

ATTACHMENT 2

Schedule Two

(Extracts of the Western Cape Communities Co-existence Agreement dated 14 March 2001)

Extracts of the Western Cape Communities Co-existence Agreement relevant to this Determination are as follows:

"1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

When used in this Agreement, including the Recitals, the following terms will have the following meanings unless the subject or the context otherwise requires:

Term	Meaning
	...
Additional Native Title Parties	The applicants in Non-conforming Applications or Conforming Applications in respect of any part of the ILUA Area who as at the Commencement Date have not signed this Agreement.
	...
Associate	An employee, servant, agent or contractor of, or person providing or receiving goods or services to or from, Comalco, a Related Body Corporate of Comalco, a person having any right or interest in relation to any Comalco Interest that is derived from, or granted by, Comalco (for example, a sublessee of part of ML 7024), or a person exercising rights with the permission or authority of Comalco and includes a Comalco Contractor.
Aurukun Community	Aboriginal people who are ordinarily resident in or around the Shire of Aurukun.
	...
Claim	In relation to any person, a demand, claim, action, proceeding, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.
Claim Area	The land the subject of a Conforming Application.

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Term	Meaning
Comalco	Comalco Aluminium Limited (ACN 009 679 127).
Comalco Act	The <i>Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957</i> (Qld)
Comalco Activities	Any activity or operation authorised, reasonably contemplated, permitted or required by the Comalco Interests and includes the Weipa Operations.
Comalco Agreement	The agreement between Queensland and Comalco referred to in s2 of the Comalco Act, as varied from time to time pursuant to s4 of that Act.
	...
Comalco Interests	Each of the following as they relate to the ILUA Area: <ul style="list-style-type: none"> (a) the Comalco Act; (b) the Comalco Agreement; (c) the Mining Leases; (d) various property interests held by Comalco now or, as of right pursuant to any other interest listed in paragraphs (a)-(c) and (e)-(l) of this definition, in the future (for example, SPMPLs) located inside the boundaries of ML 7024; (e) land within the ILUA Area leased by Comalco from the Ports Corporation; (f) any area of land within the ILUA Area over which Comalco has any continuing right or interest and which land has been excised from ML 7024 (since its grant), including Other Interests; (g) any area of land (not subject to a Mining Lease) on which Comalco or an Associate has a right to place plant, facilities, infrastructure or property in connection with the Weipa Operations (for example, the wharves and related structures at Lorim Point, Humbug Point and Evans Landing); (h) any past act (as the term is defined in the NTA), or any Pre-Existing Right-Based Act the basis for which is the Comalco Act or the Comalco Agreement or any other Comalco Interest and which is conferred on Comalco;

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Term	Meaning
	<ul style="list-style-type: none"> (i) any right of Comalco under the Comalco Act or the Comalco Agreement to obtain a further right or interest; (j) any right or interest of Comalco under any law in connection with any other Comalco Interest; (k) any other right or interest that Comalco is entitled to exercise, or have granted to it, in accordance with or as permitted by this Agreement; and
	<ul style="list-style-type: none"> (l) any right of renewal, extension, regrant or replacement of the Comalco Interests, and the renewals, extensions, regrants and replacements so obtained.
	...
Communities	Each of the following:
	<ul style="list-style-type: none"> (a) the signatories to this Agreement other than Comalco, Queensland and CYLC; (b) Possible Native Title Holders (including the Native Title Parties); (c) Traditional Owners; (d) members of the following Aboriginal peoples, traditional owner groups, associations and communities (which are believed to comprise all the Aboriginal communities with traditional or historic connections to lands within the ILUA Area) and Aboriginal communities in the vicinity of such lands: <ul style="list-style-type: none"> (i) the Aurukun Community; (ii) the Mapoon Community; (ii) the Napranum Community; and (iii) the New Mapoon Community; and
	<ul style="list-style-type: none"> (e) all other Aboriginal persons who ordinarily reside in and around the land the subject of the Mining Leases.

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Term

Meaning

Conforming Application

A claimant application made or to be made pursuant to this Agreement by a Native Title Party or other applicants on behalf of a Traditional Owner Group for a Model Determination to part of the ILUA Area and certified by CYLC pursuant to s203BE of the NTA, a proforma for which appears as Schedule 13.

...

CYLC

Any entity that is determined to be a representative Aboriginal body under the NTA for any part, or all, of the ILUA Area, which at the Commencement Date is Cape York Land Council Aboriginal Corporation.

...

Designated Minerals

Bauxite and kaolin and does not include minerals that are subsequently designated pursuant to clause 1 of the Comalco Agreement.

...

Hindering Action

An act or omission of a Traditional Owner Group or a Traditional Owner or any person on their behalf which causes or contributes to, directly or indirectly, the cessation of the registration of this Agreement or the non-registration of this Agreement (whichever is relevant).

...

ILUA

An indigenous land use agreement (area agreement) under subdivision C, division 3 of part 2 of the NTA to which the Native Title Parties are parties as registered native title claimants, applicants or proposed applicants in relation to areas totalling the ILUA Area, but a reference to a separate ILUA is taken to be a reference to such an agreement to which the Native Title Parties are the registered native title claimants, applicants or proposed applicants to the "Claim Area or such other area within the ILUA Area determined by Comalco" as referred to in clause 2.5.1.

ILUA Area

The land within the area shown on the map in Attachment 1, subject to the area being decreased under clauses 2.5 or 5.5.

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Term	Meaning
ILUA Area B	The area marked as area B in the plan of the ILUA Area.
Mining Leases	ML 6024 (formerly ML 3), ML 7024, any other mining lease (or lease that is ancillary to mining) granted to Comalco in accordance with the Comalco Act and the Comalco Agreement and any renewal, extension, regrant or replacement of any of them within the ILUA Area.
Model Determination	A native title determination in favour of a Native Title Party in the terms of the draft determination set out in Schedule 1. ...
Native Title Application	An application, claim or proceedings in relation to native title (including any application claiming native title or seeking a native title determination), whether under the NTA or otherwise.
Native Title Parties	Those Possible Native Title Holders who: <ul style="list-style-type: none"> (a) are authorised, in accordance with s251A of the NTA, by the Possible Native Title Holders in each of the Traditional Owner Groups to make and sign this Agreement as an ILUA on behalf of each of the Traditional Owner Groups; (b) pursuant to obligations contained in this Agreement: <ul style="list-style-type: none"> (i) either are or will be the applicants in Conforming Applications; or (ii) must endeavour to procure other applicants to amend their Non-conforming Applications to render them Conforming Applications; and

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Term	Meaning
	<p>(c) have signed this Agreement on the Commencement Date namely:</p> <ul style="list-style-type: none"> (i) the current registered native title claimants; and (ii) authorised signatories for each Traditional Owner Group, <p>being those persons named in Schedule 16; and</p>
	<p>(d) from their respective dates of signing, those Additional Native Title Parties who sign this Agreement pursuant to clause 2.4.5.</p> <p>...</p>
New SP MPL	<p>Any SP MPL granted or purported to be granted, on or after 23 December 1996, or to be granted in the future, for any land within the Weipa Township.</p> <p>...</p>
Non-conforming Application	<p>A claimant application which is:</p> <ul style="list-style-type: none"> (a) made on behalf of a Traditional Owner Group; (b) not a Conforming Application; and (c) made before the registration of this Agreement.
NTA	<p><i>Native Title Act 1993 (Cth).</i></p>
Other Interests	<p>Any SP MPL granted for any land within the Weipa Township and any title into which it may have been converted, whether held by Comalco or not.</p> <p>...</p>
Parties	<p>Comalco, the State of Queensland, CYLC and each other person signing this Agreement, every member of the Communities and all persons to whom s24EA(1)(b) of the NTA applies.</p> <p>...</p>
Ports Corporation	<p>The Ports Corporation of Queensland.</p>

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Term	Meaning
Possible Native Title Holders	All persons who hold or may hold native title in the ILUA Area.
Pre-Existing Right-Based Act	Has the meaning in s24IB of the NTA, and to the extent they are not covered by that definition, includes the acts under the Comalco Act or the Comalco Agreement as they relate to the ILUA Area which are listed in Schedule 12. ...
Procedural Requirements	The procedural rights (as that term is defined in s253 of the NTA) set out in s241D of the NTA but excluding those relating to compensation. ...
SBML 1	Special Bauxite Mining Lease 1 granted pursuant to the Comalco Act and the Comalco Agreement .
Short Term Non-registration Event	Where there has been a Hindering Action relating to the non-registration of this Agreement and this Agreement has not been registered within 12 months from the Commencement Date. ...
SPMPL	A Special Perpetual Mining Purposes Lease granted or to be granted pursuant to clause 27 of the Comalco Agreement. ...
Traditional Owner Groups	The native title claim groups of the ILUA Area on whose behalf Conforming Applications have been made or are required to be made pursuant to the obligations in the Agreement, namely: <ul style="list-style-type: none"> (a) the Alngith People; (b) the Anathangayth People; (c) the Ankamuthi People; (d) the Peppan People; (e) the Taepadhighi People; (f) the Thanikwithi People; (g) the Tjungundji People; (h) the Warrangu People; (i) the Wathayn People; (j) the Wik and Wik-Way Peoples; and (k) the Yupungathi People.

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Term	Meaning
Trustee	The trustee of the WCCT. ...
Weipa Operations	The activities and operations carried on and things done, from time to time, by Comalco or an Associate: (a) within the ILUA Area pursuant to or in connection with any of the Comalco Interests; or (b) outside the ILUA Area, but which relate to the matters referred to in (a) including shipping cargo and minerals to and from the ILUA Area and use of the Port of Weipa or any other port within the ILUA Area and shipping channels. ...

1.2 Interpretation

In this Agreement, including the Recitals, except to the extent that the subject or the context otherwise requires:

- 1.2.1 the following terms have the meanings respectively assigned to them in the NTA:
 - 1.2.1.1 applicant;
 - 1.2.1.2 claimant application;
 - 1.2.1.3 native title claim group;
 - 1.2.1.4 registered native title claimant;
 - 1.2.1.5 representative body;
 - 1.2.1.6 native title;
 - 1.2.1.7 native title group;
 - 1.2.1.8 native title holder;
 - 1.2.1.9 native title rights and interests; and
 - 1.2.1.10 for the purposes of any provisions in this Agreement concerning native title or native title rights and interests:
 - 1.2.1.10.1 land; and

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1.2.1.10.2 waters.

- 1.2.2 a reference to Aborigines, Aboriginal People or Aboriginals is a reference to Aboriginal peoples as defined in s253 of the NTA;
- 1.2.3 reference to any legislation or to any provision of any legislation includes any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under, such legislation or such provision and includes the corresponding legislation in such other State or Territory of the Commonwealth of Australia as may be relevant from time to time;
- 1.2.4 words (including words defined in this Agreement) denoting the singular number include the plural and vice versa;
- 1.2.5 words importing natural persons (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.2.6 words denoting any gender include all genders;
- 1.2.7 words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently viable form;
- 1.2.8 reference to a "right" includes an entitlement, remedy, discretion and power;
- 1.2.9 reference to "interest" includes any estate or interest, legal or beneficial, and whether real or personal;
- 1.2.10 reference to "permit" includes consent to, authorise and allow;
- 1.2.11 reference to "valid" includes having full force and effect and reference to "invalid" includes not having full force and effect;
- 1.2.12 reference to a "People" in the list of the Parties on page 1 of this Agreement is a reference to the Native Title Parties for those People, as detailed in the definition of Native Title Parties in clause 1.1;
- 1.2.13 reference to a "native title determination" means a native title determination as defined in s225 of the NTA;
- 1.2.14 reference to "registration" in relation to applications for native title determinations refers to registration on the Register of Native Title Claims and in relation to this Agreement refers to registration on the Register;

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- 1.2.15 when referring to native title, "affects" has the same meaning as in s227 of the NTA;
- 1.2.16 when referring to native title or native title rights and interests, a "surrender" takes place on the later of:
- 1.2.16.1 immediately after the registration of this Agreement; or
- 1.2.16.2 the event on the occurrence of which the Parties have agreed the surrender is to occur,
- and means a surrender of those native title rights and interests to Queensland;
- 1.2.17 reference to "consent" to an act after the Registration Date by the Communities or the Native Title Parties means that the Communities or the Native Title Parties also give that consent from the Commencement Date by virtue of the operation of this Agreement at common law;
- 1.2.18 if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- 1.2.19 reference to anything (including a right, obligation or concept) includes each part of it;
- 1.2.20 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.2.21 reference to a Schedule or an Attachment is a reference to a schedule or attachment to this Agreement;
- 1.2.22 reference to a sub-clause is a reference to the sub-clause of the clause in which it appears, reference to a paragraph is a reference to a paragraph of the sub-clause in which it appears and reference to a sub-paragraph is a reference to a sub-paragraph of a paragraph in which it appears;
- 1.2.23 reference to a document or agreement, or provision of a document or agreement, is to that document, agreement or provision as novated, supplemented, varied or replaced from time to time;
- 1.2.24 a recital, schedule, annexure or a description of the Parties forms part of this Agreement;
- 1.2.25 a reference to any party to this Agreement or any other document or arrangement or other party identified in this Agreement or any

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other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns and agents;

1.2.26 a reference to a Minister, Department, authority, body or person includes the Minister, Department, authority, body or person for the time being performing the functions performed by the Minister, Department, authority, body or person at the Commencement Date;

1.2.27 unless otherwise stated, a reference to "dollars" or "\$" is to Australian currency;

1.2.28 a reference in the body of this Agreement or in a Schedule to a clause is a reference to a clause in the body of this Agreement or that Schedule, respectively;

1.2.29 ...

1.2.30 where under this Agreement, Comalco commits to discriminate positively in favour of Aboriginal persons, Comalco will use its best endeavours to obtain such authorisations, if any, as may be necessary to allow it to lawfully discriminate in the manner outlined in this Agreement but Comalco's commitments are only activated once Comalco has obtained those authorisations;

1.2.31 a reference to "relevant Traditional Owner Groups" is to those Traditional Owner Groups whose Claim Areas include the land to which the operation of a provision applies and if there is uncertainty as to their identity those nominated by the Co-ordinating Committee;

1.2.32 a reference to land is to be taken to be also a reference to waters;

1.2.33 ...

1.2.34 "extension" refers to an extension of term; and

1.2.35 consents in this Agreement when given on behalf of a native title holder are deemed to have been authorised in accordance with s251A of the NTA.

1.3 **Headings**

The headings in this Agreement are for the purpose of more convenient reference only and will not form part of this Agreement or affect its construction or interpretation.

1.4 **Parts of agreement applying to Queensland**

1.4.1 Queensland will not be:

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1.4.1.1 bound by any obligations under this Agreement expressed to be obligations of a Party or the Parties; and

1.4.1.2 entitled to exercise any rights under this Agreement expressed to be a right of a Party or the Parties,

unless they are expressly stated to apply to Queensland. Further, Queensland is not entitled to rely on any acknowledgment in this Agreement unless it is expressly stated to be for the benefit of Queensland.

1.4.2 Queensland is bound by, entitled to exercise rights under, and receives the benefits of clauses 1, 2 (but it is not bound by any provisions, including clauses 2.3.11, 2.4, 2.7, 2.8, 2.9 and 2.11.1, to the extent those provisions require it to accept the terms of the Model Determination or its operation), 4, 5, 11.4, 19, 20, 21, 22 and 26 to 46 inclusive and the corresponding schedules.

1.5 Interpretation for Native Title

1.5.1 Despite any other provision of this Agreement, the provisions of this Agreement which deal with the co-existence of native title and the Comalco Interests, the Other Interests, or the performance of the Comalco Activities on any land the subject of SBML 1 when it was originally granted apply only to those parts of the ILUA Area where native title was not extinguished by:

1.5.1.1 the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, or the grant of SBML 1; or

1.5.1.2 any other rights or interests granted pursuant to the Comalco Act, the Comalco Agreement or SBML 1; or

1.5.1.3 any other legislation,

and nothing in this Agreement compromises the rights of any Party to contend that native title has been extinguished, either fully or partially, in all or any part of the ILUA Area but Comalco will only contend such extinguishment if any member of the Communities or any person on their behalf makes a Claim contending that native title survives to:

1.5.1.4 the Designated Minerals within or taken from the Mining Leases; or

1.5.1.5 New SPMPLs or Other Interests.

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1.5.2 Neither Comalco nor any other Party may rely on the surrenders or extinguishments referred to in clauses 2.2.3 and 2.2.4 in any court proceedings:

1.5.2.1 prior to the Registration Date in relation to surrenders within clause 1.2.16.1; and

1.5.2.2 prior to the date of surrender in relation to surrenders within clause 1.2.16.2 except for the specified purposes of the surrender,

except in proceedings relating to the enforcement of this Agreement or any native title determination or claimant application to the extent that it relates to the ILUA Area.

1.5.3 Where this Agreement states that the native title rights and interests have "no effect", it means that the traditional rights and interests comprising native title are not able to be enjoyed or exercised but, where applicable and subject to the other provisions of this Agreement, the Communities are able to exercise the rights given to them under the NTA, such as the right to negotiate¹ and the right to be consulted about various activities.

1.5.4 Where this Agreement provides that native title rights and interests have "no effect" in relation to the Comalco Interests or the performance of the Comalco Activities, but "again have effect", the Communities have no cause of action against Comalco:

1.5.4.1 for the lawful performance of the Comalco Activities; and

1.5.4.2 for things lawfully done under the authority of the Comalco Interests,

regardless of whether the Comalco Activities could have been done in a manner which would have had a lesser effect on the native title rights and interests, either temporarily or permanently.

...

2 NATIVE TITLE

2.1 Agreement Procedures

2.1.1 The Communities are making this Agreement as occupants and residents of western Cape York Peninsula and, to the extent that

¹ The "right to negotiate" procedures are set out in subdivision P, division 3 of part 2 of the NTA.

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they hold or may hold native title, they have authorised the making of this Agreement for the purpose of it constituting an ILUA for the whole of the ILUA Area, and as separate ILUAs as contemplated under clause 2.5.

- 2.1.2 The Parties agree that this Agreement is to be registered as one ILUA or separate ILUAs.

2.2 **Acknowledgments of Past Matters and Present and Future Consents**

The Parties make the following acknowledgments and agree to the stated effects of the acknowledgments and, subject to this Agreement, give the stated consents.

- 2.2.1 The Comalco Interests, the Other Interests, and the performance of the Comalco Activities to the Registration Date are valid. If any of the Comalco Interests and Other Interests, or the performance of any of the Comalco Activities, have ever been invalid to any extent, the Parties agree to their validation, and that they are taken to be valid and always to have been valid.
- 2.2.2 On the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, or the grant of SBML 1, any native title rights which may have existed yielded to the extent of any inconsistency between them and the Comalco Act, the Comalco Agreement, the conferral of any of the Comalco Interests and the performance of the Comalco Activities, whether done before or after the Registration Date. The yielded native title rights therefore

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ILUA AREA MAP

