

Native Title Determination QG6002/96

Land Use & Access Agreement

Schedule 2

Independent Persons

- 1. Mr John Bednarek**
- 2. Mr Graeme Neate**
- 3. Mr David Kempton**

THIS AGREEMENT is made on

1998

BETWEEN

NATIVE TITLE HOLDERS ("Western Yalanji")

AND

STATE OF QUEENSLAND ("the State")

AND

NOEL A ADAM ("Adam")

RECITALS

- A The parties to this Agreement are parties to Federal Court Proceedings QG6002 of 1996 in which Western Yalanji claim native title rights and interests in respect of certain land;
- B The parties have, or intend to, enter into an agreement with all other parties to Proceedings QG6002 of 1996 ("the Settlement Deed"). By the Settlement Deed the parties agree to apply to the Federal Court for a determination of native title in relation to the land the subject of those proceedings ("the determination area").
- C Adam has mining interests in parts of the determination area.
- D By this Agreement Western Yalanji authorise pursuant to Section 21 of the *Native Title Act 1993* (Cth) certain acts which may affect their native title rights and interests, to enable Adam to continue his mining activities within the determination area.

AGREEMENT

1. This Agreement takes effect immediately upon a determination of native title being made in accordance with the Settlement Deed. If a determination of native title is not made in accordance with the Settlement Deed by 29 September 1998, this Agreement is of no force or effect.
2. If the Minister responsible for the *Mineral Resources Act 1989* forms the intention to grant mineral exploration permits to Adam pursuant to applications EPM 11326 and/or EPM 11733 and/or EPM12132, Western Yalanji authorise pursuant to Section 21 of the *Native Title Act 1993* (Cth) those exploration permits being granted.
3. Western Yalanji authorise the continued use by Adam of the existing Horn Valley airstrip located in the determination area for the purposes of gaining access to and from the mining sites and exploration sites operated by Adam.
4. For the avoidance of doubt, Western Yalanji authorise the use by

Adam of roads and tracks within the determination area for haulage of the product of mining from the mining sites to any processing area, or any other place outside the determination area.

5. Western Yalanji authorise the construction, maintenance and use by Adam of a water reticulation system to allow Adam to transport water from the Mitchell River to any or all mining sites for the purposes of mining activities.
6. 6.1 Before constructing any part of a water reticulation system within the determination area or any new or re-routed road or track within the determination area, Adam will:
 - (a) provide a plan of the proposed system, road or track, identifying the land on which it is proposed to be constructed, to Western Yalanji;
 - (b) obtain a written clearance from Western Yalanji concerning the presence of sites of significance.
- 6.2 Western Yalanji agree that upon receiving a plan as referred to in clause 6.1(a), they will cause a site investigation to be carried out of the land on which the system, road or track is proposed to be constructed, and will advise Adam within 3 months of receiving the plan, whether or not any sites of significance may be affected by the proposed system, road or track. Adam agrees to provide transportation to and accommodation on the determination area for 2 Western Yalanji representatives for the purpose of conducting the site investigation.
- 6.3 If any sites of significance may be affected by the proposed system, road or track, Adam agrees to modify or re-route the proposed system, road or track so that, to the extent practically possible, the effect on the sites of significance will be minimal or nil.
- 6.4 If there are no sites of significance which may be affected by the proposed system, road or track, or Western Yalanji agree that the effect of the proposed system, road or track on sites of significance will be the minimum practically possible, Western Yalanji will give Adam the clearance referred to in clause 6.1(b).
7. Adam agrees to obtain and maintain all necessary licences, permits or other authorities required by law for the use and operation of the airstrip referred to in clause 3 and the water reticulation system referred to in clause 5.
8. Adam agrees that the use of the determination area by him and his agents, employees, invitees and contractors is entirely at Adam's risk

and that Adam releases Western Yalanji from liability for, and indemnifies Western Yalanji against any claims, actions or demands for any loss, damage or compensation suffered or incurred by any person from any cause whatsoever, including negligence, arising from the use by Adam, his agents, employees, invitees and contractors, of the determination area.

9. Adam agrees that he will carry out the activities authorised by this Agreement in such a way as to cause the minimum practical disruption to the land within the determination area and to the native title rights and interests of Western Yalanji.
10. This Agreement is without prejudice to:
 - 10.1 any rights of Western Yalanji to claim compensation from the State pursuant to the *Native Title Act 1993* (Cth) and from Adam pursuant to the *Mineral Resources Act 1989*.
 - 10.2 any rights of the State to claim compensation from Adam pursuant to the *Mineral Resources Act 1989*.
11. Each of the persons who have signed on behalf of Western Yalanji represents and warrant:
 - 11.1 they are members of Western Yalanji Peoples;
 - 11.2 they are authorised by the Western Yalanji to enter into this Deed on behalf of themselves and Western Yalanji as a whole; and
 - 11.3 where in this Deed they purport to bind Western Yalanji to act or to refrain from acting in a particular manner, they do so:
 - 11.3.1 pursuant to the authority referred to in clause 11.2; and
 - 11.3.2 so as to bind Western Yalanji collectively to act or to refrain from acting in that manner.
12. If there is any dispute or disagreement between the parties concerning this agreement, or anything arising under this agreement, the following will apply:
 - 12.1 The parties will first meet and discuss the matter in good faith to try to resolve it.
 - 12.2 If the dispute or disagreement cannot be resolved within a reasonable time having regard to the nature of the matter, any party may request the President for the time being of the Queensland Bar Association to appoint a suitably qualified and experienced person to act as an arbitrator in the matter in

accordance with the *Commercial Arbitration Act 1990*.

13. This agreement may be signed in any number of counterparts, and subject to clause 1, each party agrees that from the date of execution of this agreement by that party, it is irrevocably bound by the provisions of this agreement.

14. In this Agreement:

"mining site" means an area the subject of mining by Adam pursuant to a mining lease issued under the *Mineral Resources Act 1989*.

"exploration site" means an area the subject of exploration activities for minerals conducted by Adam pursuant to an exploration permit issued under the *Mineral Resources Act 1989*.

"site of significance" means a site or area of land or water that is sacred to Western Yalanji or is otherwise of significance according to Aboriginal custom and tradition.

"party" or "parties" includes successors and assigns.

EXECUTED as a deed.

SIGNED SEALED AND DELIVERED by the persons whose signature and name appears hereon on behalf of WESTERN YALANJI in the presence of the witness whose signature appears under the signature and name of the person signing.

[Signature]

Trade Daniel O'Shane
name

[Signature]
witness

) *Lance Riley*
)

) Signature
) LANCE, RILEY

) Print name
)

) Witness

) *D. R. Colless*
)

) Signature
) Daphne Rosine Colless

) Print name
)

) Witness

) *David Costello*
)

) Signature
) David Costello

) Print name
)

) Witness

) Joseph A. Cummins
) Signature
) Joseph A. Cummins
) Print name
) [Signature]
) 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: P. Beattie]

[Signature]
 Signature of Witness

ROBERT FRANK WHIDON
 Print full name of witness

SIGNED SEALED AND)
 DELIVERED by)
 NOEL A ADAM in the)
 presence of)

[Signature: Noel Adam]

[Signature]
 Signature of Witness

John William Kellett Young
 Print full name of witness