



Extract from Register of Indigenous Land Use Agreements

NNTT number	WI2024/008
Short name	Malgana Aboriginal Corporation Conservation Estate ILUA
ILUA type	Body Corporate
Date registered	03/10/2024
State/territory	Western Australia
Local government region	Shire of Carnarvon, Shire of Shark Bay, Shire of Upper Gascoyne

Description of the area covered by the agreement

3.1 ILUA Agreement Area

This Agreement applies to the ILUA Agreement Area for the purposes of section 24BC of the Native Title Act.

[A copy of Schedule 1 (Map of ILUA agreement area), Schedule 2 (Land descriptions) and Schedule 3 (Map enlargements) of the agreement 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 a combined area of about 3,028 sq km and is located approx. 70 km south of Carnarvon, in the area in and around Shark Bay.]

3.2 Monkey Mia Conservation Park

The Parties acknowledge and agree, notwithstanding anything else in this Agreement, that:

- (a) the Monkey Mia Conservation Park does not form part of the ILUA Agreement Area;
- (b) the Monkey Mia Conservation Park is included in this Agreement because it is intended that it will be jointly vested and jointly managed as referred to in clause 3.2(c) which is a Benefit; and
- (c) references in this Agreement to consent to future acts, and to the application of the nonextinguishment principle to those future acts, do not apply to the Monkey Mia Conservation Park.

Access Route Areas means the areas identified in Item 9 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 1, Map Enlargement 1A and Map Enlargement 1B in Schedule 3.

Agreement means this Agreement and includes the Schedules and their Annexures.

Conservation and Land Management Act or CALM Act means the *Conservation and Land Management Act 1984* (WA).

Determination Area means the land and waters where native title has been determined to exist under the Determinations.

Determinations means the determinations by the Federal Court of Australia in *Oxenham on behalf of the Malgana People v State of Western Australia* [2018] FCA 1929 (WAD 6236/1998) and *Drury on behalf of the Nanda People v State of Western Australia* (No 3) [2019] FCA 1812 (WAD2019/014; WAD30/2019, WAD339/2018, WAD402/2018) ('Nanda People Part B, Malgana 2 and Malgana 3 determination') that native title exists over specified land and waters.

Dirk Hartog Island National Park means the area identified in Item 6 of Schedule 2 and, for ease of reference only, shown on the Map in Schedule 1 and Map Enlargement 1 and Map Enlargement 1A in Schedule 3.

Edel National Park means the Reserve or Reserves created or to be created pursuant to the Edel National Park ILUA Transaction and the Shelter Bay Cottage Future Addition ILUA Transaction, as modified from time to time.

Edel National Park Area means the land identified in Item 1 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 1 in Schedule 3.

Edel National Park ILUA Transaction means:

- (a) the Reservation of the Edel National Park Area for the purposes of "national park" and the classification of such land under section 42 of the Land Administration Act as a "Class A reserve", to which the Conservation and Land Management Act will apply by its sections 5(1)(c) and 7(2); and
- (b) the Joint Vesting of the Reserve or Reserves in the Edel National Park Area in the Commission and MAC as provided for in section 8AA(4) of the Conservation and Land Management Act.

Francois Peron National Park means the area identified in Item 7 of Schedule 2 and, for ease of reference only, shown on the Map in Schedule 1 and on Map Enlargement 1 in Schedule 3.

Future Acts has the meaning given in clause 7.1.

ILUA Agreement Area means the area comprising:

- (a) the Edel National Park Area;
 - (b) the Nanga National Park Area;
 - (c) the Yaringa Nature Reserve Area;
 - (d) the Pimbee Nature Reserve Area;
 - (e) the Shelter Bay Cottage Area;
 - (f) the Access Route Areas;
 - (g) the Francois Peron National Park;
 - (h) the Dirk Hartog Island National Park; and
 - (i) the Shell Beach Conservation Park,
- and which areas are within the Determination Area. The ILUA Agreement Area is shown, for identification purposes, on the Map in Schedule 1.

ILUA Transactions has the meaning give in clause 7.2.

Joint Vesting means a joint vesting of land pursuant to section 8AA(2) of the Conservation and Land Management Act.

Land Administration Act or **LA Act** means the *Land Administration Act 1997 (WA)*.

MAC means the Malgana Aboriginal Corporation RNTBC (ICN 8935).

Monkey Mia Conservation Park means Reserve number 49144 comprising the "Monkey Mia Conservation Park" reserved under the Land Administration Act and to which the Conservation and Land Management Act applies.

Nanga National Park means the Reserve or Reserves created or to be created pursuant to the Nanga National Park ILUA Transaction, as modified from time to time.

Nanga National Park Area means the land identified in Item 2 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 1 in Schedule 3.

Nanga National Park ILUA Transaction means:

- (a) the Reservation of the Nanga National Park Area for the purposes of "national park" and the classification of such land under section 42 of the Land Administration Act as a "Class A reserve", to which the Conservation and Land Management Act will apply by its sections 5(1)(c) and 7(2); and
- (b) the Joint Vesting of the Reserve or Reserves in the Nanga National Park Area in the Commission and MAC as provided for in section 8AA(4) of the Conservation and Land Management Act.

Native Title Act or **NTA** means the *Native Title Act 1993 (Cth)*.

Party means a party to this Agreement and **Parties** means two or more of them as the context requires.

Pimbee Nature Reserve means the Reserve or Reserves created or to be created pursuant to the Pimbee Nature Reserve ILUA Transaction, as modified from time to time.

Pimbee Nature Reserve Area means the land identified in Item 4 of Schedule 2 and, for ease of reference only, shown on Overview Map in Schedule 1.

Pimbee Nature Reserve ILUA Transaction means:

- (a) the Reservation of the Pimbee Nature Reserve Area for the purposes of the "conservation of flora and fauna" and the classification of such land under section 42 of the Land Administration Act as a "Class A reserve", to which the Conservation and Land Management Act will apply by its sections 5(1)(d) and 7(2); and
- (b) the Joint Vesting of the Reserve or Reserves in the Pimbee Nature Reserve Area in the Commission and MAC as provided for in section 8AA(4) of the Conservation and Land Management Act.

Reservation means:

- (a) the creation of a Reserve or Reserves, for a particular purpose or purposes in the public interest by order of the Minister for Lands under section 41 of the Land Administration Act; or
- (b) where a Reserve for the requisite reserve purpose exists, adding specified Crown land to that reserve by order of the Minister for Lands under a relevant provision in Part 4 of the Land Administration Act, such as, if applicable, section 45(2).

Reserve means land, or land and waters, that has been reserved and to which the Conservation and Land Management Act applies within the meaning of its section 5.

Shell Beach Conservation Park means the area identified in Item 8 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 1 in Schedule 3.

Shelter Bay Cottage Area [means] the land identified in Item 5 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 1A in Schedule 3.

Shelter Bay Cottage Future Addition ILUA Transaction means the Reservation of the Shelter Bay Cottage Area as follows, as may be determined by the State at its discretion:

(a) as a "national park" either by:

(i) an amendment, under Part 4 of the Land Administration Act, of the boundaries of any of the Reserves comprising the Edel National Park, to include the whole or any portion of the Shelter Bay Cottage Area in that Reserve or Reserves; or

(ii) the creation of a new reserve or reserves for the purposes of "national park", and the classification of such land under section 42 of the Land Administration Act as "Class A" reserve, to which the Conservation and Land Management Act will apply by its sections 5(1)(c) and 7(2), together with the Joint Vesting of that reserve in the Commission and MAC as provided for in section 8AA(4) of the Conservation and Land Management Act; or

(b) alternatively or in addition to (a) and in respect of the whole or a portion of the Shelter Bay Cottage Area, by reservation under section 41 of the Land Administration Act for a conservation purpose, including the placing of the care, control and management of that reserved land jointly with the Commission and MAC pursuant to section 46 of the Land Administration Act with the power to lease or licence for periods of up to 21 years, and the application of section 5(1)(h) of the Conservation and Land Management Act to such reserved land and the classification of such land under section 42 of the Land Administration Act as "Class A reserve".

Yaringa Nature Reserve means the Reserve or Reserves created or to be created pursuant to the Yaringa Nature Reserve ILUA Transaction, as modified from time to time.

Yaringa Nature Reserve Area means the land identified in Item 3 of Schedule 2 and, for ease of reference only, shown on Map Enlargement 2 in Schedule 3.

Yaringa Nature Reserve ILUA Transaction means:

(a) the Reservation of the Yaringa Nature Reserve Area for the purposes of "conservation of flora and fauna" and the classification of such land under section 42 of the Land Administration Act as a "Class A reserve", to which the Conservation and Land Management Act will apply by its sections 5(1)(d) and 7(2); and

(b) the Joint Vesting of the Reserve or Reserves in the Yaringa Nature Reserve Area in the Commission and MAC as provided for in sections 8AA(4) of the Conservation and Land Management Act.

Parties to agreement

Applicant

Party name	The State of Western Australia
Contact address	c/- State Solicitor's Office David Malcolm Justice Centre 28 Barrack Street Perth WA 6000

Other Parties

Party name	Chief Executive Officer of the Department of Biodiversity, Conservation and Attractions
Contact address	Coordinator (Native Title), Parks and Wildlife Service Department of Biodiversity, Conservation and Attractions 17 Dick Perry Avenue Kensington WA 6151

Party name Conservation and Parks Commission
Contact address Executive Manager - Office of the Director General
Department of Biodiversity, Conservation and Attractions
17 Dick Perry Avenue
Kensington WA 6151

Party name Malgana Aboriginal Corporation RNTBC (ICN 8935)
Contact address c/- Yamatji Marlpa Aboriginal Corporation
Level 8, 12 The Esplanade
Perth WA 6000

Party name Minister for Lands
Contact address Executive Director, Land Use Management
140 William Street
Perth WA 6000

Period in which the agreement will operate

Start date not specified

End Date not specified

5.1 Force and effect of this Agreement

(a) This Agreement, other than those provisions referred to in subclause (b), has force and effect only from the Commencement Date.

(b) Clauses 1, 2, 3, 4, 5, 6, 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 have force and effect from the Execution Date.

5.2 Term

Subject to clause 5.3, this Agreement continues indefinitely.

5.3 Termination

This Agreement shall terminate only on the occurrence of the following events, whichever is the first to occur (the **Termination Date**):

- (a) the Agreement ceases under clause 4.7;
- (b) all Parties agree in writing to end the Agreement;
- (c) the Determinations are revoked in accordance with the Native Title Act;
- (d) the Agreement is removed from the Register of Indigenous Land Use Agreements by the Native Title Registrar in accordance with section 199C of the Native Title Act; or
- (e) a Replacement Agreement comes into effect in accordance with clause 19.5(b).

Commencement Date means the date on which this Agreement is registered on the Register of Indigenous Land Use Agreements pursuant to section 24BI of the Native Title Act.

Execution Date means the date on which this Agreement is executed by all of the Parties.

Replacement Agreement has the meaning given to that term in clause 19.5.

Termination Date has the meaning given to that term in clause 5.3.

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

7.1 Future Acts in ILUA Transactions

Each Party acknowledges and agrees that the ILUA Transactions contemplated in this clause 7 comprise future acts to which Part 2, Division 3 of the Native Title Act may apply (**Future Acts**) and that consent to the ILUA Transactions under this clause 7 includes the grant of consent to such Future Acts.

7.2 Consent to Future Acts

(a) Each Party irrevocably consents to the following ILUA Transactions in respect of the ILUA Agreement Area:

- (i) the Edel National Park ILUA Transaction;
 - (ii) the Nanga National Park ILUA Transaction;
 - (iii) the Yaringa Nature Reserve ILUA Transaction;
 - (iv) the Pimbee Nature Reserve ILUA Transaction;
 - (v) the Shelter Bay Cottage Future Addition ILUA Transaction; and
 - (vi) the Access Routes ILUA Transaction,
- (each an **ILUA Transaction**) and to the Joint Vesting of the Existing Reserves as contemplated in clause 11.1, with

the intent that such statement of consent satisfies the requirement of section 24EB(1)(b) of the Native Title Act in respect of each of them and the relevant Joint Vesting.

(b) The consents in subclause (a) of this clause include consent to the doing of every act comprised in the ILUA Transactions to the extent such requirement is applicable to such act, and any and all things ancillary to the doing of the ILUA Transactions, with the intent that such statement of consent satisfies the requirement of section 24EB of the Native Title Act in respect of each future act comprised in the ILUA Transactions.

(c) For the avoidance of doubt, the consents given in clause 7.2(a) and 7.2(b) do not cover any further additions of land to any of part of the Conservation Estate to the extent such additional areas are outside the ILUA Agreement Area.

7.3 Agreement to Future Acts includes exercise of rights

(a) Without limiting clause 7.2, the Parties acknowledge that the consent to the Future Acts under this Agreement includes consent to the doing of all acts involved in effecting the ILUA Transactions, or pursuant to the ILUA Transactions within the area of the ILUA Transactions, including:

(i) classification of the national park reserves and nature reserves as "Class A reserves" by order under section 42 of the Land Administration Act, if required;

(ii) the grant, issue or creation, from time to time, of any Tenure over the area of the ILUA Transactions;

(iii) the exercise of any power, duty or right or the discharge of any obligation, now and in the future, under:

(A) Conservation and Land Management Legislation and the Biodiversity Conservation Act and any regulations made under those Acts; and

(B) any Tenure,

in respect of the area of the ILUA Transactions; and

(iv) the exercise of any power, duty or right or the discharge of any obligation, now and in the future, that arises under the Land Administration Act or other applicable legislation as a consequence of the land comprising a national park, nature reserve, conservation park or marine park, but not including the grant of leases under section 79 or licenses under section 91 of the Land Administration Act.

7.4 Requirements of section 24EB(1)(b) of the Native Title Act

The Parties agree that each statement of consent in clauses 7.2 and 7.3, is intended to satisfy the requirement of section 24EB(1)(b) of the Native Title Act.

8. NON-EXTINGUISHMENT PRINCIPLE APPLIES, CUSTOMARY PURPOSES DEFENCE AND NO OTHER NATIVE TITLE ACT PROCEDURE

8.1 Non-extinguishment principle

(a) The non-extinguishment principle applies to the Future Acts in clause 7.

(b) The doing of the Future Acts contemplated in clause 7 and the rights and interests created by those acts and any activity that is required or permitted by those acts shall, to the extent of any inconsistency, prevail over the exercise of any native title rights or interests but do not extinguish them.

8.4 No Native Title Act procedures required

(a) In respect of the ILUA Agreement Area if any of the Future Acts are acts to which the Right to Negotiate or any other future act procedure under Division 3 of Part 2 of the Native Title Act (other than Subdivision B) would, apart from this Agreement apply, the Right to Negotiate and those other future act procedures do not apply to the Future Acts and those acts are valid pursuant to this Agreement.

Access Route Areas ILUA Transactions means the grant by the Minister for Lands under the Land Administration Act of an easement or easements over any of the Access Route Areas, as may be required to give management access/rights of carriage way by persons including MAC, the Joint Management Body, the Conservation Parties and the employees, agents, contractors and invitees of them and the Department as well the general public to, through and from any land comprised in the Conservation Estate.

Access Routes means the easement or easements created or to be created pursuant to the Access Route Areas ILUA Transaction, as modified from time to time.

Biodiversity Conservation Act means the *Biodiversity Conservation Act 2016* (WA).

Conservation Estate means:

- (a) the Edel National Park, when created;
- (b) the Nanga National Park, when created;
- (c) the Yaringa Nature Reserve, when created;
- (d) the Pimbee Nature Reserve, when created;
- (e) the Shelter Bay Cottage Reserve, if and when created;
- (f) the Dirk Hartog Island National Park;
- (g) the Francois Peron National Park;
- (h) the Shell Beach Conservation Park; and
- (i) the Monkey Mia Conservation Park.

Conservation and Land Management Legislation means the Conservation and Land Management Act and the *Conservation and Land Management Regulations 2002* (WA).

Conservation Parties means the CEO and the *[Conservation and Parks Commission]*.

Department means the Department assisting the Minister for Environment in the administration of the Conservation and Land Management Act from time to time being, at the Execution Date, the Department of Biodiversity, Conservation and Attractions.

Existing Reserves means:

- (a) the Dirk Hartog Island National Park;
- (b) the Francois Peron National Park;
- (c) the Shell Beach Conservation Park; and
- (d) the Monkey Mia Conservation Park.

Joint Management Body means the body established pursuant to an agreement under section 56A of the Conservation and Land Management Act giving effect to a requirement in any of the management plans prepared under section 54 of the Conservation and Land Management Act.

Minister for Environment means the Minister to whom administration of the Conservation and Land Management Act is committed.

Right to Negotiate means the right to negotiate procedure under and for the purposes of Subdivision P of Division 3 of Part 2 of the Native Title Act.

Shelter Bay Cottage Reserve means any Reserve or Reserves created or to be created pursuant to the Shelter Bay Cottage Future Addition ILUA Transaction, as modified from time to time.

Tenure means any lease, licence, permit or other authority which is granted, issued, created or renewed under the Conservation and Land Management Legislation or the Biodiversity Conservation Act and any regulations made under that Act.

1.3 Interpretation

(k) a reference to the "CEO" includes, as the context may require, the Conservation and Land Management Executive Body (or any replacement of it under the Conservation and Land Management Act) if the CEO chooses (or may choose) to act through that body as permitted under the Conservation and Land Management Act;

Attachments to the entry

[WI2024_008 Schedule 1 Map of ILUA agreement area.pdf](#)

[WI2024_008 Schedule 2 Land Descriptions.pdf](#)

[WI2024_008 Schedule 3 Map Enlargements.pdf](#)