboriginal law and custom.
- 1.2 The native title holders recognise that the Pedersens have a lawful right to occupy and use the land in accordance with the terms of the lease.
- 1.3 The native title holders acknowledge that where the exercise of their native title rights or any other rights under this agreement is inconsistent with the rights of the Pedersens pursuant to the lease or this agreement the rights of the Pedersens shall prevail.
- 1.4 This agreement does not operate to create or extinguish native title rights that exist in respect of the land.
- 1.5 It is the intention of the parties that this agreement shall operate to regulate, explain and control the exercise of all rights by the native title holders in respect of the land whether such rights are native title rights or not to the extent that this agreement is not inconsistent with the *Native Title Act 1993* or any other legislation. However, to the extent that any right the subject of this agreement is a future act, the native title holders consent to it being done and agree that it is valid.
- 1.6 This Agreement is intended to operate as Schedule 4 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.

- 1.7 The parties agree that should a member of the native title holders act in breach of the provisions of this agreement he or she may be regarded as a tourist instead of a native title holder in respect of the conduct which constitutes such breach.
- 1.8 The native title holders shall nominate a person to be responsible for reporting back to the Elders on the operation of this Agreement.
- 1.9 In addition to any Authorities or Permissions conferred under this Agreement, any permits, licences, or other authorities required by law for any activity under this Agreement must also be obtained.
- 1.10 If a native title right is determined or asserted that is not listed in clause 7 of the Determination, it will be not exercised on the land without first reaching an agreement with the Pedersens as to whether, and if so how, the right will be exercised.

2 ACCESS TO THE LAND BY THE NATIVE TITLE HOLDERS (ACCESS RULES)

- 2.1 The native title holders acknowledge that where the exercise of their native title rights or any other rights conferred under this Agreement interfere with the rights of the Pedersens to undertake pastoral activities allowed under their lease, the pastoral activities shall take precedence over the native title rights or the other rights and the native title holders agree to comply with any reasonable request by the Pedersens to avoid such interference.
- 2.2 The native title holders acknowledge that where the native title holders wish to access the land for purposes other than to exercise their native title rights in accordance with the terms of this agreement, these native title holders are to be regarded as tourists in accordance with the terms of clause 8 of this agreement.
- 2.3 The native title holders shall be entitled to access to the Land, apart from the Homestead area subject always to control by the Elders.
- 2.4 The native title holders agree to provide to the Pedersens a register listing adult native title holders and identifying Elders and Aboriginal rangers, within one month of the execution of this agreement. The native title holders agree to update this register from time to time.
- 2.5 Prior to any member of the native title holders accessing the Land the Pedersens shall be notified by or on behalf of the native title holders of the following:

- (a) the name of the member;

- (b) the area of the Land to be accessed.
 - (c) the time and duration of the access:
 - (d) the purpose of the access; and
 - (e) the name of a contact person.
- 2.6 One of the requirements for notification about certain matters is to ensure the safety and efficient coexistence of peoples working on a pastoral property.
- 2.7 The Pedersens shall advise the native title holders or the contact person of any difficulties arising out of access to the Land by the native title holders. Such advice may be by telephone in an emergency but shall be in writing at all other times.
- 2.8 The native title holders agree to comply with any reasonable request or condition suggested by the Pedersens regarding such access.
- 2.9 The native title holders shall nominate Aboriginal rangers to help supervise members of the native title holders accessing and camping on the Land and, in conjunction with the Pedersens, will assist in the control of tourists who may visit and camp on the Land.
- 2.10 The Pedersens shall not intentionally interfere with Aboriginal law business provided that such business is not in contravention of the terms of this agreement.
- 2.11 The native title holders agree not to carry or use any firearms on the Land.
- 2.12 The native title holders agree not to consume alcohol on the Land.
- 2.13 The native title holders shall ensure that their use of fire will be restricted to campfires, cooking fires and for ritual purposes and are managed properly and that no wildfires (burnoffs) are lit by them on the Land.
- 2.14 The native title holders agree to remove all of their rubbish from the Land.
- 2.15 The native title holders agree to leave all gates to and on the Land as they found them.
- 2.16 The native title holders agree that any vehicles brought onto the Land by them will only be driven on existing roads and tracks.
- 2.17 The native title holders agree that where a property road, not being a public road, is used on a regular basis by the native title holders to access a specific area or locality, the native title holders will contribute to the maintenance of the road proportionately to the use of the road by them.

- 2.18 The native title holders agree not to bring any animals onto the Land.
- 2.19 The native title holders agree, so far as is reasonable and practicable, to assist with the control of noxious weeds, vermin and feral animals on the Land.
- 2.20 The native title holders agree to only visit the Homestead between 6.00am and 6.00pm, except in the case of an emergency.

3 CAMPING ON THE LAND BY NATIVE TITLE HOLDERS ("CAMPING USE RULES")

- 3.1 The Access Rules in clause 2 shall apply to any member of the native title holders exercising their native title right to camp or reside on the Land.
- 3.2 The native title holders agree to only camp or reside for periods up to a maximum of seven days.

4 HUNTING FISHING AND THE COLLECTION OF BUSH MEDICINE ON THE LAND BY NATIVE TITLE HOLDERS WHEN EXERCISING THEIR NATIVE TITLE RIGHTS

- 4.1 The Access and Camping Use Rules shall apply to any member of the native title holders using the Land for hunting, fishing or the collection of bush medicine.
- 4.2 The native title holders may undertake the cultivation of bush medicine (identification and/or protection) at locations agreed with the Pedersens provided that such activity is not inconsistent with the Pedersens' pastoral activities.
- 4.3 A conservation protocol shall be established between the Pedersens and the native title holders within six months of the execution of this agreement. The protocol will be reviewed at least annually by a meeting between the parties or more regularly if either party requests.
- 4.4 The native title holders agree that the hunting of native animals will not occur until the conservation protocol is established and will then only occur in accordance with that protocol.
- 4.5 The native title holders agree to observe the current and any future agreed closures of rivers or other locations for conservation/breeding purposes as defined in clause 4.3 above.

5

USE OF NATURAL RESOURCES FOR TRADITIONAL PURPOSES INCLUDING THE EXCHANGE OF ARTEFACTS AND BUSH TUCKER FROM THE LAND BY THE NATIVE TITLE HOLDERS

- 5.1 The native title holders may collect and use natural resources including clay, ochre, timber for spears etc, berries for dye, bark, stone and artefacts from the Land provided that any treatment or further manufacture of the natural resources must take place within the Land or the adjoining ALA Land.
- 5.2 The native title holders may collect flora for seed collection.
- 5.3 The native title holders agree that the taking of bush tucker may only occur in accordance with the conservation protocol.
- 5.4 The native title holders agree that they will not:
- (a) engage in activities set out in clauses 5.1, 5.2 and/or 5.3 for purposes other than satisfying their personal, domestic or non-commercial communal needs;
 - (b) use the determination area and its natural resources for economic purposes; and/or
 - (c) exercise and carry out economic life on the determination area,
- until the conservation protocol is established in accordance with clause 4.3 and then may only do so in accordance with that protocol.

6

PROTECTING SITES OF SIGNIFICANCE/CULTURAL HERITAGE MANAGEMENT ON THE LAND

- 6.1 The native title holders agree to, at their own expense, complete a site investigation of the Homestead area as soon as practicable after this agreement comes into effect but in any case not longer than six months from such date.
- 6.2 The native title holders agree to, at their own expense, complete site investigations of specific areas as defined in the property development plan submitted under clause 7.7 hereunder as soon as practicable after this agreement comes into effect but in any case not longer than nine months from such date. Where the development plan refers to dams, the native title holders agree to complete site investigations of these particular areas within six months of the location of the proposed dams being advised to them.
- 6.3 The native title holders agree to, at their own expense and within five years from when this agreement comes into effect, identify all sites of significance on the remainder of the Land.

- 6.4 Where existing sites of significance to the native title holders are identified, details of these sites are to be communicated within the periods outlined in paragraphs 6.1, 6.2 and 6.3 herein to the Pedersens who shall respect and take reasonable action to help protect those sites.
- 6.5 The Pedersens agree to immediately notify the native title holders of any sites that the Pedersens reasonably suspect to be sites of significance which are detected during use and/or development of the Land and the native title holders agree to complete site investigation of any such sites at their own expense as quickly as possible after such notification but in any case not longer than three months from the date of such notification.
- 6.6 Where the native title holders wish sites of significance to be protected from intrusion, the native title holders may, at their own expense, fence those areas off after consultation with the Pedersens. Such fencing shall not impact significantly on the Pedersens' activities on the Land.
- 6.7 New sites of significance may be created in accordance with the native title holders' traditional laws and customs. However, the native title holders agree not to do anything, in the process of creating or using such a site, which is likely to impact on the pastoral activities, unless the Pedersens give their prior written consent.

7

USE OF THE LAND BY THE PEDERSENS

- 7.1 The Pedersens agree not to unreasonably interfere with the native title holders exercising their native title rights provided such rights are being exercised in accordance with the terms of this agreement and in particular paragraph 1.3.
- 7.2 The Pedersens agree to respect the religious and cultural sensitivities of the native title holders provided that the carrying out of such activities is not contrary to this Agreement.
- 7.3 The Pedersens agree to use reasonable endeavours to not allow cattle to stray onto sites of significance which are fenced for protection, except where necessary for the cattle to seek refuge from flood waters or fire and in that case the Pedersens shall arrange for their removal at the earliest opportunity.
- 7.4 The Pedersens shall clean up all rubbish created by them on the Land outside of the Homestead area.
- 7.5 The Pedersens have the right to burn off on the Land as required, however where the native title holders have advised that native title rights are being exercised, the Pedersens will ensure that proper warning notice is given.

- 7.6 The Pedersens agree to use, enjoy and develop the land for purposes consistent with any lease thereover. The Native title holders agree to the Pedersens using the Land for such purposes and also for ancillary purposes consistent with the peaceful use and enjoyment of the Land or waters for domestic and recreational purposes (e.g. fishing and camping) and to them authorising others to so use the Land and the native title holders agree to such others entering and so using the land.
- 7.7 The Pedersens agree to provide to the native title holders a property development plan within three months of this agreement being executed. Such plan is to be for the Land exclusive of the Homestead area and is to be for a seven year period from the commencement of the perpetual lease to issue over the Land. Where amendment to the development plan within the first five years of the term of the perpetual lease is necessary, the Pedersens agree to notify the native title holders of such amendment and to allow a period of two months from the date of notification for the native title holders to respond to the proposal. The Pedersens agree to consider any response received from the native title holders but will not be bound by such response.
- 7.8 The Pedersens have the right to fully develop the Homestead area without further reference to the native title holders for purposes consistent with the Lease provided that the site investigation set out in clause 6.1 above has been completed and provided that the Pedersens shall use reasonable endeavours to protect any sites of significance in that area.
- 7.9 The native title holders agree to only access the Homestead area for the purpose of visiting sites of significance and then only with the consent of the Pedersens which shall not be unreasonably withheld. Such visits shall normally be limited to day trips only.
- 7.10 The Pedersens agree, so far as is reasonable and practicable, to control and prevent the spread of noxious weeds, vermin and feral animals on the Land.

8

VISITING THE LAND - TOURISTS AND CAMPERS

The parties agree to the following rules about tourists and campers (which terms also refer to and include invitees of the native title holders):

- 8.1 Tourists and campers wishing to visit and camp on the Land are to notify the Pedersens in advance of proposed visits and obtain permission for such visits.
- 8.2 The Pedersens and/or with the assistance of the native title holders shall to the extent reasonably practicable monitor the activities of visiting tourists and campers to ensure that there is no interference with the Pedersens' or the native title holders activities on the Land, that where the native title holders' native title rights are being exercised in accordance with this agreement, such rights may continue to be exercised unimpeded and that any

interference (whether accidental or intentional) with sites of significance cease immediately. Where any inappropriate activities are detected each party agrees to notify the other party immediately and to assist to resolve the matter.

- 8.3 Any vehicles brought on the Land by tourists or campers shall be driven only on existing roads and tracks unless otherwise authorised by the Pedersens.

8A. ADDITIONAL RIGHTS – CERTAIN AREAS

Although native title does not exist in respect of those areas referred to as area "E" marked on Schedule 1 to the Determination of which this Agreement is Schedule 4, the parties agree that the native title holders may nonetheless exercise on those areas rights equivalent to their determined native title rights, but subject always to the terms of this agreement.

9

DISPUTE RESOLUTION

- 9.1 Any disputes between the parties in respect of this agreement will be resolved in accordance with this Part.

- 9.2 If a dispute arises under this agreement between any of the parties, those parties agree that they will meet first and talk on an informal basis in an effort to settle the dispute, in an appropriate manner.

- 9.3 If the dispute cannot be resolved in accordance with clause 9.2, any party to this agreement may appeal to an independent expert using the procedures set out below.

- 9.4 If the parties are unable to resolve the dispute in accordance with clause 9.2, then the following provisions shall apply:

(a) where the dispute involves primarily a question of fact, either party may make a written request to any one of three independent persons agreed to by the parties at the date of this agreement and recorded in Schedule Two to resolve the dispute:

(b) where the dispute involves a question of law, either party may make a written request to the Bar Association of Queensland to appoint a barrister of appropriate standing and experience to resolve the dispute.

- 9.5 The person so appointed in accordance with clauses 9.3 and 9.4 shall:

(a) decide how he or she shall inquire into the matter;

(b) act as an arbitrator;

(c) give a written decision within twenty-eight days or such sooner time if the matter requires.

- 9.6 ~~Such decision shall be final and binding.~~
- 9.7 Each party to the dispute will pay their own costs, except that any costs of the Arbitrator must be paid equally by the parties.

10 MISCELLANEOUS

10.1 The native title holders agree not to exercise native title rights which involve significant physical disturbance to the land (for example and including, the erection of structures or the conducting of burials) unless the exercise of their right is expressly permitted by clauses 4.2, 5.1, 5.2, 5.4 and 6.6 of this agreement.

10.2 Future Amendments

10.2.1 The parties to this agreement agree to meet annually to discuss and resolve any matters arising out of the operation of this agreement.

10.2.2 Any matters which the parties agree are to constitute amendments to the agreement are to be recorded in writing, signed by or on behalf of the parties, and are to be attached to this agreement.

10.2.3 This agreement can only be amended in accordance with clause 10.2.2.

10.3 Future Residences

10.3.1 The native title holders will not object to the construction of up to 5 residences and associated amenities on the Land for the lineal descendants of the leaseholder provided that the construction of the residences and associated amenities does not operate to extinguish native title. For the purposes of this clause the provisions of clause 6.5 shall apply.

10.4 Indemnity

10.4.1 The parties shall:

- (a) indemnify the other for any loss, damage or injury suffered as a result of the negligent act or omission of that party;
- (b) each take out and keep current a policy of public risk insurance in the sum of five million dollars (\$5,000,000.00).

10.5 Prescribed Body Corporate

10.5.1 Upon registration of a prescribed body corporate as the registered Native Title Body Corporate for the native title holders the parties will consent to, and will execute such documents as are reasonably necessary such that the prescribed body corporate will also be bound by this agreement and will be the agent and representative of the native title holders.

10.6 Confidentiality

10.6.1 Information given by one party to the other which the first party requests the second party to treat as confidential, shall be confidential and shall not be disclosed to any person, except as required by law.

11 DEFINITIONS

Unless the context otherwise requires terms used in this agreement have the meanings given to those terms in the *Native Title Act 1993* (Cth).

"Aboriginal law business" means the practice of the Native Title Holders' custom and tradition including the passing on of intellectual knowledge about that custom and tradition.

"Aboriginal rangers" means those appointed by the native title holders.

"ALA land" means an area of approximately 300 hectares at the junction of the Mitchell and St George Rivers identified as area "A" in the Plan which is Schedule 1 to the Determination. Such area is to be made available to the native title holders as Perpetual Lease with subsequent ALA freehold by transfer.

"camp" includes reside.

"custom and tradition" where ever these words are used in a particular context means the relevant custom and tradition described in that context in the Wood report.

"economic purposes" means economic purposes in accordance with custom and tradition.

"Elders" means those native title holders identified as Elders and advised to the Pedersens.

"Homestead" means the homestead as depicted in the Plan in Schedule 1.

"Homestead area" means that area as depicted in the Plan in Schedule 1.

"Land" means the land and waters depicted on and marked as areas B, C and D on the plan in Schedule 1.

"Lease" refers to the estate and interest in the land held by the Pedersens from time to time, be it the interests held under OL285 Cooktown District being Lot 285 on Plan OL455, County of Dagmar, Parish of Tregoora and SL14/51183 or those held under a perpetual lease granted over the land.

"lease operations" means that as defined within the Lease and in accordance with the definition of Primary Production Activity as set out in the *Native Title Amendment Act 1998* (Cth) ("NTAA").

"map" means and includes plan and "plan" means and includes map.

"native title rights" means the native title rights and interests of the native title holders in relation to the Land, set out in the Determination of the Federal Court in Proceedings No. QG6002 of 1996 of which this agreement forms a part

"natural resources" means natural materials on the land to be used for domestic purposes, i.e. for traditional purposes by the native title holders and property development purposes by the leaseholder.

"pastoral activities" means and is intended to refer to and includes all those rights conferred by or under the Lease and the right to use the Land for ancillary purposes consistent with the peaceful use and enjoyment of the Land for domestic or recreational purposes (e.g., fishing and camping).

"Pedersens" means lessees of the Lease and any subsequent transferees or successors.

"primary production" has the same meaning as in the *Native Title Amendment Act 1998* (Cth).

"protocol" means the recognised process to achieve an outcome.

"religious and cultural sensitivities" means the privacy attached to the doing of Aboriginal law business or custom and tradition.

"ritual purposes" means the use of matter for customary and traditional purposes as evidenced by the Wood Report.

"roads and property roads" means roads which have been formed by mechanical means and not by vehicles only.

"sites of significance" means a site or area of land or water that is sacred to the native title holders or is otherwise of significance according to Aboriginal custom and tradition.

"tourists" means visitors to the Land who do not have any approved or valid rights to the area.

"native title holders" means native title holders as determined by the Federal Court in the Native Title Determination Proceedings No. QG6002 of 1996 of which this agreement forms a part.

"Wood Report" means the Anthropological Report prepared by Mr Ray Wood and filed in the Federal Court of Australia in Federal Court of Australia Proceedings QG6002 on or about 22 May 1998.

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

[Handwritten mark]

Witness

D. R. Colless

Signature

Daphne Rosina Colless

Print name

[Handwritten mark]

Witness

DWAYNE FULLERTON

Signature

DWAYNE FULLERTON

Print name

[Handwritten mark]

Witness

David Castillo

Signature

David Castillo

Print name

[Handwritten mark]

Witness

Quaranta Brody

Signature

Quaranta Brody

Print name

[Handwritten mark]

Witness

John Cummins

Signature

John Cummins

Print name

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Witness

Sunny Levers

Signature

Sunny Levers

Print name

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Witness

