



# Indigenous Land Use Agreement

Jagera, Yuggera and Ugarapul People and Ipswich City Council

*Yuggera*



*Jagera*



*Ugarapul*

# **Indigenous Land Use Agreement**

## **Jagera, Yuggera and Ugarapul People and Ipswich City Council**

**Kenneth Henry Bonner, Clarence William Bonner, Caroline Joyce Bonner-Bray, James Bonner and Madonna William as registered native title claimants for Native Title Determination Application QUD6014/03 (Jagera People #2)**

**"the Native Title Party"**

**Eddie Ruska and Michelle Thomson as authorised representatives of the Yuggera People**

**"the Yuggera Representatives"**

**Ross Anderson and Eileen Oertel as authorised representatives of the Ugarapul People**

**"the Ugarapul Representatives"**

**Ipswich City Council**

**"the Local Government"**

## INDIGENOUS LAND USE AGREEMENT

### Jagera, Yuggera and Ugarapul People and Ipswich City Council

Execution Date: 30 January 2008

Parties: Kenneth Bonner, Clarence Bonner, Caroline Bonner-Bray, James Bonner and Madonna William as registered native title claimants for Native Title Determination Application QUD6014/03 (Jagera People #2)

"the Native Title Party"

Eddie Ruska and Michelle Thomson as authorised representatives of the Yuggera People

"the Yuggera Representatives"

Ross Anderson and Eileen Oertel as authorised representatives of the Ugarapul People

"the Ugarapul Representatives"

Ipswich City Council

"the Local Government"

#### Background:

- A. The *Jagera Representatives*, the *Yuggera Representatives*, the *Ugarapul Representatives* and the *Native Title Party* represent the Jagera People, Yuggera People and Ugarapul People. The *Jagera*, *Yuggera* and *Ugarapul People* are the *Traditional Owners* of land and waters which have been occupied and cared for by their ancestors for countless generations.
- B. The *Jagera*, *Yuggera* and *Ugarapul People* continue to care for country. As *Traditional Owners* they have rights and responsibilities for country. To recognise some of those rights and to help meet some of those responsibilities, the *Native Title Party* has lodged a native title claim over some of their country on behalf of the *Jagera*, *Yuggera* and *Ugarapul People* who are all included in the Native Title Claim Group.
- C. The *Local Government* represents all of the local community. Like the *Jagera*, *Yuggera* and *Ugarapul People* it has certain interests, rights and responsibilities in relation to land and waters within its local government area. Those rights and responsibilities also involve caring for country. As well, the *Local Government* must provide many of the community services and facilities for the people who live in the area including the *Jagera*, *Yuggera* and *Ugarapul People*.
- D. The *Jagera*, *Yuggera* and *Ugarapul People* and the *Local Government* agree that they should work together to recognise each others rights and interests and to help each other meet their responsibilities. Together they can:-
- better care for country;
  - find ways to help protect the special rights and interests of the *Jagera*, *Yuggera* and *Ugarapul People* as *Traditional Owners*;
  - look after the needs of all local people; and
  - live together and support each other for the benefit of the whole community.
- E. This *Agreement* is a record of how the *Jagera*, *Yuggera* and *Ugarapul People* and the *Local Government* will work together. It represents part of an ongoing relationship between the *Parties*.

## What does the Agreement contain?

This *Agreement* contains five Parts:-

**Part 1 - Preliminary** - This Part mostly contains technical information about how the *Agreement* works.

**Part 2 - Resolving the Native Title Claim** - This Part sets out how the *Local Government* can help resolve the *Native Title Claim* and how the *Native Title* of the *Jagera, Yuggera and Ugarapul People* and the interests of the *Local Government* will co-exist if *Native Title* is recognised by the Federal Court of Australia.

**Part 3 - Native Title Compliance** - Some *Activities* by the *Local Government* may affect *Native Title*. This Part sets out how those *Activities* can be done validly.

**Part 4 - Aboriginal Cultural Heritage Compliance** - This Part contains some practical measures to help protect *Aboriginal Cultural Heritage*. It enables *Activities* by the *Local Government* which might affect *Aboriginal Cultural Heritage* to be carried out lawfully.

**Part 5 - Other Outcomes** - The *Local Government* and the *Jagera, Yuggera and Ugarapul People* agree on a range of other things to help them meet mutual aspirations, benefit the local community and ensure ongoing communication between the *Parties*. Details are recorded in this Part.

To help the *Parties* understand and implement the *Agreement*, this document uses plain language. Because it is also a legal document, the meanings of words and phrases in the *Agreement* need to be very clear. Some words and phrases are shown in italics and their meanings are contained in Schedule 1.

## How does the Agreement relate to the Native Title Claim?

Upon its registration by the National Native Title Tribunal, this *Agreement* will constitute an "area agreement" indigenous land use agreement under the *Native Title Act*. It has been entered into between the *Parties* before the *Native Title Claim* is finalised.

The *Local Government* will support the *Jagera, Yuggera and Ugarapul People*, in the way described in the *Agreement*, in seeking an outcome to the *Native Title Claim* which recognises *Native Title*.

There are several ways in which the *Native Title Claim* could be finalised. The *Agreement* provides for all possibilities in the following ways:-

**First Possibility** - The Federal Court of Australia might make a final order by consent of all the required parties to the *Native Title Claim* recognising that *Native Title* exists. In that event Part 2 will cease to apply, but Part 1, Part 3, Part 4 and Part 5 will continue to apply indefinitely.

**Second Possibility** - The *Native Title Claim* may proceed to a final contested hearing and the Federal Court of Australia will make a final order in relation to the *Native Title Claim*. In that event, Part 2 will cease to apply, upon an *Unsuccessful Determination* Part 3 will cease to apply, but Part 1, Part 4 and Part 5 will continue to apply unless another native title claim is entered in the *Register of Claims* over the *ILUA Area*.

**Third Possibility** - Before or after the *Native Title Claim* is decided by order of the Federal Court of Australia, the *Native Title Party* might surrender any *Native Title* within the *ILUA Area* to the State of Queensland. In that event Part 2 and Part 3 would cease to apply but Part 1, Part 4 and Part 5 would continue to apply indefinitely.

**Fourth Possibility** - Before the *Native Title Claim* is finally decided by the Federal Court of Australia, it might be discontinued by the *Native Title Party*, or struck out or dismissed by order of the Court. In that event Part 2 will cease to apply but Part 1, Part 3, Part 4 and Part 5 will continue to apply unless another native title claim is entered in the *Register of Claims* over the *ILUA Area*.

No matter how the *Native Title Claim* is finalised, the *Local Government* and the *Jagera, Yuggera and Ugarapul People* want the relationship they have established through the development of this *Agreement* to continue. Some aspects of the *Agreement* will need to be implemented on an ongoing basis. Nothing in the *Agreement* prevents the *Local Government* from entering into other agreements with the *Jagera, Yuggera and Ugarapul People*. It is likely that, over time, the *Local Government* and the *Jagera, Yuggera and Ugarapul People* will want to deal with new matters outside this *Agreement*.

## How did the Agreement come about?

The Federal Court of Australia made an Order on 14 October 2004 referring the *Native Title Claim* to the National Native Title Tribunal for mediation under Section 86B of the *Native Title Act*.

The purpose of mediation is to provide an opportunity for the parties to a native title claim to negotiate agreements. Section 86F of the *Native Title Act* provides that agreements can be about:-

- helping to resolve native title claims; and
- matters other than native title.

The *Native Title Party* and the *Local Government* are both parties to the *Native Title Claim*.

On 7 July 2005 the *Parties* commenced mediation with their first mediation meeting. They entered into a preliminary Memorandum of Understanding on 27 November 2006 which set out the following broad objectives:-

**First Objective** - To resolve *Local Government* interests and issues in relation to the *Native Title Claim* by agreement rather than through litigation.

**Second Objective** - To help facilitate recognition of any *Native Title* held by the *Jagera, Yuggera and Ugarapul People* and, irrespective of the final outcome to the *Native Title Claim*, recognise the *Jagera, Yuggera and Ugarapul People* as the *Traditional Owners* of the whole of the area under the *Local Government's* jurisdiction.

**Third Objective** - To develop clear procedures specific to the *Local Government* and the *Jagera, Yuggera and Ugarapul People* about how future *Activities* by the *Local Government* can comply with the *Native Title Act* and the *Aboriginal Cultural Heritage Act*.

**Fourth Objective** – To add value to any agreement by including other *Non-Determination Outcomes*. They are outcomes which do not relate to a determination of the *Native Title Claim* but which benefit the *Parties* and the local community irrespective of how the *Native Title Claim* is ultimately resolved.

This indigenous land use agreement records how the *Parties*, through mediation, have achieved all of these objectives.

As the *Agreement* includes outcomes on how the *Local Government* will support the resolution of the *Native Title Claim* and how the *Local Government's* interests and certain *Community Interests* will be recognised and protected irrespective of how the *Native Title Claim* is resolved, the *Local Government* will adopt the following position for the remainder of the claim resolution process:-

- **No Further Mediation Involvement** - The *Local Government* does not need to participate any further in mediation of the *Native Title Claim* pending final arrangements for a *Successful Determination* by consent. Nevertheless the *Local Government* will support, in the way set out in this *Agreement*, other *Non-Determination Outcomes* between the *Native Title Party* and other parties to the *Native Title Claim* as an alternative way of resolving the claim.
- **Consent Determination** - Where the *Native Title Party* reaches agreement about a *Successful Determination* with the other parties to the *Native Title Claim*, the *Parties* will work together to ensure that the *Determination Orders* are consistent with this *Agreement*. The *Local Government* will then consent to the making of the *Determination Orders* by the Federal Court of Australia.
- **Contested Final Hearing** - Where the *Native Title Party* is not able to reach agreement with the other parties about a *Successful Determination*, the *Parties* will participate in any final hearing of the *Native Title Claim* in the way set out in this *Agreement*.

Importantly, the *Non-Determination Outcomes* in this *Agreement* are not dependant on how the *Native Title Claim* is resolved. Even if there is no *Successful Determination*, the time and resources invested by the *Parties* in their mediation will have achieved a package of *Non-Determination Outcomes* of real value to the *Parties* and to the local community.

That package of outcomes is specific to the *Parties*. They have weighed the benefits and obligations between them and developed a holistic package tailored to their mutual needs and aspirations. The package takes account of the important status of the *Jagera, Yuggera and Ugarapul People* as *Traditional Owners* and the public responsibilities of the *Local Government*.

## Wider Context to the Agreement

### Jagera, Yuggera and Ugarapul People

The Jagera People, the Yuggera People and the Ugarapul People are closely associated clan groups.

For the purpose of recognising and asserting their traditional laws and customs, the *Jagera, Yuggera and Ugarapul People* have lodged the *Native Title Claim*. In addition, the *Jagera, Yuggera and Ugarapul People* have established corporate entities, put in place management structures and made other administrative arrangements to manage the business of the clan groups in a way most effective to them.

The arrangements may change over time to reflect changing circumstances. At the time this *Agreement* was entered into, the organisational structure and associated responsibilities of the clan groups is broadly as follows:-

Clan Group	General Responsibilities
Jagera	<ul style="list-style-type: none"> <li>• Cultural heritage compliance and clearances</li> <li>• Coordinating the <i>Native Title Claim</i></li> <li>• Employment and training initiatives</li> </ul>
Yuggera	<ul style="list-style-type: none"> <li>• Cultural and artistic initiatives</li> <li>• Cultural training and education</li> <li>• Welcome to country ceremonies (including a traditional dance group)</li> <li>• Cultural tourism</li> </ul>
Ugarapul	<ul style="list-style-type: none"> <li>• Land management initiatives</li> <li>• Cultural and environmental preservation and conservation</li> <li>• Custodianship of cultural sites, artefacts and objects</li> </ul>

These general areas of responsibility do not preclude participation of any *Jagera, Yuggera and Ugarapul Person* in any of the different areas of interests. The clan groups work together in coordinating and supporting the common interests of all *Jagera, Yuggera and Ugarapul People*.

### Ipswich City Council

Ipswich City Council, as the *Local Government* for the whole of the area covered by the *Agreement*, recognises the special position of the *Jagera, Yuggera and Ugarapul People* as the *Traditional Owners* of the City of Ipswich. Clause 4 in the *Agreement* formalises that recognition.

The *Local Government's* involvement in this *Agreement* builds on the commitment contained in the Indigenous Australians Accord which it adopted in 1997.

The *Agreement* also reflects the *Local Government's* policy that it is preferable for the *Native Title Claim* to be resolved by agreement and for native title agreements to be coordinated with policies and programs which deliver practical outcomes to *Traditional Owners* in other ways.

At the time this *Agreement* was entered into, the *Local Government* was a member of a regional local government organisation called the Western Regional Organisation of Councils ("WESROC"). The *Local Government* has regularly briefed other WESROC member local governments on the progress of mediation culminating in this *Agreement*.

To maximise the benefits from this *Agreement* to local government generally, the *Local Government* is committed to the following:-

- Continue to brief and otherwise assist through its experience other local government members of WESROC (or any successor organisation) seeking to achieve similar outcomes.
- Make this *Agreement* available as a general template to other WESROC members and local government generally.
- Participate where reasonable to do so in regional local government initiatives to promote the agreed resolution of the *Native Title Claim*.

The *Local Government* acknowledges the resources made available through the Commonwealth Attorney-General's Department which have assisted in facilitating this *Agreement*.

## Part 1 - Preliminary

**Introduction** - Part 1 sets out the terms on which the *Parties* have agreed to some technical and other preliminary issues such as the following:-

- Recognition of the *Jagera, Yuggera and Ugarapul People* as the *Traditional Owners* for the *ILUA Area*.
- What areas of land and waters are covered by the *Agreement*.
- Confirmation that the *Native Title Party* is authorised to complete the *Agreement*.
- What happens if an *Aboriginal Corporation* is appointed to represent the *Jagera, Yuggera and Ugarapul People* on matters other than *Aboriginal Cultural Heritage* before the *Native Title Claim* is determined or a *Native Title Body Corporate* is appointed to take on that role after the *Native Title Claim* is determined.
- How disputes relating to the *Agreement* should be resolved.
- How the *Parties* can give *Notice* to each other for purposes of the *Agreement*.
- Other technical points.

### 1. Definitions and Interpretation

1.1 Schedule 1 contains a dictionary setting out the meanings of words and phrases used in the *Agreement*. The defined words and phrases are mostly shown in italics throughout the *Agreement*.

1.2 In this *Agreement* unless inconsistent with the context or subject matter:-

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing a singular number include a plural number;
- (d) words importing a plural number include a singular number;
- (e) clause headings are not part of the clause or sub-clause to which they relate;
- (f) where any word or phrase is given a defined meaning, any other grammatical form concerning the word or phrase has a corresponding meaning;
- (g) a reference to a statute includes all subordinate legislation and amendments;
- (h) a reference to repealed legislation includes a reference to any legislation replacing the repealed legislation;
- (i) references to writing include any means of representing or reproducing words in tangible and permanently visible form and includes email and fax;
- (j) except as otherwise set out in this *Agreement*, an obligation of two or more *Parties* binds them jointly and each of them severally;
- (k) an obligation incurred in favour of two or more *Parties* is enforceable by them severally;

- (l) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (m) a reference to a business day means any day on which trading banks are open for business in Queensland;
- (n) if any time period specified in this *Agreement* expires on a day which is not a business day, the period shall expire at the end of the next business day;
- (o) a reference to a month means a calendar month; and
- (p) words and expressions defined in the *Aboriginal Cultural Heritage Act* or the *Native Title Act* have the same meaning in the *Agreement* unless those words and expressions are given a separate definition in the *Agreement*.

1.3 Subject to the preceding sub-clause, words and phrases not defined in Schedule 1 have their ordinary meaning.

1.4 The explanatory notes in the boxes on pages 2, 3 and 4, at the commencement of each Part and in the Schedules to the *Agreement*, and the footnotes throughout the *Agreement*, are for explanation purposes only. In the event of any inconsistency between the wording in the boxes and footnotes on the one hand, and the clauses and Schedules on the other hand, the clauses and Schedules prevail.

## 2. Duration of Part 1

2.1 Part 1 commences on the *Execution Date*.

2.2 Part 1 applies indefinitely unless the *Agreement* is *Terminated*.

## 3. Area Covered by Agreement

3.1 Although different parts of this *Agreement* commence at different times depending on their function and relevant legal requirements, overall this *Agreement*-

- (a) after the Registration Date is an indigenous land use agreement (area agreement) under Subdivision C of Division 3 of Part 2 of the *Native Title Act* in respect of the *ILUA Area*;
- (b) after the Execution Date is a contractually binding agreement between the Parties; and
- (c) after the Execution Date is an agreement under Sections 23(3)(a)(iii), 24(2)(a)(iii), 25(2)(a)(iii) and s26(2)(a)(iii) of the *Aboriginal Cultural Heritage Act* in respect of the *ILUA Area*.

3.2 The *Agreement* covers the *ILUA Area* for the purposes of Parts 2, 3 and 4.

3.3 Part 1 and Part 5 of the *Agreement* is not limited by any geographic extent.

## 4. Recognition as Traditional Owners

4.1 The *Local Government* recognises that the *Jagera, Yuggera and Ugarapul People* are the *Traditional Owners* of the *ILUA Area*.

4.2 The *Local Government* acknowledges and values the special cultural, spiritual and historical associations of the *Jagera, Yuggera and Ugarapul People* as the *Traditional Owners* of the *ILUA Area*.

4.3 Irrespective of the outcome of the *Native Title Claim*, the *Local Government* acknowledges that the *Jagera, Yuggera and Ugarapul People* have traditional laws and customs which are central to their cultural identity and of importance to the history and character of the local community.

## 5. **Native Title Party's Authority**

5.1 The *Native Title Party* together with the *Jagera Representatives*, the *Yuggera Representatives* and the *Ugarapul Representatives* represent the *Jagera, Yuggera and Ugarapul People*.

5.2 The *Jagera Representatives*, the *Yuggera Representatives* and the *Ugarapul Representatives* have signed this *Agreement* in accordance with authority obtained through the customary decision making processes of the clan groups which they represent.

5.3 The *Native Title Party* warrants that they are *Authorised* by the *Jagera, Yuggera and Ugarapul People* to enter into the *Agreement*.

5.4 The *Native Title Party* warrants that they:-

- (a) have informed the *Native Title Representative Body* in writing of their intention to enter into the *Agreement*; and
- (b) have complied with all of the relevant requirements of the *Native Title Act* and the *ILUA Regulation* for the purpose of entering into the *Agreement*.

5.5 The *Parties* agree that:-

- (a) the *Local Government* may apply to *Register* the *Agreement* under the *Native Title Act*; and
- (b) they will do everything reasonably necessary to achieve and maintain *Registration* of the *Agreement*.

## 6. **Aboriginal Corporate Entities**

6.1 The *Agreement* anticipates that:-

- (a) a corporate entity will represent the *Jagera, Yuggera and Ugarapul People* at different points in time on matters other than *Aboriginal Cultural Heritage* compliance under Part 4 of this *Agreement* as follows:
  - i) Before a *Successful Determination* or where no *Determination Orders* are made - an *Aboriginal Corporation* (as trustee for a trust or in any other capacity) may be established to represent the *Jagera, Yuggera and Ugarapul People* (clause 8 relates to an *Aboriginal Corporation*).
  - ii) After a *Successful Determination* - a *Native Title Body Corporate* will be established to represent the *Jagera, Yuggera and Ugarapul People* (clause 7 relates to a *Native Title Body Corporate*).
- (b) an *Aboriginal Cultural Heritage Corporation* will represent the *Jagera, Yuggera and Ugarapul People* and the *Native Title Party* both before and after any *Determination Orders* are made for the *Native Title Claim* in relation to all matters involving *Aboriginal Cultural Heritage* compliance under Part 4 of this *Agreement* (clause 9 relates to an *Aboriginal Cultural Heritage Corporation*).

- 6.2 Where a *Successful Determination* is made and the law otherwise allows, an *Aboriginal Corporation* may become a *Native Title Body Corporate* or another corporate entity may be established as a *Native Title Body Corporate*.
- 6.3 The purposes of an *Aboriginal Corporation* and a *Native Title Body Corporate* may include to:-
- (a) ensure that there is a perpetual corporate entity which can represent all of the *Jagera, Yuggera and Ugarapul People*; and
  - (b) provide a single point of contact and a channel of communication between the *Local Government* and all of the *Jagera, Yuggera and Ugarapul People* about *Native Title* and other matters, except for matters relating to *Aboriginal Cultural Heritage* compliance under Part 4 of this Agreement.
- 6.4 The roles of an *Aboriginal Cultural Heritage Corporation* are described in Clause 41.

## 7. **Native Title Body Corporate**

- 7.1 Where the *Native Title Claim* results in a *Successful Determination*, the *Native Title Party* will do everything reasonably possible to ensure that a *Native Title Body Corporate* is established on behalf of the *Jagera, Yuggera and Ugarapul People*.
- 7.2 Where there is a *Native Title Body Corporate*:-
- (a) the *Jagera, Yuggera and Ugarapul People* will request the *Native Title Body Corporate* to act as their agent in relation to this Agreement;
  - (b) the *Native Title Party* will give to the *Local Government* a *Notice* confirming the appointment of the *Native Title Body Corporate* and advising of its registered address and other relevant information relating to the *Native Title Body Corporate*;
  - (c) the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* will keep the *Local Government* informed about the *Native Title Body Corporate's* agency role and any other matters affecting the *Native Title Body Corporate's* ability to represent the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* for purposes of this Agreement; and
  - (d) the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* will, if requested by the *Local Government*, do everything reasonably possible to arrange for the *Native Title Body Corporate* to enter into a Deed with the *Local Government* under which it will be contractually bound to the terms of this Agreement in the same way as the *Native Title Party*.

## 8. **Aboriginal Corporation**

- 8.1 An *Aboriginal Corporation* may be established by or on behalf of the *Jagera, Yuggera and Ugarapul People* to handle matters for them under Part 3 and Part 5 of this Agreement before a *Native Title Body Corporate* is established.
- 8.2 The *Aboriginal Corporation* for purposes of this Agreement will be the corporation (including an incorporated association and any corporate trustee of a trust) named in a *Nominated Aboriginal Corporation Notice* given to the *Local Government*.
- 8.3 The *Native Title Party* may at any time revoke the role of the *Aboriginal Corporation* for purposes of this Agreement by giving a written *Notice* to the *Local Government* to that effect.

8.4 The *Nominated Aboriginal Corporation Notice* and any other written *Notice* under this clause must be signed by each person comprising the *Native Title Party*.

## 9. **Aboriginal Cultural Heritage Corporation**

9.1 At the *Execution Date* the *Aboriginal Cultural Heritage Corporation* is Jagera Daran Pty Ltd.<sup>1</sup>

9.2 The *Native Title Party* may at any time revoke the role of the *Aboriginal Cultural Heritage Corporation* for purposes of this *Agreement* by giving a written *Notice* to the *Local Government* to that effect.

9.3 Where the role of the *Aboriginal Cultural Heritage Corporation* is revoked, the successor to the *Aboriginal Cultural Heritage Corporation* for purposes of this *Agreement* will be:-

- (a) any successor corporate entity named in a *Nominated Aboriginal Corporation Notice* signed by each person comprising the *Native Title Party* and given to the *Local Government*; or
- (b) where the immediately preceding paragraph does not apply, the *Aboriginal Party* for the *ILUA Area*.

## 10. **Local Government**

10.1 The benefits of the *Agreement* are available to the *Local Government* and any *Third Party* acting on the *Local Government's* behalf.

**Example** - The consent of the *Parties* under Part 3 and the *Clearance Process* under Part 4 may apply to *Activities* which are undertaken by a *Third Party* on the *Local Government's* behalf.

10.2 Irrespective of the immediately preceding sub-clause, the *Local Government* is responsible for any *Activities* covered by this *Agreement* where they are undertaken by a *Third Party* on it's behalf.

## 11. **Relevant Law**

11.1 The laws of Queensland and the laws of the Commonwealth of Australia which are in force in Queensland govern the *Agreement*.

11.2 If matters under the *Agreement* need to be brought before the Courts, the *Parties* accept the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts which are able to hear appeals from them.

## 12. **Binding on Successors**

12.1 This *Agreement* benefits and binds the *Local Government* and its successors and any person to whom the *Agreement* is assigned.

12.2 This *Agreement* benefits and binds the *Native Title Party* and, to the greatest extent possible, the *Jagera, Yuggera and Ugarapul People* and their heirs, executors, successors and persons to whom the *Agreement* is assigned.

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<sup>1</sup> At the *Execution Date* Jagera Daran Pty Ltd is the *Aboriginal Cultural Heritage Corporation* and is also an Aboriginal cultural heritage body under the *Aboriginal Cultural Heritage Act* for the whole of the *ILUA Area*.

- 12.3 Where an *Aboriginal Corporation* or a *Native Title Body Corporate* is a party to this *Agreement* or has been appointed by *Notice* under Clause 7 or Clause 8, as the:-
- (a) agent of the *Native Title Party* or the *Jagera, Yuggera and Ugarapul People* for purposes of the *Agreement* or generally in relation to *Native Title*; or
  - (b) trustee of the *Jagera, Yuggera and Ugarapul People* in relation to their *Native Title*

the *Agreement* binds the *Aboriginal Corporation* and the *Native Title Body Corporate* to the greatest extent possible as if it were the *Native Title Party*.

### 13. Severance

- 13.1 Where a provision of the *Agreement* is void or unenforceable it must be severed from the *Agreement*.
- 13.2 The provisions of the *Agreement* which are not void or unenforceable are unaffected by the severance.

### 14. Review

- 14.1 The *Parties* will meet to review the *Agreement*, assess its operation and consider any alterations to improve the content and operation of the *Agreement* at an agreed date which falls within twelve months of the fifth anniversary of the *Execution Date* and at an agreed date which falls within twelve months of the tenth anniversary of the *Execution Date*.<sup>2</sup>
- 14.2 Where the *Parties* meet for purposes of the immediately preceding sub-clause, they must, unless otherwise agreed:-
- (a) consider parts of the *Agreement* that either *Party* recommends reviewing, in order to confirm those parts of the *Agreement* that a *Party* believes are working well, and to attempt to improve any parts of the *Agreement* that a *Party* believes are not working well;
  - (b) ensure that a written record is kept by each *Party* which includes details of the matters considered and any agreement reached;
  - (c) consider whether a further review mechanism for the *Agreement* would be appropriate; and
  - (d) formalise any arrangements for a further review mechanism if one is agreed (for example, by amending the *Agreement* or entering into another agreement providing for the further review).<sup>3</sup>
- 14.3 Where the *Parties* agree, they may review the *Agreement* at any other time.

### 15. Amendment of ILUA

- 15.1 Where the *Parties* propose to change the *Agreement* they will jointly consider the following:-
- (a) whether the change can best be made by amending the *Agreement*;

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<sup>2</sup> This means that reviews would take place at approximately 5 and 10 year intervals after the *Executive Date*.

<sup>3</sup> Another agreement providing for a review could take the form of an exchange of letters but consider seeking professional advice at the time.

- (b) whether the change can best be made by entering into another agreement; and
- (c) the requirements of any law at the time of the change, particularly in relation to any consequential need to change the *Registration* of the *Agreement*, whether an application is required for the *Registration* of any changes to the *Agreement* and how any such application would be made..

16. **All or Part of the Agreement is Terminated**

***Effect of Parts***

16.1 Each Part of this *Agreement* takes effect from the date indicated in the Part and continues unless either that Part is *Terminated* or the *Agreement* is *Terminated*.

16.2 For clarification:-

- (a) Part 1 is *Terminated* in the circumstances in Clause 2.2;
- (b) Part 2 is *Terminated* in the circumstances in Clause 19.2;
- (c) Part 3 is *Terminated* in the circumstances in Clause 30.2;
- (d) Part 4 is *Terminated* in the circumstances in Clause 39.2;
- (e) Part 5 is *Terminated* in the circumstances in Clause 52.2; and
- (f) one or more Parts are *Terminated* with respect to a discrete area representing a part of the *ILUA Area* in the circumstances in Clause 16.5.

***Termination by Agreement***

16.3 The *Agreement* may be *Terminated* by agreement in writing of the *Parties*.

***Other Circumstances where Agreement may be Terminated***

16.4 Where:

- (a) the *Native Title Claim*:
  - i) results in an *Unsuccessful Determination*; or
  - ii) is struck out, dismissed or discontinued; and
- (b) another native title claim is made over the *ILUA Area* and is entered on the *Register of Native Title Claims*

either *Party* may:

- (c) terminate the *Agreement* by giving two months written *Notice* of their intention to do so to the other *Party* (either before or after consultations of the kind referred to in the next paragraph); or
- (d) request the other *Party* to consult about amending the *Agreement* to take into account any changes in circumstances brought about by the entry of another native title claim on the Register of Native Title Claims..

***Circumstances where Local Government Is No Longer Bound***

16.5 Where:-

- (a) the *Native Title Claim* is struck out, dismissed or discontinued with respect to part of the *ILUA Area* and a native title claim made on behalf of persons other

than the *Jagera, Yuggera and Ugarapul People* is entered in the *Register of Native Title Claims* in respect of that area (called the "discrete ILUA area"); or

- (b) there is an *Unsuccessful Determination* with respect to part of the *ILUA Area* (called the "discrete ILUA area"); or
- (c) the *Native Title Party* or their successor is no longer the *Aboriginal Party* for part of the *ILUA Area* (called the "discrete ILUA area")

the *Local Government* may at its discretion give *Notice* to the *Native Title Party* that it is no longer bound by the Parts of the *Agreement* specified in the *Notice* to the extent these Parts apply to the discrete ILUA area.

- 16.6 Upon the *Local Government* giving *Notice* covering Parts 2, 3 and 4 of this *Agreement* for purposes of Clause 16.5, the *ILUA Area* will be deemed not to include the discrete ILUA area.

#### ***Effect of Termination***

- 16.7 If the *Agreement* is *Terminated* in relation to all or a part of the *ILUA Area*:-

- (a) anything already done under the *Agreement* continues to have the benefit of being done under the *Agreement*;
- (b) any liabilities already incurred under the *Agreement* are unaffected;
- (c) a *Party* entitled to a remedy under the *Agreement* can still pursue the remedy as if the *Agreement* had not been *Terminated* or the relevant provision had not ceased to have effect; and
- (d) any confidentiality arising from the *Agreement* continues to apply.

- 16.8 If the *Agreement* is *Terminated*, the *Parties* will request that the Native Title Registrar remove the *Agreement* from the *Register of Indigenous Land Use Agreements*.

## **17. Dispute Resolution**

### ***Dispute Notice***

- 17.1 Where a dispute relating to the *Agreement* arises between the *Parties*, a *Party* may commence the dispute resolution process under this clause by giving a written *Notice* (called a *Dispute Notice*) to the other *Party* describing the dispute and any other matters that may, in the reasonable opinion of the notifying *Party*, be relevant to resolving the dispute.

- 17.2 .Within 14 days of receipt of the *Dispute Notice*, the other *Party* will provide a written response (called a *Notice of Response*) stating their position in relation to the dispute described in the *Dispute Notice*.

- 17.3 Within 14 days of receipt of the *Notice of Response*, the *Parties* must take reasonable steps to attempt to resolve the dispute directly between themselves.

### ***Mediation***

- 17.4 If a dispute remains unresolved for 28 days after a *Dispute Notice* is given and one or both of the *Parties* request it, the following steps will be taken:-

- (a) the *Parties* will seek to agree within two (2) days on the identity of a mediator of recognised high reputation and familiarity with the matters similar to the matters in dispute to provide mediation of the dispute; and<sup>4</sup>
- (b) if the *Parties* cannot agree on a mediator, either *Party* may request the President of the Queensland Law Society ("the President") to nominate a mediator who is of recognised high reputation and who has acknowledged familiarity with the matters in dispute, to mediate the dispute. The request will include copies of the Dispute Notice and Notice of Response and include a request that the President appoint a mediator as soon as possible and that the President advise the *Parties* of the appointment.

17.5 Once a mediator is appointed, both *Parties* will participate in mediation in good faith and will reasonably cooperate with the mediator with a view to resolving the dispute on agreed terms.

17.6 Any information or documents obtained through or as part of the reference to mediation under the preceding sub-clauses will not be used for any purpose other than settlement of the dispute under this clause.

#### **Costs of Mediation**

17.7 Each *Party* will bear their own costs of mediation and the *Local Government* will, where the mediator decides the referral of the *Dispute* to mediation was not done by the *Native Title Party* on a frivolous or vexatious basis, pay the first two thousand dollars (increased by CPI) of the costs of the mediator after which the *Parties* will bear the costs of the mediator equally.

#### **Unsuccessful Mediation**

17.8 If the mediation does not resolve the dispute within 60 days after a Dispute Notice is given either *Party*:-

- (a) may commence proceedings in any Court of competent jurisdiction; or
- (b) if the *Parties* agree, may refer the dispute for an expert determination, pursuant to this clause.

#### **Appointment of Expert**

17.9 If a dispute is referred to expert determination the *Parties* may agree to appoint a particular person as the expert.

17.10 Failing agreement between the *Parties*, either *Party* may request the President to appoint the expert. The request shall include copies of the Dispute Notice and Notice of Response and include a request that the President appoint the expert as soon as possible and advise the *Parties* in writing of the appointment.

#### **Replacement of Expert**

17.11 The *Parties* may agree to appoint a substitute expert in accordance with the procedure under this clause if:-

- (a) the appointed expert:
  - i) dies;
  - ii) resigns; or
  - iii) the appointment is terminated during the expert determination either under sub-clause 17.12 or by a *Notice* signed by the *Parties*; or

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<sup>4</sup> Paragraph (a) is not optional.

- (b) the *Parties* consider that the Estimate of the appointed expert's costs (provided under sub-clause 17.14) excessive and agree to appoint a different expert.

### ***Disclosure by Expert***

17.12 If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must inform the *Parties* immediately and the appointment of the expert will terminate, unless the *Parties* agree otherwise.

### ***Role and Powers of the Expert***

17.13 The expert will:-

- (a) act as an expert and not as an arbitrator;
- (b) be of high reputation and experience in dealing with matters similar to the matter in dispute;
- (c) act independently of, and act fairly and impartially as between the *Parties*, giving each *Party* a reasonable opportunity to present its case, respond to any opposing submissions and make submissions on the procedure proposed for the expert determination;
- (d) proceed in any reasonable manner he or she thinks fit;
- (e) determine whether it is appropriate to draw upon technical expertise to assist his or her coordination of the dispute;
- (f) conduct any investigation which he or she considers necessary to resolve the dispute;
- (g) require either *Party* to provide or make reasonably available to him or her any document or thing in their possession, or under their control, that the expert requires for the purpose of the expert determination;
- (h) examine such documents and interview such persons as he or she may require; and
- (i) make such directions for the conduct of the expert determination as he or she considers necessary.

### ***Preliminaries to Expert Determination***

17.14 Within 14 days after the expert has been appointed, the expert shall provide the *Parties* with an estimate of the fees and disbursements relating to the expert determination (called the "Estimate").

17.15 Unless otherwise agreed by the *Parties* and expert, the *Parties* shall provide the expert with a security deposit in a form acceptable to the expert in the amount of the Estimate.

17.16 The *Parties* agree to comply with any procedural directions the expert may give in the preparation for or in the course of a preparatory conference.

### ***Representation and Attendance***

17.17 During any conference or any stage of the expert determination, the *Parties* may be represented by a legal representative and other persons with information or knowledge relevant to the expert determination.

### **Conduct of Expert Determination**

17.18 The *Parties* shall take all reasonable steps for the expeditious and cost-effective conduct of the expert determination. These steps include but are not limited to complying without delay, with any direction or ruling by the expert as to procedural or evidentiary matters.

### **Confidentiality and Expert Determination**

17.19 Confidential information disclosed to the expert by the *Parties* or by others attending in the course of the expert determination, shall not be divulged by the expert unless authorised in writing by both *Parties*.

17.20 The *Parties* will not compel the expert to divulge records, reports or other documents (electronic or otherwise) received while serving in that capacity, or testify in regard to the expert determination in any adversarial proceeding, judicial forum or body.

### **Determination of Expert**

17.21 The determination of the expert:-

- (a) must be in writing, accompanied by reasons;
- (b) will be final and binding; and
- (c) is not an arbitration within the meaning of any statute.

### **Costs of Expert Determination**

17.22 Each *Party* will:-

- (a) bear its own costs in relation to any preparation and representation at any expert determination; and
- (b) pay half of the expert's costs.

### **Payment of Interest**

17.23 Unless otherwise agreed by the *Parties*, the expert determination may include the payment of interest on any monetary component of the expert determination in such reasonable amount as the expert may determine.

### **No Suspension of Contractual Obligations**

17.24 The referral of a dispute for expert determination under this clause does not suspend the contractual obligations of the *Parties* under the *Agreement*.

## **18. How to Give Notice**

### **Notice Between Parties**

18.1 Except for the special requirements in sub-clause 36.1 (Part 3) and Clause 49 (Part 4), any *Notice*, which either *Party* is required or wants to give to another *Party* under or in relation to the *Agreement* will be:-

- (a) made in writing and sent to the recipient's address set out in this clause or as varied by any *Notice*; and
- (b) hand delivered, sent by facsimile, pre-paid ordinary mail or email to that address.

18.2 The address for service of the *Parties* is as follows:-

- (a) If the *Notice* is in response to correspondence - to the address indicated in that correspondence.
- (b) Subject to sub-clause 18.7, in any other case:-

***Native Title Party:*** Jagera, Yuggera and Ugarapul People  
PO Box 48,  
Banyo, 4014

***Local Government:*** Chief Executive Officer  
Ipswich City Council  
45 Roderick Street  
Ipswich Qld 4305

18.3 Either of the *Parties* may change their address for service by giving written *Notice* of a new address to the other *Party*.

18.4 A *Notice* given under this clause is taken to have been received:-

- (a) if hand delivered - on delivery;
- (b) if sent by facsimile - when the sender receives a receipt of successful facsimile transmission;
- (c) if sent by pre-paid ordinary mail - three business days after the date of posting; or
- (d) if sent by email - the sender receives a receipt confirming the successful delivery of the email.

***Notice to Native Title Body Corporate or Aboriginal Corporation***

18.5 Where a *Native Title Body Corporate* has been appointed under Clause 7 as the:-

- (a) agent of the *Native Title Party* or the *Jagera, Yuggera and Ugarapul People* for the *Agreement*; or
- (b) the trustee of the *Jagera, Yuggera and Ugarapul People* in relation to their *Native Title*.

any *Notice* to the *Native Title Party* or the *Jagera, Yuggera and Ugarapul People* can be given to the *Native Title Body Corporate*.

18.6 Where an *Aboriginal Corporation* is a party to this *Agreement* or has been appointed under Clause 8, any *Notice* to the *Native Title Party* can be given to the *Aboriginal Corporation*.

18.7 The address for service for a *Native Title Body Corporate* and an *Aboriginal Corporation* will be their registered office address at the time service is made.

***Notice Under Part 3 and Part 4***

18.8 A *Notice* given by the *Local Government* under Part 3 must meet the special requirements in sub-clause 36.1.

18.9 A *Notice* given by the *Local Government* under Part 4 must meet the special requirements in Clause 49.

## Part 2 - Resolving the Native Title Claim

**Introduction** - The *Local Government* will work with the *Jagera, Yuggera and Ugarapul People* towards a *Successful Determination* of the *Native Title Claim*. This Part of the *Agreement* sets out the following:-

- What the *Parties* will do to try and achieve a *Successful Determination*.
- How any *Determination Orders* will be developed.
- How *Native Title*, the *Local Government's* interests and any *Community Interests* will co-exist in the same area.
- Any other possibilities for how the *Native Title Claim* might be resolved and the position of the *Parties* under each possibility.

Under some of the possibilities the *Native Title Claim* may not result in *Determination Orders* recognising *Native Title*. In that event the *Parties* will still have achieved *Non-Determination Outcomes* - including through Part 3, Part 4 and Part 5 of the *Agreement*.

### 19. Duration of Part 2

19.1 Part 2 commences on the *Execution Date*.

19.2 Part 2 ceases to have effect where:-

- (a) it ceases to apply to the extent specified in any *Notice* given under sub-clause 16.5;
- (b) the *Native Title Claim* results in a *Successful Determination* or an *Unsuccessful Determination* in relation to the *Claim Area*;
- (c) all *Native Title* in the *ILUA Area* is surrendered under the *Native Title Act*; or
- (d) the *Native Title Claim* over the whole of the *Local Government's* local government area, is:-
  - i) discontinued; or
  - ii) struck out or dismissed by order of the Court; or
- (e) the *Agreement* is *Terminated*.

19.3 Otherwise Part 2 applies indefinitely.

### 20. ILUA Covers all Claim Resolution Possibilities

20.1 The objective of the *Parties* is to enter into the *Agreement* as early as possible in the mediation stage of the *Native Title Claim* (and probably before agreement is reached between the *Native Title Party* and other respondents to the *Native Title Claim*).

20.2 Therefore Part 2 of the *Agreement* seeks to accommodate every likely possibility for the final resolution of the *Native Title Claim*.

20.3 Although, at the time the *Agreement* is concluded, it is not known under which possibility the *Native Title Claim* will be finally resolved, the *Parties* have identified the possible scenarios as follows:-

- (a) *Possibility 1 - Consent Determination* - This means *Determination Orders* are made for a *Successful Determination* with the consent of all parties to the *Native Title Claim* required for a *Successful Determination*.<sup>5</sup> This is the scenario which the *Parties* agree to work towards. Provision for this possibility is made in clause 21.
- (b) *Possibility 2 - Contested Final Hearing* - This means that there is no *Successful Determination* by consent and the *Native Title Claim* proceeds in such a way (for example by way of a final hearing before the Federal Court of Australia), that *Determination Orders* could be made that *Native Title* does or does not exist in any part of the *Claim Area*. For example, it is possible that the Court may find that the *Native Title Party* are the *Traditional Owners*, but that some or all of their *Native Title* has been extinguished. Provision for this possibility is made in clause 22.
- (c) *Possibility 3 - Native Title is Surrendered* - This means that the *Native Title Party* agrees to surrender any *Native Title* in all of the *ILUA Area* to the State of Queensland. Provision for this possibility is made in clause 23.
- (d) *Possibility 4 - Native Title Claim is Discontinued Struck Out or Dismissed* - This means that the *Native Title Claim* is either discontinued by the *Native Title Party*, or struck out or dismissed by order of the Federal Court of Australia. Provision for this possibility is made in clause 24.

## 21. **Possibility 1 - Consent Determination**

21.1 The *Local Government* will, subject to the conditions in clause 21.2, work with the *Native Title Party*, to:-

- (a) seek a *Successful Determination* by consent of all of the required parties to the *Native Title Claim*; and
- (b) seek other *Non-Determination Outcomes* on matters which involve *Local Government*.

21.2 The preceding clause is subject to the following conditions:-

- (a) A *Successful Determination* must not, in relation to those areas where the *Local Government* has an interest other than a regulatory interest<sup>6</sup>, or there are *Community Interests*, recognise *Native Title* of an *Exclusive* kind.

**Note:** This does not prevent a *Successful Determination* of an *Exclusive* kind in areas where the *Local Government* does not have any interests.<sup>7</sup>

- (b) A *Successful Determination* must contain provisions which recognise the nature and extent of all of the *Local Government's* interests<sup>8</sup> in the *Claim Area* including interests of the kind referred to in this *Agreement*.
- (c) A *Successful Determination* must contain provisions which broadly determine the relationship between the *Local Government's* interests and *Native Title* in a manner consistent with this *Agreement*.

<sup>5</sup> Section 87A of the *Native Title Act* sets out the parties to a native title claim which are required to give notice of their agreement to proposed *Determination Orders* in order for the Federal Court of Australia to be able to make the orders without holding a final hearing.

<sup>6</sup> The category of *Local Government* interests called "regulatory interests" is set out in paragraph 1 of Schedule 4

<sup>7</sup> The Parties do not believe that this example applies and it is given simply to demonstrate how Possibility 2 might come to apply.

<sup>8</sup> The *Local Government's* interests mean any interests of the kind to which Section 225(c) of the *Native Title Act* refers.

- (d) The *Parties* must reach agreement, in a manner consistent with this *Agreement*, about the nature and extent of the *Native Title*.
  - (e) The *Parties* must reach agreement about the way in which any *Community Interests* are addressed in the *Successful Determination* or in any other legal arrangements relating to a *Successful Determination*.
  - (f) This *Agreement* is *Registered*.
- 21.3 After the *Execution Date*, the *Parties* will participate in the *Native Title Claim* where there is a reasonable prospect of a *Successful Determination* under this possibility in the following ways:-
- (a) The *Native Title Party* will ensure that any draft *Determination Orders* are developed in a way which is consistent with this *Agreement*.
  - (b) The *Native Title Party* will provide a copy of the draft *Determination Orders* (and subsequent drafts) to the *Local Government* in a reasonable time.
  - (c) The *Parties* will work with each other and the State of Queensland to complete the draft *Determination Orders* as quickly as reasonably possible and in a way which is consistent with this *Agreement*.
  - (d) Where the *Native Title Party* and the State of Queensland want to consider *Tenure Resolution* proposals or other *Non-Determination Outcomes* additional to those contained in this *Agreement*, the *Local Government* will give consideration to any reasonable request that it participate in those matters.
  - (e) The *Local Government* may make suggestions to the *Native Title Party* and the State of Queensland about any *Tenure Resolution* proposals or other *Non-Determination Outcomes* additional to those contained in this *Agreement*.
- 21.4 The *Local Government* may remain or withdraw as a *Party* to the *Native Title Claim* at its discretion, and either *Party* may inform the Federal Court of Australia of how this *Agreement* advances the *Native Title Claim* and its implications for a *Successful Determination*.
- 21.5 Subject to any reasonable constraints upon it, the *Native Title Party* will try to conclude the *Native Title Claim* as quickly as possible.
- 21.6 The *Parties* will seek to resolve all issues towards *Determination Orders* for a *Successful Determination* of the *Native Title Claim* by the following means:-
- (a) Make best endeavours to reach agreement between them.
  - (b) Seek mediation assistance from the National Native Title Tribunal.
  - (c) Work constructively with the other parties to the *Native Title Claim*.
- 21.7 Where in completing draft *Determination Orders* the *Parties* are unable to reach agreement on some issues (for example, in relation to *Extinguishment* over a particular area), the *Parties* will reasonably seek to avoid a final hearing of the *Native Title Claim* about those issues by considering use of either or both of the following:-
- (a) Any methods of *Alternative Dispute Resolution* for resolving the issues.
  - (b) Seeking a preliminary decision from the Federal Court of Australia on those issues (for example, through Section 86D(1) of the *Native Title Act* or through Order 29 of the Federal Court Rules).

- 21.8 Where the State of Queensland decides to consent to a *Successful Determination*:-
- (a) the *Local Government* may seek, and if so the *Native Title Party* will provide, a written summary of how *Connection* has been satisfied; and
  - (b) the *Local Government* will not further engage in the *Native Title Claim* process in relation to *Connection* issues.

22. **Possibility 2 - Contested Final Hearing**

22.1 After the *Execution Date*, the *Parties* will participate in the *Native Title Claim* where there is not a reasonable prospect of a *Successful Determination* by consent of the required parties to the *Native Title Claim*, in the following ways:-

- (a) The *Local Government* may:-
  - i) remain or withdraw as a respondent party to the *Native Title Claim* at its discretion; and
  - ii) inform the Federal Court of Australia of the implications of this *Agreement* for any contested hearing of the *Native Title Claim*.
- (b) Participate in any contested hearing of the *Native Title Claim* in the way set out in clauses 22.2 and 22.3.

22.2 Where the State of Queensland:-

- (a) decides not to consent to a *Successful Determination* of the *Native Title Claim*; and
- (b) the *Native Title Claim* proceeds to a contested final hearing by the Federal Court of Australia

the *Local Government*:-

- (c) may fully participate in the final hearing in relation to *Connection* and any other issues relevant to the making of the *Determination Orders*; and
- (d) may consider and use any *Connection* evidence prepared by or on behalf of the *Native Title Party* exclusively for that purpose.

22.3 Where:-

- (a) despite the best endeavours of the *Parties*, a *Successful Determination* of the *Native Title Claim* cannot be achieved by agreement; and
- (b) the *Native Title Party* seeks *Determination Orders* through a final hearing before the Court

the *Parties* agree that the contested final hearing will be conducted as follows:-

- (c) The *Parties* may each fully participate, to the extent they each decide for themselves, in the contested final hearing in relation to any issues relevant to the making of *Determination Orders*.
- (d) Other than as provided in this *Agreement*, the *Parties* may present evidence and make submissions at the final hearing as they decide.
- (e) The *Parties* will reasonably cooperate with each other to minimise the time and cost involved in a contested final hearing.

- (f) The *Parties* will reasonably cooperate with, and support each other in relation to:-
  - i) *Alternative Dispute Resolution* methods; and
  - ii) seeking a preliminary decision from the Federal Court of Australia about contested issues if that is likely to avoid, or reduce the time and cost involved in, a final hearing.
- (g) This *Agreement* may be tendered in evidence by any *Party*.

**23. Possibility 3 - Native Title is Surrendered**

- 23.1 The *Parties* acknowledge that this possibility is only likely to arise in the context of an overall agreement about resolving the *Native Title Claim* between the *Native Title Party* and the State of Queensland which includes *Non-Determination Outcomes* to the *Native Title Claim* between those parties.
- 23.2 The *Local Government* acknowledges that the surrender of *Native Title* is a decision for the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* and that this possibility is likely to apply in conjunction with the *Native Title Claim* being discontinued.
- 23.3 Where the *Native Title Party*, the *Jagera, Yuggera and Ugarapul People* and the State of Queensland want to consider:-
  - (a) *Tenure Resolution*; or
  - (b) other *Non-Determination Outcomes* additional to those contained in this *Agreement*

the *Local Government* will give consideration to any reasonable request to participate on those matters.
- 23.4 The *Local Government* may make suggestions to the *Native Title Party* and the State of Queensland about any *Tenure Resolution* proposals or other *Non-Determination Outcomes* additional to those contained in this *Agreement*.

**24. Possibility 4 - Native Title Claim is Discontinued, Struck Out or Dismissed**

- 24.1 The *Parties* acknowledge that there are various foreseeable and unforeseeable ways in which the *Native Title Claim* could be discontinued, struck out or dismissed and the *Parties* will, where it is reasonable to do so, seek to avoid this.
- 24.2 The *Native Title Claim* may be discontinued as part of *Non-Determination Outcomes* agreed between the *Native Title Party* and the State of Queensland in the context of the mediation of the *Native Title Claim*. In that event, where those parties want to consider:
  - (a) *Tenure Resolution* proposals; or
  - (b) other *Non-Determination Outcomes* additional to those contained in this *Agreement*

the *Local Government* will give consideration to any reasonable request to participate in those matters.
- 24.3 The *Local Government* may make suggestions to the *Native Title Party* and the State of Queensland about any *Tenure Resolution* proposals or other *Non-Determination Outcomes* additional to those contained in this *Agreement*.

**25. Native Title Claim Group Interests**

- 25.1 Irrespective of how the *Native Title Claim* is resolved, the *Parties* acknowledge the nature and extent of the *Native Title* asserted by the *Native Title Party*.
- 25.2 The *Parties* agree that at the *Execution Date* the *Jagera, Yuggera and Ugarapul People* assert native title rights and interests in the *Claim Area* of the kinds described in Schedule 3.

**26. Local Government Interests**

- 26.1 Irrespective of how the *Native Title Claim* is resolved, the *Parties* acknowledge the nature and extent of the *Local Government's* interests in the *Claim Area*.
- 26.2 The *Parties* agree that:-
- (a) the *Local Government* has categories of interests in the *Claim Area* of the kinds described in Schedule 4;
  - (b) the relationship between the *Local Government's* interests and *Native Title* will be as generally as described in Schedule 4;
  - (c) a *Successful Determination* by consent of all the required parties will be consistent with Schedule 4; and
  - (d) where *Determination Orders* are sought through a contested final hearing of the *Native Title Claim* by the Federal Court of Australia, the *Local Government* may present any evidence and the *Parties* will make any submissions consistent with Schedule 4.

**27. Application of Local Government Laws**

- 27.1 The *Parties* agree that *Native Title* will be exercised in a way which complies with:-
- (a) *Local Laws*; and
  - (b) *Planning Schemes*.

**28. Community Interests**

- 28.1 Irrespective of how the *Native Title Claim* is resolved, the *Parties* acknowledge the nature and extent of certain *Community Interests* which exist in the *Claim Area*.
- 28.2 At the *Execution Date* the *Community Interests* in the *Claim Area* include the following:-
- (a) access by the public at or to the locations shown on the Plan in Schedule 5;
  - (b) the carrying out of activities of the kind described in Schedule 5.
- 28.3 The *Parties* agree that:-
- (a) *Determination Orders* for a *Successful Determination* of the *Native Title Claim* by consent of the required parties will contain paragraphs recognising the *Community Interests* consistent with Schedule 5; and
  - (b) where *Determination Orders* are sought through a contested final hearing of the *Native Title Claim* by the Federal Court of Australia, the *Local Government* may present evidence and the *Parties* will make submissions consistent with Schedule 5.

## 29. Extinguishment

- 29.1 The *Parties* have agreed to accept certain positions on the question of how *Native Title* may have been extinguished in the *ILUA Area* for purposes of Possibility 1 and Possibility 2 under Part 2 of the *Agreement*.
- 29.2 Under Possibility 1 and Possibility 2, except where Section 47, 47A or 47B of the *Native Title Act* apply, the *Parties* agree and will not dispute that *Native Title* is:-
- (a) *Extinguished* over areas within the *ILUA Area* where there has been:
    - i) a *Previous Exclusive Possession Act*, and
    - ii) the dedication of a road before 1 January 1994; and
  - (b) *Partially Extinguished* over areas within the *ILUA Area* where there has been a *Previous Non-Exclusive Possession Act*, to the extent and in the manner set out in Sections 23G and 23H of the *Native Title Act*.
- 29.3 Under Possibility 1, where a *Successful Determination* by agreement of all the required parties is proposed:-
- (a) the *Local Government* will limit its position in relation to *Extinguishment* and *Partial Extinguishment* in the *Claim Area* to areas where they contend that *Extinguishment* or *Partial Extinguishment* has occurred in the manner referred to in the immediately preceding clause; and
  - (b) the *Parties* will make best endeavours to reach agreement on the extent of *Extinguishment* and *Partial Extinguishment* in the *Claim Area*.

**Note:** This does not limit the position of the *Local Government* where there ceases to be a prospect of *Successful Determination* by consent such as where the *Native Title Claim* is listed for a contested final hearing.

## Part 3 - Native Title Compliance

**Introduction** - *Native Title* is protected by the *Native Title Act*. The *Native Title Act* sets out complex requirements for what must be done to ensure that *Activities* which affect *Native Title* (called "*Future Acts*") are done validly. The *Native Title Act* provides the following options:-

- The parties to an indigenous land use agreement can consent to *Future Acts* (and validate *Activities* done in the past) based on whatever conditions are agreed and set out in the indigenous land use agreement.
- A *Future Act* which is not covered in an indigenous land use agreement can still proceed validly if it is covered by certain provisions in Part 2 Division 3 of the *Native Title Act*.

Importantly, if the *Native Title Act* is not complied with when an *Activity* is done, a *Future Act* is invalid to the extent that it affects *Native Title*.

To help the *Parties* comply with the *Native Title Act*, Part 3 contains conditional consents to some classes of *Future Acts* and un-conditional consents to other classes of *Future Acts* (e.g. those which would have only a minor affect on *Native Title*).

*Future Acts* not covered by this *Agreement* will need to be undertaken by the *Local Government* in accordance with the *Native Title Act*.

The procedures under this Part of the *Agreement* have been negotiated exclusively between the *Native Title Party* and the *Local Government* as part of the package of outcomes contained in the *Agreement*.

### 30. Duration of Part 3

30.1 Part 3 commences on the *Registration Date*.

30.2 Part 3 ceases to have effect where:-

- (a) it ceases to apply to the extent specified in any *Notice* given under sub-clause 16.5;
- (b) the *Native Title Claim* results in an *Unsuccessful Determination* over the *ILUA Area*;
- (c) all *Native Title* in the *ILUA Area* is surrendered under the *Native Title Act*; or
- (d) in those areas where there has been *Extinguishment*; or
- (e) the *Agreement* is Terminated..

30.3 Otherwise Part 3 applies indefinitely.

### 31. Technicalities for Future Acts

31.1 The *Non-Extinguishment Principle* applies to any *Future Acts* that are covered by the *Agreement*.

31.2 Part 2 Division 3 Subdivision P of the *Native Title Act* (which relates to the right to negotiate) does not apply to any *Future Acts* covered by the *Agreement*.

Note: The *Agreement* will not cover the freeholding of land by the State of Queensland to the *Local Government*. That would require *Native Title* to either be compulsorily acquired or surrendered under an indigenous land use agreement to which the State of Queensland is a party.

## 32. Coordinating Future Act and Cultural Heritage Clearances - Overview

- 32.1 Through a combination of Part 3 and Part 4, the *Agreement* enables the *Local Government* and the *Native Title Party* to coordinate separate compliance arrangements for the carrying out of *Activities* by or for the *Local Government* which could affect *Native Title* or which could harm, or threaten harm to, *Aboriginal Cultural Heritage*.
- 32.2 This Part of the *Agreement* contains compliance arrangements for *Native Title* and Part 4 of the *Agreement* contains compliance arrangements for *Aboriginal Cultural Heritage*. The following chart explains how the arrangements apply.

### Explanatory Notes:

*Native Title* and *Aboriginal Cultural Heritage* are for legal purposes, separate issues. Each can be affected in different ways by various types of *Activities*. *Activities* which affect *Native Title* are called "Future Acts" in the *Native Title Act* and in some places in this *Agreement*.

The *Parties* have, through negotiation and exclusively for purposes of this *Agreement*, categorised *Activities* done by or for the *Local Government* regarding their possible impact on *Native Title* and *Aboriginal Cultural Heritage*.

The categories of *Activities* (e.g. maintenance, infrastructure, pest control, etc.) are grouped together depending on whether, for the purposes of this *Agreement*, they are considered by the *Parties* to have a low impact, a medium impact or a high impact.

*Low Impact Activities* are described in Schedule 6 and can simply proceed. *Medium Impact Activities* are described in Schedule 7 and can proceed subject to the *Local Government* satisfying a requirement to give *Notice*.

*High Impact Activities* are described in Schedule 8.

*Activities* which have a high impact on *Native Title*, mainly where it is proposed for *Non-Freehold Land*, require a compliance procedure (involving a *Notice* and *Consultation*) to be completed first.

*Activities* which have a high impact on *Aboriginal Cultural Heritage* which could be the case in relation to both *Freehold Land* and *Non-Freehold Land*, also require a compliance procedure (which may involve a site inspection or a site survey) to be completed first.

The clauses in Part 2 and Part 3 of the *Agreement* together with the relevant Schedules provide for these arrangements. They are set out in diagrammatic form below.

	Freehold Land	Non-Freehold Land
Future Act (Native Title) Compliance	Not Required	Required
Summary of compliance process under Part 3 of this <i>Agreement</i>	No compliance process required	<p><b>Step 1</b></p> <p>Native Title affected? Yes</p> <p>↓</p> <p><b>Step 2</b></p> <p>Native Title extinguished? No</p> <p>↓</p> <p><b>Step 3</b></p> <p>Activity proceeds as follows:-</p> <p><b>Low Impact Activity -</b> Consent to proceed</p> <p><b>Medium Impact Activity -</b> Consent to proceed subject to <i>Notice</i></p>

	Freehold Land	Non-Freehold Land
		<b>High Impact Activity -</b> Consent to proceed subject to <i>Notice and Consultation</i>
Aboriginal Cultural Heritage Compliance	Required	Required
Summary of compliance process under Part 4 of this <i>Agreement</i>	<p><b>Step 1</b></p> <p>Area previously <i>Cleared</i>? No</p> <p>↓</p> <p><b>Step 2</b></p> <p>Activity proceeds as follows:</p> <p><b>Low Impact Activity -</b> Can proceed</p> <p><b>Medium Impact Activity -</b> Can proceed subject to <i>Notice</i></p> <p><b>High Impact Activity -</b> Can proceed subject to <i>Notice and Clearance Procedure</i></p>	<p><b>Step 1</b></p> <p>Area previously <i>Cleared</i><sup>9</sup>? No</p> <p>↓</p> <p><b>Step 2</b></p> <p>Activity proceeds as follows:</p> <p><b>Low Impact Activity -</b> Can proceed</p> <p><b>Medium Impact Activity -</b> Can proceed subject to <i>Notice</i></p> <p><b>High Impact Activity -</b> Can proceed subject to <i>Notice and Clearance Procedure</i></p>

### 33. Future Acts Under this Agreement

- 33.1 A *Future Act* is covered by this *Agreement* where it is expressly or impliedly done in a manner consistent with this *Agreement*.
- 33.2 A *Future Act* is not covered by this *Agreement* where:-
- it does not constitute a *Low Impact Activity*, a *Medium Impact Activity* or a *High Impact Activity* under this *Agreement*; or
  - the *Local Government* advises that it is not covered by this *Agreement* (this does not mean that the *Local Government* has a discretion to advise that an *Activity* is not a *Low Impact*, a *Medium Impact* or a *High Impact Activity* where this *Agreement* provides otherwise).

### 34. Native Title and Activities on Freehold Land and Extinguishment Areas

- 34.1 Subject to the application of Section 47A of the *Native Title Act*, where an *Activity* only relates to *Freehold Land* and other *Extinguishment Areas*, the *Parties* agree that for *Native Title* purposes:-
- any *Native Title* will have been *Extinguished* over those areas and *Native Title* will not be affected by the *Activity*; and
  - no *Native Title* compliance measures for the *Activity* are required.
- 34.2 Compliance measures for *Activities* in relation to *Aboriginal Cultural Heritage* are still required under Part 4 of the *Agreement*.

<sup>9</sup> The word "*Cleared*" is defined in Schedule 1 and includes an area where the *Clearance Procedure* under this *Agreement* has been completed for an *Activity* which does not disturb the ground to a greater degree than the disturbance associated with the *Activity* to which the *Clearance Procedure* applied.

### 35. Native Title and Activities<sup>10</sup> on Non-Freehold Land

#### **Low Impact Activities**

35.1 The *Parties* consent to a *Low Impact Activity* (these are described in Schedule 6).

35.2 There are no conditions on the consent to a *Low Impact Activity*.

#### **Medium Impact Activities**

35.3 Where the condition in the immediately following sub-clause is satisfied, the *Parties* consent to a *Medium Impact Activity* (these are described in Schedule 7) and the consent becomes effective as soon as the condition is completely satisfied.

35.4 The condition for purposes of the immediately preceding sub-clause is that the *Local Government*<sup>11</sup> gives *Notice*:

- (a) Before *Determination Orders* are made or a *Native Title Body Corporate* is registered to:
  - i) the *Native Title Party*, or
  - ii) when a *Nominated Aboriginal Corporation Notice* has been given and not revoked under sub-clause 8.3, an *Aboriginal Corporation*.
- (b) After *Determination Orders* are made and a *Native Title Body Corporate* is registered to the *Native Title Body Corporate*.

#### **High Impact Activities**

35.5 Where the conditions in the immediately following sub-clause are satisfied, the *Parties* consent to a *High Impact Activity* (these are described in Schedule 8) and the consent becomes effective as soon as the conditions are completely satisfied.

35.6 The conditions for purposes of the immediately preceding sub-clause are that the *Local Government*-

- (a) gives *Notice* in accordance with sub-clause 36.1:
  - i) Before *Determination Orders* are made or a *Native Title Body Corporate* is registered to:
    - A. the *Native Title Party*, or
    - B. when a *Nominated Aboriginal Corporation Notice* has been given and not revoked under clause 8, an *Aboriginal Corporation*.
  - ii) After *Determination Orders* are made and a *Native Title Body Corporate* is registered, to the *Native Title Body Corporate*.
- and
- (b) completes *Consultation* in accordance with sub-clause 36.2.

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<sup>10</sup> In the remainder of Part 3 of this *Agreement* the words *Activity* and *Future Act* are interchangeable as a *Future Act* means any *Activity* which affects *Native Title*.

<sup>11</sup> The definition of *Local Government* includes any *Third Party* acting on behalf of the *Local Government*.

## 36. Notice and Consultation

- 36.1 The condition in relation to the giving of *Notice* under Part 3 of the *Agreement* can be satisfied as follows:
- (a) The *Notice* must:
    - i) be in writing;
    - ii) be substantially in the format of the template contained in Schedule 9; and
    - iii) substantially contain the information indicated in the template in Schedule 9.
  - (b) The *Notice* must be given in the way set out in clause 18.
  - (c) The *Notice* must be given:
    - i) in sufficient time to enable any necessary *Consultation* to be completed before the *Activity* is carried out; or
    - ii) if no *Consultation*, at least 21 days before the *Activity* is carried out.
  - (d) The *Notice* may cover multiple *Activities*.
- 36.2 The condition in relation to *Consultation* under Part 3 of the *Agreement* means completion of the procedure set out in Schedule 10.

## 37. Activities Under an Approved Management Plan

- 37.1 Provision is made in this *Agreement* for *Activities* to proceed as *Low Impact Activities* where they are done for the purpose of implementing an *Approved Management Plan* (the *Parties* anticipate that an *Approved Management Plan* will be used for special strategic projects where the *Native Title Party* may have an interest beyond *Native Title* or *Aboriginal Cultural Heritage*).
- 37.2 Schedule 11 contains a procedure for the *Local Government* and the *Native Title Party* to develop an *Approved Management Plan* together to achieve the following objectives:-
- (a) Enable the *Native Title Party* to become involved in concepts and planning for the area or *Activities* covered by the *Approved Management Plan* at an early stage in the life of a project.
  - (b) Provide flexibility to the *Parties* in developing an *Approved Management Plan* specific to a particular project.
  - (c) The *Approved Management Plan* itself would contain any provisions developed through negotiation under the procedure in Schedule 11 for addressing impacts on *Native Title* and *Aboriginal Cultural Heritage* (including any ongoing *Consultation* or *Clearance Procedure* requirements).

**Note:** From time to time, there may be strategic projects which the *Local Government* will propose for a particular area and where it would be beneficial for the *Native Title Party* to be involved early in the design stage. In such a circumstance, the *Local Government* can fulfil any related compliance procedure conditions in Parts 3 and 4 of this *Agreement* upon implementation of an *Approved Management Plan*. Schedule 11 sets out the procedure for completing an *Approved Management Plan*. The commencement of an *Approved Management Plan* is a *Medium Impact Activity* (under Schedule 7). Initially the *Local Government* must give *Notice* of its proposal to develop a plan (Step 1 of the procedure in Schedule 11). The *Native Title Party* may require provisions to be included in the *Approved Management Plan* about ongoing *Consultation* and a *Clearance Procedure* (Step 6 of the procedure in Schedule 11). When there is consensus as to the terms of an *Approved Management Plan* implementation of the plan meets *Native Title* and *Aboriginal Cultural Heritage* compliance conditions under this *Agreement*.

38. **Validation of Acts Already Done (Past Acts)**

38.1 The *Parties* agree that *Acts Already Done* in the classes described in the Table in the immediately following sub-clause:-

- (a) have been done validly; and
- (b) have not extinguished any *Native Title*.

38.2 The Table referred to in the immediately preceding sub-clause is as follows:-

<b>Class of Acts Already Done</b>	<b>Description of What the Class Covers</b>
Off Alignment Roads	<i>Activities</i> involving the construction outside a road dedicated for use by the public, of all roads existing in the <i>ILUA Area</i> on or before the <i>Execution Date</i> .
Other Public Works	<i>Activities</i> involving the improvement or maintenance of land or waters in the <i>ILUA Area</i> by or on behalf of the <i>Local Government</i> on or before the <i>Execution Date</i> where the <i>Activities</i> were done for the public benefit and whether or not on land or waters owned or controlled by the <i>Local Government</i> .
Interests in Land	<i>Activities</i> involving the grant in the <i>ILUA Area</i> to the <i>Local Government</i> of an interest in land or waters or a statutory approval or gazettal for the benefit of the <i>Local Government</i> in the <i>ILUA Area</i> on or before the <i>Execution Date</i> except for a <i>Previous Exclusive Possession Act</i> and the compulsory acquisition of <i>Native Title</i> .

38.3 A *Future Act* which was invalidly done before the *Execution Date* and which is not an intermediate period act under the *Native Title Act* is validated.

## Part 4 - Aboriginal Cultural Heritage Compliance Process

**Introduction** - *Aboriginal Cultural Heritage* is protected by the *Aboriginal Cultural Heritage Act*. It sets out complex requirements for what must be done to ensure that *Activities* which could harm *Aboriginal Cultural Heritage* satisfy the "cultural heritage duty of care". The *Aboriginal Cultural Heritage Act* provides the following options:-

- The parties to an indigenous land use agreement can include in the agreement their own procedures to ensure that *Activities* avoid, or otherwise reasonably minimise, harm to *Aboriginal Cultural Heritage*.
- An *Activity* can also proceed lawfully if it is covered by certain provisions in the *Aboriginal Cultural Heritage Act*.<sup>12</sup>

Part 4 contains agreed procedures (called the "*Clearance Procedure*") in relation to *Activities* by or for the *Local Government*. An *Aboriginal Cultural Heritage Corporation* will administer the procedures for the *Native Title Party*.

The *Activities* of the *Local Government* may also be undertaken in accordance with any of the other provisions in the *Aboriginal Cultural Heritage Act*.

The procedures under this Part of the *Agreement* have been negotiated exclusively between the *Native Title Party* and the *Local Government* as part of the package of outcomes contained in this *Agreement*.

### 39. Duration of Part 4

39.1 Part 4 commences on the *Execution Date*.

39.2 Part 4 is *Terminated* where:-

- (a) it ceases to apply to the extent specified in any *Notice* given under sub-clause 16.5;
- (b) the *Native Title Party* is no longer an *Aboriginal Party* for all of the *ILUA Area*; or
- (c) the *Agreement* is *Terminated*.

39.3 Otherwise, Part 4 applies indefinitely.

### 40. Native Title Party, Aboriginal Party and Aboriginal Cultural Heritage Corporation

40.1 The *Native Title Party* enters into the *Agreement* on behalf of, and as agent for:-

- (a) all persons who are an *Aboriginal Party* in the *ILUA Area* at the *Execution Date*; and
- (b) the *Aboriginal Cultural Heritage Corporation*.

40.2 The *Native Title Party* is the *Aboriginal Party* for all areas within the external boundaries of the *Claim Area*.

### 41. Role of Aboriginal Cultural Heritage Corporation

41.1 Under this *Agreement* the *Aboriginal Cultural Heritage Corporation* will have the following roles:-

<sup>12</sup> See Section 23(3), 24(2), 25(2), and 26(2) of the *Aboriginal Cultural Heritage Act*.

- (a) act on behalf of, and as agent for, the *Native Title Party* and all persons who are an *Aboriginal Party* in the *ILUA Area* in the implementation of Part 4 of the *Agreement*;
- (b) receive any *Notices* from the *Local Government* under Part 4 of the *Agreement*;
- (c) give any *Notices* to the *Local Government* under Part 4 of the *Agreement*;
- (d) arrange with the *Local Government* the carrying out of any *Clearance Procedure*;
- (e) participate if it wishes in the procedure in Schedule 11 for developing an *Approved Management Plan*; and
- (f) administer remuneration arrangements under Part 4 of the *Agreement*.

41.2 Where the *Aboriginal Cultural Heritage Corporation* is an Aboriginal cultural heritage body under the *Aboriginal Cultural Heritage Act*, it also has all of the statutory functions of such a body.

#### 42. **Objective of Part 4**

42.1 The general objective of this Part of the *Agreement* is to:-

- (a) help the *Parties* identify areas where the *Clearance Procedure* is required for an *Activity* proposed by or for *Local Government*;
- (b) help the *Parties* identify those *Activities* proposed by or for *Local Government* where the *Clearance Procedure* is not required for an *Activity*; and
- (c) set out the terms on which the *Clearance Procedure* for *High Impact Activities* will be carried out.

#### 43. **Coordinating Future Act and Cultural Heritage Clearances - Overview**

43.1 Through a combination of Part 3 and Part 4, the *Agreement* enables the *Local Government* and the *Native Title Party* to coordinate separate compliance arrangements for the carrying out of *Activities* by or for the *Local Government* which could affect *Native Title* or which could harm, or threaten harm to, *Aboriginal Cultural Heritage*.

43.2 This Part of the *Agreement* contains compliance arrangements for *Aboriginal Cultural Heritage* and Part 3 of the *Agreement* contains compliance arrangements for *Native Title*. The following chart explains how the arrangements apply.

**Explanatory Notes:**

*Native Title* and *Aboriginal Cultural Heritage* are for legal purposes, separate issues. Each can be affected in different ways by various types of *Activities*. *Activities* which affect *Native Title* are called "Future Acts" in the *Native Title Act* and in some places in this *Agreement*.

The *Parties* have, through negotiation and exclusively for purposes of this *Agreement*, categorised *Activities* done by or for the *Local Government* regarding their possible impact on *Native Title* and *Aboriginal Cultural Heritage*.

The categories of *Activities* (e.g. maintenance, infrastructure, pest control, etc.) are grouped together depending on whether, for the purposes of this *Agreement*, they are considered by the *Parties* to have a low impact, a medium impact or a high impact.

*Low Impact Activities* are described in Schedule 6 and can simply proceed. *Medium Impact Activities* are described in Schedule 7 and can proceed subject to the *Local Government* satisfying a requirement to give *Notice*.

*High Impact Activities* are described in Schedule 8.

*Activities* which have a high impact on *Aboriginal Cultural Heritage* which could be the case in relation to both *Freehold Land* and *Non-Freehold Land*, require a compliance procedure (which may involve a site inspection or a site survey) to be completed first.

*Activities* which have a high impact on *Native Title*, mainly where it is proposed for *Non-Freehold Land*, also require a compliance procedure (involving a *Notice* and *Consultation*) to be completed first.

The clauses in Part 2 and Part 3 of the *Agreement* together with the relevant Schedules provide for these arrangements. They are set out in diagrammatic form below.

	Freehold Land	Non-Freehold Land
Aboriginal Cultural Heritage Compliance	Required	Required
Summary of compliance process under Part 4 of this Agreement	<p><b>Step 1</b></p> <p>Area previously Cleared?    No</p> <p>↓</p>	<p><b>Step 1</b></p> <p>Area previously Cleared<sup>13</sup>?    No</p> <p>↓</p>
	<p><b>Step 2</b></p> <p>Activity proceeds as follows:</p>	<p><b>Step 2</b></p> <p>Activity proceeds as follows:</p>
	<p><b>Low Impact Activity -</b>    Can proceed</p> <p><b>Medium Impact Activity -</b>    Can proceed subject to <i>Notice</i></p> <p><b>High Impact Activity -</b>    Can proceed subject to <i>Notice</i> and <i>Clearance Procedure</i></p>	<p><b>Low Impact Activity -</b>    Can proceed</p> <p><b>Medium Impact Activity -</b>    Can proceed subject to <i>Notice</i></p> <p><b>High Impact Activity -</b>    Can proceed subject to <i>Notice</i> and <i>Clearance Procedure</i></p>

Future Act (Native Title) Compliance	Not Required	Required
Summary of compliance process under Part 3 of this Agreement	No compliance process required	<p><b>Step 1</b></p> <p>Native Title affected?    Yes</p> <p>↓</p> <p><b>Step 2</b></p> <p>Native Title extinguished?    No</p> <p>↓</p>

<sup>13</sup> The word "Cleared" is defined in Schedule 1 and includes an area where the *Clearance Procedure* under this *Agreement* has been completed for an *Activity* which does not disturb the ground to a greater degree than the disturbance associated with the *Activity* to which the *Clearance Procedure* applied.

Future Act (Native Title) Compliance	Not Required	Required
		<p style="text-align: center;"><b>Step 3</b></p> <p><i>Activity</i> proceeds as follows:-</p> <p><b>Low Impact Activity -</b> Consent to proceed</p> <p><b>Medium Impact Activity -</b> Consent to proceed subject to <i>Notice</i></p> <p><b>High Impact Activity -</b> Consent to proceed subject to <i>Notice</i> and <i>Consultation</i></p>

**44. Activities Covered by Agreement**

- 44.1 The *Agreement* covers all *Activities* by or on behalf of the *Local Government* in the *Claim Area*.<sup>14</sup>
- 44.2 No *Aboriginal Cultural Heritage* is excluded from the *Agreement*.
- 44.3 Nothing in the *Agreement* prevents *Activities* by the *Local Government* from also being done lawfully under any provisions in the *Aboriginal Cultural Heritage Act*.

**45. Other Cultural Heritage Agreement or Clearance Process**

- 45.1 Nothing prevents the *Parties* from making other agreements in relation to *Aboriginal Cultural Heritage*.
- 45.2 The *Parties* can also develop a separate customised process for particular areas or *Activities* and this procedure is the *Clearance Procedure* (under paragraph 1 of Schedule 12) in place of the standard clearance procedure when a *Notice* to that effect is provided by the *Aboriginal Cultural Heritage Corporation* to the *Local Government*.

**46. Land and Waters Covered by Agreement**

- 46.1 The *Agreement* relates to all land and waters within the *ILUA Area* whether *Freehold Land* or *Non-Freehold Land*.

**47. Area to be Cleared Once**

- 47.1 An *Activity* can proceed in an area which has already been *Cleared*.

**48. Cultural Heritage Clearance**

***Low Impact Activities***

- 48.1 A *Low Impact Activity* (these are described in Schedule 6) can proceed in any part of the *ILUA Area*.
- 48.2 There are no requirements for a *Low Impact Activity*.

***Medium Impact Activities***

- 48.3 As soon as the requirement in the immediately following sub-clause is satisfied, a *Medium Impact Activity* (these are described in Schedule 7) can proceed.

<sup>14</sup> This includes any *Activities* by an employee, agent or contractor of the *Local Government*.

48.4 The *Local Government* gives *Notice* to the *Aboriginal Party* in accordance with Clause 49.

### **High Impact Activities**

48.5 As soon as the requirement in the immediately following sub-clause is satisfied, a *High Impact Activity* (these are described in Schedule 8) can proceed.

48.6 The *Local Government* completes the *Clearance Procedure* in accordance with Clause 50.

### **When an Activity Can Proceed**

48.7 In summary, an *Activity* can proceed under Part 4 in a particular area if:-

- (a) the *Activity* is of a kind which is incapable of causing harm to *Aboriginal Cultural Heritage* (for example, because it does not cause disturbance to land or waters);
- (b) the *Activity* takes place on an area which has already been *Cleared*;
- (c) it is a *Low Impact Activity*;
- (d) it is a *Medium Impact Activity* and the requirements in sub-clause 48.3 are met;
- (e) it is a *High Impact Activity* and the requirements in sub-clause 48.5 are met;
- (f) the *Activity* is done for the purpose of implementing an *Approved Management Plan* (described in Clause 37 and Schedule 11); or
- (g) the *Activity* is carried out in a way that it is otherwise compliant with the *Aboriginal Cultural Heritage Act*.

## **49. Notice**

49.1 The condition in relation to the giving of *Notice* under Part 4 of the *Agreement* can be satisfied as follows:

- (a) The *Notice* must:
  - i) be in writing;
  - ii) be given to the *Aboriginal Cultural Heritage Corporation* (having regard to it's role under sub-clause 41.1(b));
  - iii) be generally in the format of the template contained in Schedule 9; and
  - iv) substantially contain the information indicated in the template in Schedule 9.
- (b) The *Notice* must be given in the way set out in clause 18.
- (c) The *Notice* may cover multiple *Activities*.

## **50. Clearance Procedure**

50.1 Completing the *Clearance Procedure* requires the *Parties* to undertake one of the procedures contained in Schedule 12.

50.2 The *Clearance Procedure* in Schedule 12 includes:

- (a) an option (under paragraph 1 of that Schedule) for the *Parties* to develop a customised procedure for particular areas or *Activities*; and
- (b) a standard procedure (under paragraph 2 of that Schedule) that will generally apply where the *Parties* do not develop a customised procedure.

## 51. Remuneration for Clearance Procedure

51.1 The *Parties* acknowledge that:

- (a) it is appropriate for representatives of the *Jagera, Yuggera and Ugarapul People* who participate in implementation of the *Clearance Procedure* to be properly remunerated for their skills, time and effort;
- (b) where there is an *Aboriginal Cultural Heritage Corporation* it may be most efficient and effective for that entity to administer remuneration and other logistical aspects of the *Clearance Procedure*; and
- (c) the nature and extent of the remuneration arrangements under this *Agreement* is exclusive to the *Parties* and has been negotiated to take into account the whole package of outcomes under this *Agreement* (including those contained in Part 5).

51.2 The agreed remuneration arrangements for the *Clearance Procedure* are included in Schedule 13.

51.3 Where the *Parties* propose a customised procedure for a particular *Activity* or area under paragraph 1 in Schedule 12, the *Parties* may negotiate specific remuneration arrangements for the matter and the remuneration arrangements in Schedule 13 may be used as a guide.

## Part 5 - Other Outcomes

**Introduction** - Other Parts of this *Agreement* contain outcomes on technical aspects of *Native Title* and *Aboriginal Cultural Heritage*. However the *Parties* believe that, by working together, they can achieve additional, practical outcomes on issues which affect the lives and values of the *Jagera, Yuggera and Ugarapul People* and the local community.

In negotiating agreed outcomes to the *Native Title Claim*, the *Native Title Act* recognises that the *Agreement* "may involve matters other than Native Title".<sup>15</sup>

This Part contains the agreed commitment of the *Parties* to develop and implement policies and programs relating both to the *Jagera, Yuggera and Ugarapul People* and the wider community in Ipswich City. It also contains arrangements for ongoing communication between the *Jagera, Yuggera and Ugarapul People* and the *Local Government*.

### 52. Duration of Part 5

52.1 Part 5 commences on the *Execution Date*.

52.2 Part 5 is *Terminated* where:-

- (a) it ceases to apply to the extent specified in any *Notice* given under Clause 16.5; or
- (b) the *Agreement* is *Terminated*.

52.3 Otherwise, Part 5 applies indefinitely.

### 53. Operation of Part 5

53.1 Part 5 operates in two ways:-

- (a) Firstly, Clause 52 in conjunction with relevant Schedules, sets out certain locally focussed policies and programs which the *Local Government* agrees to implement as part of the overall package of outcomes under this *Agreement*.
- (b) Secondly, as part of a permanent relationship between the *Parties* at the local level, Clause 53 contains a mechanism (*a Consultative Committee*) through which the *Parties* seek to achieve the following ongoing outcomes:
  - i) to meet regularly and communicate effectively;
  - ii) to discuss future policies and programs identified in Clause 55;
  - iii) to provide a forum at which either *Party* can put forward new ideas and proposals for mutual consideration; and
  - iv) strengthen their relationship and work together in building a stronger local community.

53.2 Although framed as part of a legally binding agreement, the *Parties* acknowledge that for this Part of the *Agreement* to work most effectively the following general principles will need to apply:-

- (a) The *Parties* will show respect for each other.

<sup>15</sup> See Section 86F(i) of the *Native Title Act*.

- (b) The *Parties* acknowledge that, from time to time, mistakes may be made and points of disagreement may arise, but they will do their best to work with each other to rise above those things for the purpose of maintaining their relationship.
- (c) Although Part 2, Part 3 and Part 4 of the *Agreement* relate exclusively to the *Jagera, Yuggera and Ugarapul People* and the *Local Government*, the objective of some of the policies and programs under Part 5 may be to benefit the whole local community.
- (d) Part 5 of the *Agreement* contributes to a whole package of ongoing outcomes between the *Parties* and therefore addresses matters that are not necessarily related to *Native Title* or *Aboriginal Cultural Heritage*.
- (e) The *Parties* have negotiated the *Agreement* holistically and have sought to achieve an overall balance between the benefits, responsibilities and compromises which each have accepted or incurred. Therefore no individual part of the *Agreement* should necessarily influence future negotiations on any particular matter between the *Native Title Party* and other persons or organisations.
- (f) The general form and content of the *Agreement* has been developed as a template which other local governments and native title claim groups may consider for use in the resolution of other native title claims. The general form and content of the *Agreement* may also be used by other local governments in the mediation of the *Native Title Claim* including local government mediation outcomes on a regional basis.
- (g) The *Parties* each have limitations on their time and resources and will always take those constraints reasonably in account in the way the *Agreement* is implemented.

#### 54. **Agreed Policies and Programs**

54.1 The *Local Government* commits to the following policies and programs:-

- (a) ***Policy on Option for Freeholding Land*** - The *Local Government* will adopt a policy of considering the option of agreed native title compulsory acquisitions in some cases as set out Schedule 18.
- (b) ***Protocol on Welcome to Country*** -The *Local Government* will adopt a protocol based on the principles and processes set out in Schedule 15 for civic events involving a *Welcome to Country* by the *Native Title Party*.
- (c) ***Employment of Rangers*** - Where there are suitable candidates who wish to perform the relevant duties and where those duties are properly performed, the *Local Government* will recruit to its staff at a minimum, the equivalent of two full time persons at a time to be drawn from the *Jagera, Yuggera and Ugarapul People* as rangers for parks, open space and other land under the *Local Government's* ownership or control. Where the duties are properly performed the *Local Government* will continue to employ the persons. Where the duties are not properly performed, the usual local government disciplinary and employment rules will apply. If a person is dismissed the *Local Government* will endeavour to replace the person with another suitable candidate drawn from the *Jagera, Yuggera and Ugarapul People*.<sup>16</sup>
- (d) ***Employment of Partnerships Co-ordinator*** - Where there is a suitable candidate to perform the relevant duties and where those duties are properly

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<sup>16</sup> These will be positions as officers of the *Local Government* and subject to all of the relevant terms and conditions of employment by the *Local Government*.

performed, the *Local Government* agrees to recruit to its staff one person to be drawn from the *Jagera, Yuggera and Ugarapul People* as an officer to assist in co-ordinating the implementation of the *Agreement*, to assist with the implementation of policies and programs under this clause, to assist with the operation of the *Consultative Committee* and to perform other duties assigned by the *Local Government*. Where the duties are properly performed the *Local Government* will continue to employ the person. Where the duties are not properly performed, the usual local government disciplinary and employment rules will apply. If a person is dismissed the *Local Government* will endeavour to replace the person with another suitable candidate drawn from the *Jagera, Yuggera and Ugarapul People*.<sup>17</sup>

- (e) **Policy on Signage and Place Naming** - The *Local Government*, in consultation with the *Consultative Committee*, will develop the following:
- i) Subject to any legal restrictions and policy restrictions imposed by a *Third Party*, a policy on the erection of appropriate signage at entry points to the City of Ipswich and other relevant public places in a way determined by the *Local Government* in consultation with the *Consultative Committee*, to assist in the public recognition of the traditional lands of the *Jagera, Yuggera and Ugarapul People*.
  - ii) A policy to be determined by the *Local Government* in consultation with the *Consultative Committee* on the naming of certain public places using the traditional names of the *Jagera, Yuggera and Ugarapul People* for those places or using other appropriate words drawn from the traditional language of the *Jagera, Yuggera and Ugarapul People*.
- (f) **Feasibility Assessment for Facilities** - In relation to the aspiration of the *Jagera, Yuggera and Ugarapul People* for a cultural learning centre and a cultural keeping place in the City of Ipswich, the *Local Government* will assist with feasibility assessments for those facilities in the following ways:
- i) Provide its own expertise and assist in providing reasonably available resources for the feasibility assessments, in particular the feasibility of locating a permanent cultural keeping place and associated office space at Kholo Gardens in the longer term, and the feasibility of providing storage facilities for cultural artefacts at Kholo Gardens depot in the shorter term.
  - ii) Assist with the preparation of funding and other resourcing applications to appropriate funding bodies in relation to the feasibility assessments.
- (g) **Policy on Traditional Access and Land Use** - The *Local Government* will adopt a policy which will allow access to certain land which is open space under the *Local Government's* ownership or control (including certain *Freehold Land*), for the purpose of enabling the exercise by the *Jagera, Yuggera and Ugarapul People* of some traditional land use activities.

54.2 Some of the policies and programs in this clause are stated in relatively general terms. In that regard, the *Parties* acknowledge the following:

- (a) Details about how the policy or program will be implemented will be discussed by the *Parties* through the *Consultative Committee*.
- (b) Implementation of some of the policies and programs may require the *Local Government* to make budget allocations in subsequent financial years and that may affect the timing of implementation.

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<sup>17</sup> This will be a position as an officer of the *Local Government* and subject to all of the relevant terms and conditions of employment by the *Local Government*.

- (c) Where a particular policy or program is subject to *Third Party* funding or other approvals, the *Parties* will work together and support each other in seeking the funding or other approvals.

## 55. Proposals for Future Policies and Programs and Ongoing Communication

55.1 This clause establishes a mechanism through which:-

- (a) the *Parties* will have formal system of ongoing communication on any issues<sup>18</sup>; and
- (b) the *Parties* will discuss over time the possible adoption, resourcing and implementation of future policies and programs on which they can work together for the advancement and betterment of:
  - i) the *Jagera, Yuggera and Ugarapul People*; and
  - ii) the local community as a whole.

### **Consultative Committee**

55.2 The *Local Government* and the *Jagera, Yuggera and Ugarapul People* will establish a *Consultative Committee*.

55.3 The *Consultative Committee* will discuss issues arising from this *Agreement*, ideas and policies identified in sub-clause 55.6 and any other related issue identified for discussion. Whilst the *Consultative Committee* is unable to make a decision on behalf of *Local Government* it may provide direct advice to *Local Government* for its consideration.

55.4 The *Consultative Committee* will operate in the following way:-

- (a) The *Consultative Committee* will not be a statutory committee of the *Local Government* but will operate as a formal consultative committee between the *Parties*.
- (b) The *Consultative Committee* will be constituted by the following:
  - i) four persons apart from the partnership's co-ordinator referred to in Clause 54.1(d) (who cannot be nominated) nominated in writing by the *Native Title Party* or, where one has been appointed for the purposes of this *Agreement*, by an *Aboriginal Corporation* or *Native Title Body Corporate*; and
  - ii) an elected Councillor and three other persons appointed by the *Local Government*.
- (c) Meetings of the *Consultative Committee* will generally only be attended by committee members and other representatives of the *Parties*, however, the *Consultative Committee* may make its own rules for the attendance of observers at meetings.
- (d) The meetings of the *Consultative Committee* will be chaired on a rotation basis by the elected Councillor (or their nominee) and a nominee of the *Native Title Party*.
- (e) The partnership's coordinator (or their nominee) will take the minutes of meetings and provide other support services for the *Consultative Committee*.

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<sup>18</sup> Nothing in this ILUA restricts the manner or content of future communications between the *Parties*.

- (f) The *Consultative Committee* will meet at least once every three months (i.e. quarterly) or more frequently if determined by the *Consultative Committee* from time to time.
- (g) Wherever possible, the *Consultative Committee* will seek to reach decisions on a consensus basis however the *Consultative Committee* may establish its own rules of operation in that regard.

55.5 Other than as set out in the immediately preceding sub-clause, the *Consultative Committee* may determine its own rules of operation from time to time and a written record of the rules of operation will be maintained by the partnership's co-ordinator.

#### ***Future Policies and Programs***

55.6 During the negotiation of this *Agreement*, the *Parties* identified some general ideas for future policies and programs which might be considered by the *Consultative Committee* at some stage in the future. Although, at the time this *Agreement* was entered into it was too early for the *Parties* to commit to any of those ideas, they are recorded in the following list for future reference:-

- (a) Inclusion of a *Jagera, Yuggera, Ugarapul People* representative on the advisory committee for the development of the Briggs Road sporting complex.
- (b) Development and allocation of permissions which recognise and permit the conduct of traditional land use activities such as hunting and harvesting in particular areas including appropriate *Freehold Land* owned by the *Local Government*.
- (c) Revision of the section within the *Local Government* website that relates to local Aboriginal history and information.

Signed by the *Parties*.

**SIGNED** under the **CORPORATE SEAL** of )  
**IPSWICH CITY COUNCIL** in pursuance its local )  
laws and in the presence of ) \_\_\_\_\_ Mayor  
) )  
the Mayor, Deputy Mayor and ) \_\_\_\_\_ Deputy Mayor  
) )  
the Chief Executive Officer: ) \_\_\_\_\_ Chief Executive Officer  
) )  
) )

**SIGNED** by **Kenneth Henry Bonner** as )  
registered native title claimants on behalf of the )  
**JAGERA PEOPLE #2 NATIVE TITLE CLAIM** ) \_\_\_\_\_  
**GROUP** ) )  
) )

**SIGNED** by **Clarence William Bonner** as )  
registered native title claimants on behalf of the )  
**JAGERA PEOPLE #2 NATIVE TITLE CLAIM** ) \_\_\_\_\_  
**GROUP** ) )  
) )

**SIGNED** by **Caroline Joyce Bonner-Bray** as )  
registered native title claimants on behalf of the )  
**JAGERA PEOPLE #2 NATIVE TITLE CLAIM** ) \_\_\_\_\_  
**GROUP** ) )  
) )

**SIGNED** by **James Bonner** as registered native )  
title claimants on behalf of the **JAGERA PEOPLE** )  
**#2 NATIVE TITLE CLAIM GROUP** ) \_\_\_\_\_  
) )  
) )

**SIGNED** by **Madonna William** as registered )  
native title claimants on behalf of the **JAGERA** )  
**PEOPLE #2 NATIVE TITLE CLAIM GROUP** ) \_\_\_\_\_  
) )  
) )

**SIGNED** by **Ross Anderson** representing the )  
**UGARAPUL PEOPLE** ) \_\_\_\_\_  
) )  
) )

**SIGNED** by **Eddie Ruska** representing the )  
**YUGGERA PEOPLE** ) \_\_\_\_\_  
) )  
) )

**SIGNED by Eileen Oertel representing the )**  
**UGARAPUL PEOPLE )**  
)  
)  
)

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**SIGNED by Michelle Thomson representing the )**  
**YUGGERA PEOPLE )**  
)  
)  
)

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## SCHEDULE 1 - DICTIONARY

This Schedule contains the meanings of words and phrases shown in italics throughout the *Agreement* (refer to Clause 1.1).

"**Aboriginal Corporation**" is any corporation (including an incorporated association or the corporate trustee of a trust), prior to there being a *Native Title Body Corporate*, appointed under Clause 8 to represent the *Jagera, Yuggera and Ugarapul People* for the purposes of this *Agreement*<sup>19</sup>

"**Aboriginal Cultural Heritage**" has the same meaning as given in the *Aboriginal Cultural Heritage Act*.

"**Aboriginal Cultural Heritage Act**" means the *Aboriginal Cultural Heritage Act, 2003 (Qld)*.

"**Aboriginal Cultural Heritage Corporation**" means Jagera Daran Pty Ltd or any successor of the kind referred to in clause 9.3.

"**Aboriginal Cultural Heritage Database**" has the same meaning as given in the *Aboriginal Cultural Heritage Act*.

"**Aboriginal Cultural Heritage Register**" has the same meaning as given in the *Aboriginal Cultural Heritage Act*.

"**Aboriginal Party**" has the same meaning as given in the *Aboriginal Cultural Heritage Act*. At the *Execution Date* the *Native Title Party* is the registered native title claimant for the *Claim Area* and therefore, under Section 34(1)(a) and Section 35(1) of the *Aboriginal Cultural Heritage Act*, is also an *Aboriginal Party*.

"**Activity**" and "**Activities**" has the widest possible meaning and includes any activity (including any construction and ground disturbing activity), action, undertaking, dealing, grant, approval, consent and agreement but does not include exploration, mining, quarrying or compulsory acquisition of *Native Title*.

"**Acts Already Done**" means an *Activity* by the *Local Government* or by any *Third Party* on behalf of or for the benefit of the *Local Government*:-

- (a) done before the *Execution Date*; and
- (b) covered by one of the classes described in the Table in Clause 38.2.

"**Agreement**" means this Deed and all schedules to it.

"**Alternative Dispute Resolution**" means any method to resolve disputes alternative to litigation including mediation, case appraisal and arbitration.

"**Approved Management Plan**" means any plan or proposal prepared by or on behalf of the *Local Government* in relation to an area, *Activity* or group of *Activities* in accordance with the procedure in Schedule 11.

"**Authorised**" means authorised in the manner described in Section 251A of the *Native Title Act* or any similar provision which replaces that section.

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<sup>19</sup> An *Aboriginal Corporation* can only operate for purposes of this ILUA where there is not a *Native Title Body Corporate*.

"**Claim Area**" means all land and waters covered by the *Native Title Claim* as at the *Execution Date*.

"**Clearance Procedure**" means either one of the procedures referred to in Clause 50 and set out in Schedule 12.

"**Cleared**" means:-

- (a) an area where the *Clearance Procedure* under this *Agreement* has been completed or is deemed to be completed for an *Activity* which has a higher level of ground disturbance than the previously cleared *Activity*; and
- (b) an area where there has been a previous agreement between the *Local Government* and the *Native Title Party* or the *Aboriginal Cultural Heritage Corporation* that an *Activity* can proceed in an area for purposes of *Aboriginal Cultural Heritage*.

"**Community Interests**" means interests in relation to public access and use of certain watercourses as set out in Schedule 5.

"**Connection**" refers to the requirement for a *Successful Determination* that the *Native Title Party* establish the existence of *Native Title* in accordance with Section 223(1) of the *Native Title Act* or any similar provision which replaces that section.

"**Consultation**" means completion of the native title consultation procedure set out in Schedule 10.

"**CPI**" means the Consumer Price Index: All Groups Percentage Changes weighted average of eight capital cities published by the Australian Bureau of Statistics.

"**Determination Orders**" means orders of the Federal Court of Australia in relation to the *Native Title Claim* which constitute a determination of *Native Title* under the *Native Title Act*.

"**Established Cultural Heritage Area**" means an area of land or water for which:-

- (a) there is an entry in the *Aboriginal Cultural Heritage Register* or the *Aboriginal Cultural Heritage Database* (or any official Government record of *Aboriginal Cultural Heritage* sites which replaces the Register or Database); or
- (b) there is an entry in a *Local Government Cultural Heritage Database*.

"**Execution Date**" means the date on which the *Agreement* was signed by the last of the *Parties* to sign it.

"**Exclusive**" refers to *Determination Orders* for a *Successful Determination* which recognises *Native Title* of a kind which gives the *Jagera, Yuggera and Ugarapul People* or a *Native Title Body Corporate* rights to the possession, occupation, use and enjoyment of land or waters to the exclusion of all others.

"**Extinguishment**" means the complete extinguishment of *Native Title* at law.

"**Extinguishment Areas**" means any areas of land or waters:

- (a) which is *Freehold Land*; or
- (b) where there is clear evidence that there has been *Extinguishment*.

"**Freehold Land**" means any land or waters which, at the *Execution Date*, is subject to freehold title, but does not include any land or waters to which s.47A of the *Native Title Act* applies at the relevant time.

**"Future Acts"** has the same meaning as given in the *Native Title Act*.

**"High Impact Activity"** means anything which is covered by any of the classes of *Activities* in Schedule 8.

**"High Impact Infrastructure"** means the infrastructure referred to in Schedule 8.

**"ILUA Area"** means all of the land and waters in the area described and shown on the map marked "ILUA Area" in Schedule 2.

**"ILUA Regulation"** means *Native Title (Indigenous Land Use Agreements) Regulation, 1999*.

**"Invalid Past Act"** means a 'past act' as defined in the *Native Title Act* and an 'intermediate period act' as defined in the *Native Title Act* which was not undertaken validly under the *Native Title Act* by or for the benefit of the *Local Government* before the *Execution Date*.

**"Jagera Representatives"** those Jagera persons who are also members of the *Native Title Party* who sign this *Agreement*, both on behalf of the *Native Title Party* and as representatives of the Jagera People.

**"Jagera, Yuggera and Ugarapul People"** means all people who are members of the *Native Title Claim Group*.

**"Jagera, Yuggera and Ugarapul Person"** means any individual who is a member of the *Native Title Claim Group*.

**"Local Government"** means *Ipswich City Council* and any *Third Party* acting on the *Local Government's* behalf or for the *Local Government's* benefit.

**"Local Government Cultural Heritage Database"** means any official record held by the *Local Government* and developed with, or approved by the *Native Title Party*, an *Aboriginal Corporation*, an *Aboriginal Cultural Heritage Corporation*, or a *Native Title Body Corporate*, which contains information about the location of *Aboriginal Cultural Heritage*.

**"Local Laws"** means the local laws and local law policies of the *Local Government* and any regulations derived from the local laws.

**"Low Impact Activity"** means anything which is covered by any of the classes of activities contained in Schedule 6.

**"Low Impact Infrastructure"** means the infrastructure referred to in Schedule 6.

**"Major Disturbance"** means disturbance to land and any bed or banks below waters brought about by digging or other excavations involving the use of machinery.

**"Medium Impact Activity"** means anything which is covered by any of the classes of activities contained in Schedule 7.

**"Medium Impact Infrastructure"** means the infrastructure referred to in Schedule 7.

**"Native Title"** means native title rights and interests held by or on behalf of the *Jagera, Yuggera and Ugarapul People*.

**"Native Title Act"** means the *Native Title Act, 1993 (Clth)*.

**"Native Title Body Corporate"** means a registered native title body corporate, an agent prescribed body corporate, or a replacement prescribed body corporate as defined in the *Native Title Act* arising out of *Determination Orders* for the *Native Title Claim*.

**"Native Title Claim"** means native title determination application QUD6014/03 (Jagera People #2) as amended from time to time.

"**Native Title Claim Group**" has the same meaning as given in the *Native Title Act* in relation to the *Native Title Claim* and includes all *Jagera, Yuggera and Ugarapul Persons*.

"**Native Title Party**" means:

- (a) Kenneth Henry Bonner, Clarence William Bonner, Caroline Joyce Bonner-Bray, James Bonner and Madonna William on their own behalf and on behalf of the *Native Title Claim Group*, or such other person or persons who may from time to time be the native title claimant(s) for native title determination application QUD 6014/03 (*Jagera People #2*);
- (b) for purposes of Part 1, Part 3 and Part 5 of the *Agreement* before a *Successful Determination* and until a *Native Title Body Corporate* is appointed after a *Successful Determination* - where appropriate in the context of the *Agreement* and to the extent the law allows, any *Aboriginal Corporation* which is a party to this *Agreement* or which is nominated in the most recent *Nominated Aboriginal Corporation Notice* received by the *Local Government*;
- (c) after a *Successful Determination* and upon the *Local Government* being given *Notice* that a *Native Title Body Corporate* has been appointed – where appropriate in the context of the *Agreement* and to the extent the law allows, the *Native Title Body Corporate*; and
- (d) for purposes of Part 4 of the *Agreement* an *Aboriginal Cultural Heritage Corporation*.

"**Native Title Representative Body**" means the Queensland South Native Title Services Limited or any other native title representative body or native title services provider under the *Native Title Act* for the *ILUA Area*.

"**Nominated Aboriginal Corporation Notice**" means a written *Notice* appointing a corporate entity as either an *Aboriginal Corporation* under Clause 8 or an *Aboriginal Cultural Heritage Corporation* under Clause 9 for purposes of this *Agreement* and that is signed at the time the *Notice* is given, by each person who is an applicant for the *Native Title Claim*.

"**Non-Determination Outcomes**" means agreed outcomes to the *Native Title Claim* which are additional or alternative to *Determination Orders* and which include but are not limited to outcomes of the kind provided for in Part 3, Part 4 and Part 5 of the *Agreement*.

"**Non-Extinguishment Principle**" has the same meaning as given in the *Native Title Act*.

"**Non-Freehold Land**" means any land or waters which is not *Freehold Land*.

"**Notice**" refers to any notice given under the *Agreement* and, for clarification, Clause 18 sets out how *Notice* is given and Schedule 9 contains the template of a notice to be given for purposes of Part 3 and Part 4 of the *Agreement*.

"**Partial Extinguishment**" means the partial extinguishment of *Native Title* at law.

"**Party**" or "**Parties**" refers to the *Native Title Party* and the *Local Government*.<sup>20</sup>

"**Planning Schemes**" means the land use planning scheme of the *Local Government* and any regulations derived from the scheme.

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<sup>20</sup> Although the *Jagera Representatives*, the *Yuggera Representatives* and the *Ugarapul Representatives* are also parties to this *Agreement* in the technical sense, they are not included in this definition as the words "*Party*" and "*Parties*" are generally used through this *Agreement* in clauses where the obligations and requirements only fall on the *Native Title Party* and the *Local Government*. For clauses relevant to the *Jagera Representatives*, the *Yuggera Representatives* and the *Ugarapul Representatives* those representatives are specifically referred to.

**"Previously Disturbed"** means the relevant area had been subject to *Major Disturbance* before the *Execution Date*.

**"Previous Exclusive Possession Act"** has the same meaning as given in the *Native Title Act*.

**"Previous Non-Exclusive Possession Act"** has the same meaning as given in the *Native Title Act*.

**"Register"** and **"Registration"** means the inclusion of the indigenous land use agreement comprised by this *Agreement* as an entry in the *Register of Indigenous Land Use Agreements*.

**"Register of Indigenous Land Use Agreements"** has the same meaning as given in the *Native Title Act*.

**"Register of Native Title Claims"** has the same meaning as given in the *Native Title Act*.

**"Registration Date"** means the date on which details of this *Agreement* are entered in the *Register of Indigenous Land Use Agreements*.

**"Reserves"** means land or water dedicated as a reserve, other than a road dedicated for use by the public:

- (a) which was dedicated on or before the *Execution Date*; and
- (b) where *Native Title* had not been *Extinguished* over all of the land and water at the *Execution Date*.

**"Successful Determination"** means *Determination Orders* in relation to the *Native Title Claim* which determine that *Native Title* exists in all or part of the *Claim Area*.

**"Terminated"** means termination of the *Agreement* under Clause 16 .

**"Tenure Resolution"** means proposed changes to interests in land or waters granted or created under legislation in association with the resolution of the *Native Title Claim*.

**"Third Party"** means any person (including a corporation, the Commonwealth of Australia and the State of Queensland) who is not a party to the *Agreement*.

**"Traditional Owners"** means the persons who, as a group, hold the rights and interests set out in paragraphs (a) and (b) of section 223(1) of the *Native Title Act*. That is, in relation to an area of land and waters, the *Traditional Owners* are the persons who, as a group, hold communal, group or individual rights and interests in relation to land and waters, where:

- (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by Aboriginal people; and
- (b) the Aboriginal people, by those laws and customs, have a connection with the land and waters.

**"Ugarapul Representatives"** are persons chosen by the Ugarapul People to sign this *Agreement* along with the *Native Title Party*, on their behalf.

**"Unsuccessful Determination"** means *Determination Orders* in relation to the *Native Title Claim* which determine that *Native Title* does not exist in any part of the *Claim Area*.

**"Yuggera Representatives"** are persons chosen by the Yuggera People to sign this *Agreement* along with the *Native Title Party*, on their behalf.

## SCHEDULE 2 - PLAN OF ILUA

This schedule contains the written description of the *ILUA Area* and a plan that depicts the extent of the *ILUA Area* (refer to Clause 3).

### Description of the ILUA Area

The agreement covers all the lands and waters within the Ipswich City Council local government area covered by native title determination application QUD6014/03 Jagera People #2 (QC03/15).

### Note

#### Data Reference and source

- Agreement boundary compiled by National Native Title Tribunal based on data sourced from & used with the permission of the Department of Natural Resources and Water (Qld).
- Local Government Authorities data sourced from Public Sector Mapping Agency (Nov. 2006).
- Native title determination application QUD6014/03 Jagera People #2 (QC03/15) as accepted for registration on 11 March 2004.

#### Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Unit and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from various custodians at the time.

#### Use of Coordinates

Where coordinates are used in the description to represent cadastral or topographical boundaries or intersections with such, they are intended as a guide only. Because the custodians of cadastral and topographic data continuously recalculate the geographic position of their data base on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, NNTT (06/12/2007)

#### Plan of the ILUA Area

The plan is page 49A of this *Agreement*.

### SCHEDULE 3 – NATIVE TITLE CLAIM GROUP INTERESTS

This Schedule describes the native title rights and interests asserted by the *Native Title Claim Group* in the *Claim Area* (refer to Clause 25).

The *Native Title Claim* describes the native title rights and interests as follows:-

*"The nature and extent of the native title rights and interests claimed are the rights and interests of the common law holders to possess, occupy, use and enjoy lands and waters in accordance with and subject to their traditional laws and customs and the force and operation of laws of the Commonwealth and the State, in relation to land where there may be exclusive possession by the Jagera People.*

*In land where there is not exclusive possession the Jagera People claim the following rights:*

- (a) live and dwell on the area;*
- (b) conserve the natural resources of the area for the benefit of the common law holders;*
- (c) maintain, use and enjoy the area for the benefit of the common law holders to the extent permissible by law, that is to:*
  - (i) maintain and protect sites of significance to the common law holders and other Aboriginal people within the meaning of that term in the Native Title Act 1993;*
  - (ii) inherit, dispose of or give native title rights and interests to others provide that such persons are Aboriginal people within the meaning of that term in the Native Title Act 1993;*
  - (iii) decide who are the Jagera People, provided that such persons must be Aboriginal people within the meaning of that term in the Native Title Act 1993;*
  - (iv) regulate among, and resolve disputes between, the common law holders in relation to the rights claimed in the area;*
  - (v) conduct social, religious, cultural and economic activities on the area;*
  - (vi) exercise and carry out economic life on the area, including harvesting, fishing, cultivating and exchange of economic resources;*
- (d) conserve, use and enjoy the natural resources of the area for social, cultural, economic, religious, spiritual, customary and traditional purposes, and make decisions about, the use and enjoyment of, the area and its natural resources by the common law holders;*
- (e) make decision in co-operation with and subject to the co-existing statutory title holders rights and interests, regarding access to, and the use and enjoyment of, the determination area and its natural resources by the Jagera People according to their traditional laws and customs.*

These rights may co-exist with other statutory or common law rights in relation to some lands and waters, but in relation to USL land where there are no co-existing rights, exclusive possession is claimed."<sup>21</sup>

<sup>21</sup> This Schedule contains an extract from the *Native Title Claim* describing the asserted native title rights and interests. Although the *Native Title Claim* makes a short hand reference to the "Jagera People", in describing the *Native Title Claim Group*, the *Native Title Claim Group* actually includes all *Jagera, Yuggera and Ugarapul People*.

## SCHEDULE 4 - LOCAL GOVERNMENT INTERESTS

This Schedule describes some general categories of *Local Government* interests in the *Claim Area* and the relationship between the *Local Government* interests and any Native Title (refer to Clause 26).

### 1. Categories of *Local Government* interests

- **Property Interests** - All interests in land or waters held at law by the *Local Government* in the *ILUA Area*.  
**Examples:** Any permits to occupy, occupation licences, easements and leases which have not given rise to *Extinguishment*, etc
- **Trustee Interests** - All interests involving trusteeship by the *Local Government*, or which give rise to rights or powers of management and control by the *Local Government*, in relation to land or waters in the *ILUA Area*.  
**Example:** Dedication of reserves where the *Local Government* is the trustee.
- **Interests Under Agreements** - All interests in, or derived from, any agreement, offer or undertaking between the *Local Government* and a *Third Party* which relates to land or waters in the *ILUA Area*.  
**Examples:** Trustee lease over a reserve between the *Local Government* and a sporting club, maintenance contract for mowing and slashing in public places, etc.
- **Interests in Improvements** - All interests in infrastructure, structures, earthworks, access routes, plantings, maintained areas and improvements of any kind in or on land or waters in the *ILUA Area* including the *Local Government's* interests derived from having constructed, funded, operated, used or maintained such improvements.  
**Examples:** Constructed roads, drainage works, pipelines, parklands, recreation facilities, erosion control works, restoration and remediation works, etc.
- **Operational Interests** - All interests involving access to, or the carrying out of *Activities* on land or waters in the *ILUA Area* undertaken as part of the *Local Government's* statutory responsibility to provide for the good rule and government of its local government area.  
**Examples:** Entering land to assess compliance by any persons with *Local Laws*, carrying out erosion control, civic functions and events, etc.
- **Regulatory Interests** - All interests, including any rights, powers and functions, derived from the *Local Government's* jurisdiction and as an entity exercising rights or powers under any Law or under this *Agreement* in the *ILUA Area*.  
**Examples:** Powers in relation to land use planning and regulation under a *Local Planning Instrument*, interests under *Local Laws*, powers under legislation such as that regulating health or building matters, etc.

### 2. The relationship between *Local Government* interests and any *Native Title*.

The relationship is that:-

- (a) the *Local Government* interests (which includes the categories of interests referred to in this Schedule), continue to exist and have effect notwithstanding the existence of *Native Title*;

- (b) the *Local Government* interests and *Native Title* co-exists and will each be given full effect to the extent that each is consistent with the other; and
- (c) where in any particular instance the *Native Title*, or some aspect of *Native Title*, is not consistent with a *Local Government* interest, the *Local Government* interest prevails to the extent of the inconsistency.

## SCHEDULE 5 - COMMUNITY INTERESTS

This Schedule describes the *Community Interests* in the *ILUA Area* addressed through the *Agreement* and the relationships between *Community Interests* and any *Native Title* (refer to Clause 28).

1. Description of *Community Interests*.

The *Community Interests* in the *ILUA Area* addressed by this *Agreement* are the interests which members of the public have in accessing and using watercourses in the *ILUA Area* for sporting activities, recreation and hobbies.

The main watercourses to which these interests relate are shown on the plans in paragraph 3.

2. The relationship between *Community Interests* and any *Native Title*.

The relationship is that:-

- (a) the *Community Interests* continue to exist and have effect notwithstanding the existence of *Native Title*; and
- (b) the *Community Interests* and *Native Title* co-exist and can each be given full effect to the extent that each is consistent with the other.

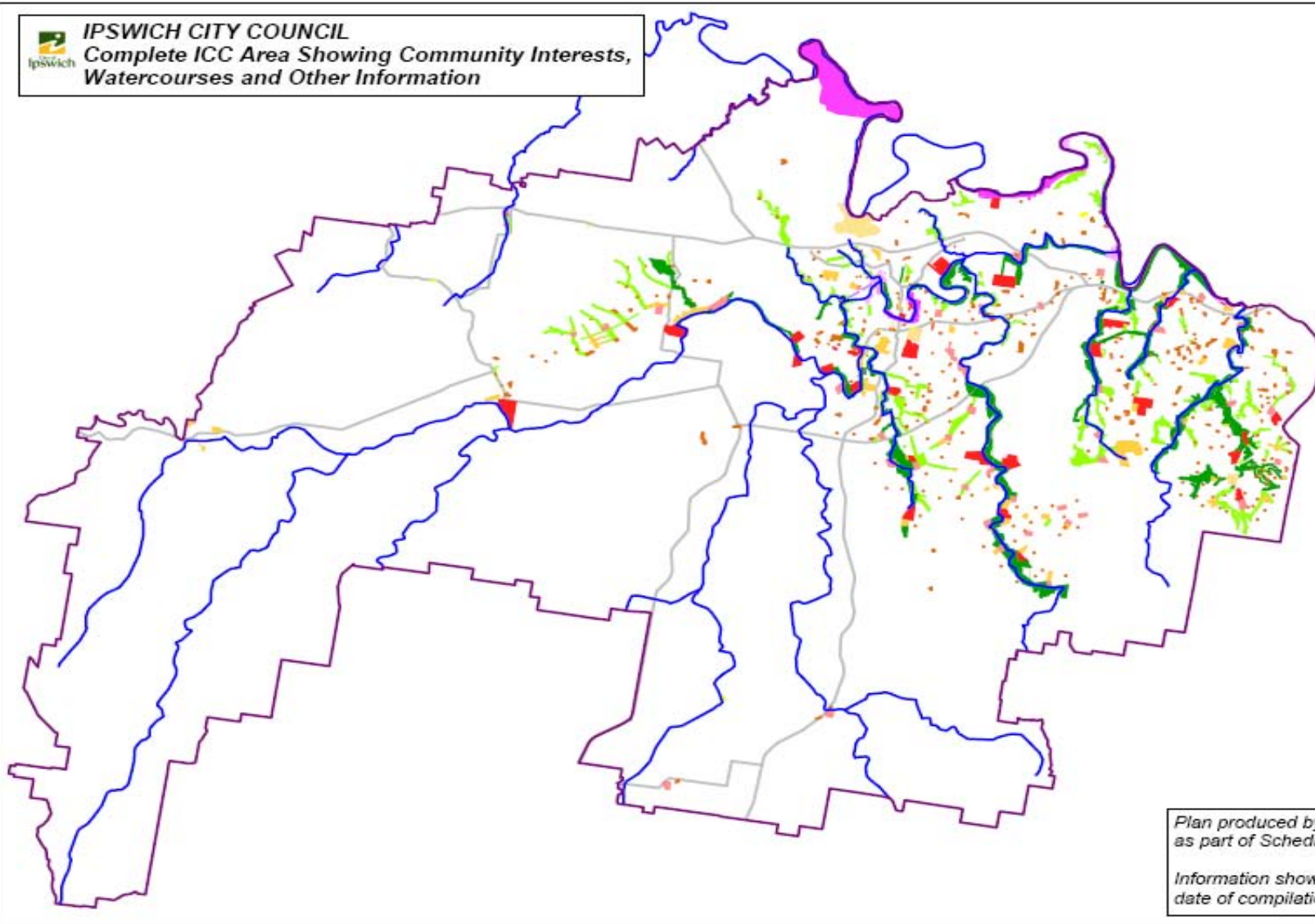
3. Plans indicating the location of areas accessed by the public.

On the following two pages are two separate plans. One plan illustrates access areas throughout the *ILUA Area* and the second plan illustrates access areas in a portion of the *ILUA Area*.



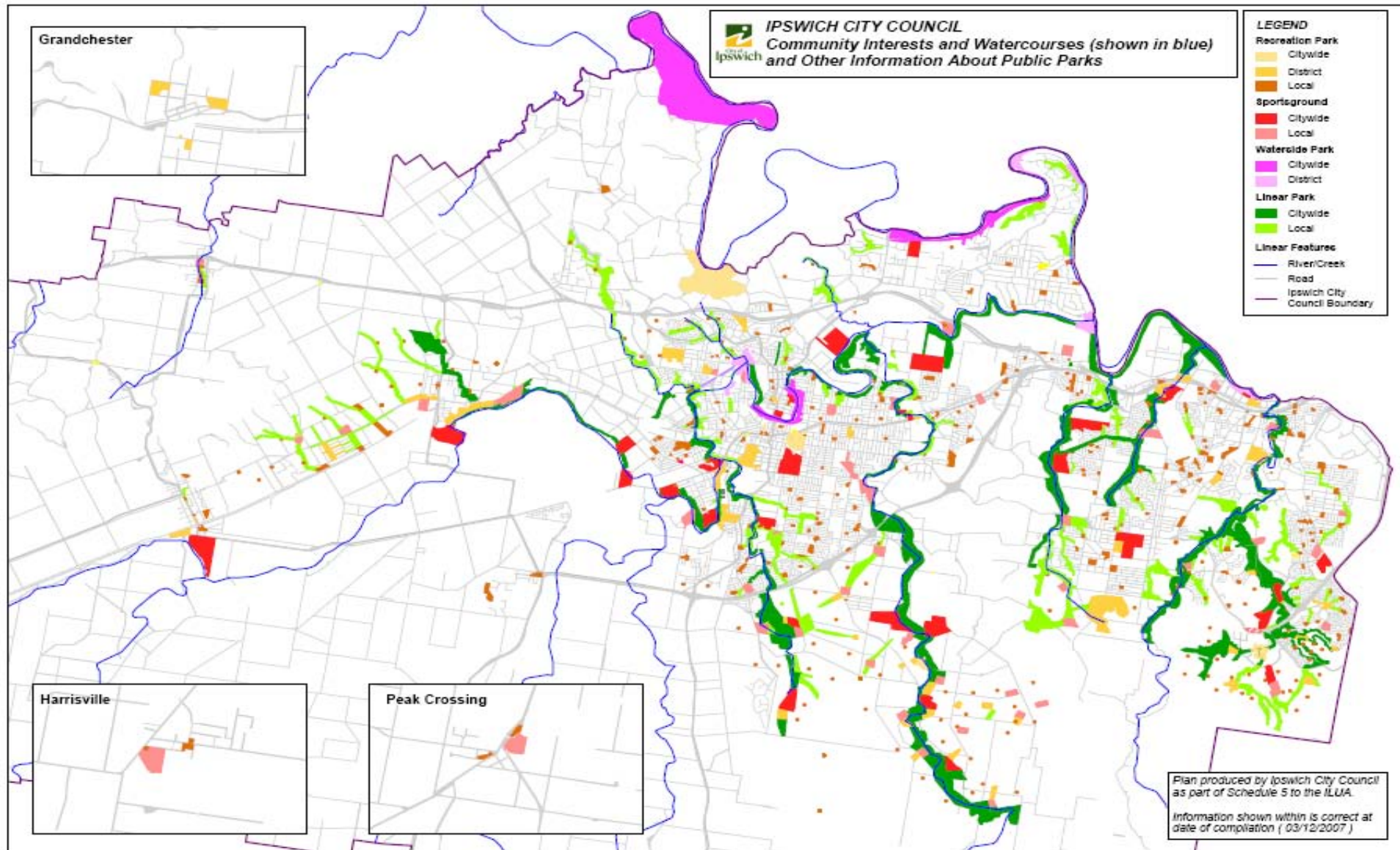
**IPSWICH CITY COUNCIL**  
**Complete ICC Area Showing Community Interests,**  
**Watercourses and Other Information**

- LEGEND**
- Recreation Park
    - Citywide
    - District
    - Local
  - Sportsground
    - Citywide
    - Local
  - Waterside Park
    - Citywide
    - District
  - Linear Park
    - Citywide
    - Local
  - Linear Features
    - River/Creek
    - Road
    - Ipswich City Council Bdy



*Plan produced by Ipswich City Council  
as part of Schedule 5 to the ILUA.*

*Information shown within is correct at  
date of compilation ( 03/12/2007 )*



## SCHEDULE 6 - LOW IMPACT ACTIVITIES

This Schedule contains classes of activities which are *Low Impact Activities* (refer to sub-clause 35.1 - Part 3 and sub-clause 48.1- Part 4).

*Activities* covered by the *Agreement* need to be assessed for compliance on an *Activity* by *Activity* basis.

For example, where a project involves multiple *Activities* (such as statutory approvals, tenure grants and construction *Activities*), each one must be assessed separately as to whether it is a *Low Impact Activity*, a *Medium Impact Activity* or a *High Impact Activity*.

Short Description	Class of Activities
Maintenance	<p>Anything which:</p> <ul style="list-style-type: none"> <li>(a) involves the maintenance, repair, protection or making safe of existing infrastructure, structures, improvements, earthworks and areas under the <i>Local Government's</i> ownership, care or control; and</li> <li>(b) does not use more than the currently used area or any adjacent area the use of which is or was necessary for, or incidental to, the construction, establishment or operation of those things.</li> </ul> <p><i>Examples</i> - Repairs to buildings, re-sealing roads and car parks, mowing parks, removing rubbish, restoring erosion.</p>
<i>Low Impact Infrastructure</i>	<p>Anything which involves the construction or establishment of infrastructure, structures, improvements and earthworks which:</p> <ul style="list-style-type: none"> <li>(a) comprises signage or fencing which does not prevent the exercise of <i>Native Title</i>,</li> <li>(b) replaces, in the same location and occupying no greater area than, previously existing infrastructure, structures, improvements and earthworks;</li> <li>(c) in relation to <i>Native Title</i> compliance under Part 3 of the <i>Agreement</i> but not in relation to <i>Aboriginal Cultural Heritage</i> compliance under Part 4 of the <i>Agreement</i>, is located wholly in an area which is a <i>Reserve</i> and is consistent with the purpose of the <i>Reserve</i>; and</li> <li>(d) in relation to <i>Native Title</i> compliance under Part 3 of the <i>Agreement</i> but not in relation to <i>Aboriginal Cultural Heritage</i> compliance under Part 4 of the <i>Agreement</i>, consists of the construction, operation, use, maintenance or repair of any of the things listed from time to time in Section 24KA(2) of the <i>Native Title Act</i>.</li> </ul> <p><i>Examples</i> - Street signs, replacing an existing sewerage treatment plant, underground water pipeline.</p>
Statutory Approvals	<p>Anything which involves, or which permits or requires, the granting, issuing or making by or to the <i>Local Government</i> of any approval, consent or permission under an Act or Regulation.</p> <p><i>Examples</i> - environmental approvals, permits under <i>Local Laws</i>.</p>

Short Description	Class of Activities
Low Impact Tenure Grants	<p>Anything which involves, or which permits or requires, the granting, issuing, making, dedicating, re-granting or renewal by or to the <i>Local Government</i> of:</p> <p>(a) an interest in land of a kind which is less than freehold title, but which does not allow or require any <i>Activity</i> that is a <i>Medium Impact Activity</i> or a <i>High Impact Activity</i>; or</p> <p>(b) an interest in land of a kind which is less than freehold title in relation to land which is a <i>Reserve</i> and where the interest is consistent with the purpose of the <i>Reserve</i>.</p> <p><i>Example</i> - Trustee lease by Council to a sporting club over a reserve, Permit to Occupy, easements</p>
Pest Control	<p>Management, control or elimination of pests.</p> <p><i>Examples</i> - Removing weeds, eradicating non-native animals.</p>
Access and Site Investigation	<p>Access and site investigation activities which do not require major excavations or earthworks.</p> <p><i>Examples</i> - Inspecting an area, surveying an area, conducting geotechnical testing, water quality testing.</p>
Emergencies	<p>Anything which is undertaken during an emergency, or in anticipation of a pending emergency, for the purpose of preventing or minimising physical harm or the threat of physical harm to persons or public property, but not activities which take place beyond the duration of the emergency.</p> <p><i>Examples</i> - Constructing a fire break or a safety barrier.</p>
Contractual Interests with <i>Third Parties</i>	<p>Anything which involves, or which permits or requires, the granting, issuing or making of a contract or agreement, so long as the contract or agreement includes a provision confirming that the <i>Clearance Procedure</i> applies to any <i>High Impact Activities</i> that are permitted or required.</p> <p><i>Examples</i> - A management agreement, maintenance contract, permit or agreement entered into under <i>Local Laws</i>.</p>
Implementing an <i>Approved Management Plan</i>	<p>Anything which involves, or which permits or requires, an <i>Activity</i> which is for, or relates to, the implementation of an <i>Approved Management Plan</i>.</p> <p><b>Note</b> - The <i>Native Title Party</i> must first have been consulted about, and the <i>Parties</i> reached consensus on, an <i>Approved Management Plan</i> as such a plan is a <i>Medium Impact Activity</i> and the <i>Approved Management Plan</i> must be developed in accordance with the procedure in Schedule 11.</p>

## SCHEDULE 7 - MEDIUM IMPACT ACTIVITIES

This Schedule contains classes of activities which are *Medium Impact Activities* (refer to sub-clause 35.3 - Part 3 and sub-clause 48.3 - Part 4)

*Activities* covered by the *Agreement* need to be assessed for compliance on an *Activity* by *Activity* basis.

For example, where a project involves multiple *Activities* (such as statutory approvals, tenure grants, and construction *Activities*), each one must be assessed separately as to whether it is a *Low Impact Activity*, a *Medium Impact Activity* or a *High Impact Activity*.

Short Description	Class of Activities
<i>Medium Impact Infrastructure</i>	Anything which is not <i>Low Impact Infrastructure</i> and which involves the construction or establishment of infrastructure, structures, improvements and earthworks:-  (a) located wholly on areas which have been <i>Previously Disturbed</i> ; and  (b) which do not require <i>Major Disturbance</i> to land or waters.
Dedication of Reserves	Anything which involves the dedication, creation or establishment of a reserve where the <i>Local Government</i> is the trustee or one of the trustees.  <i>Examples</i> - A reserve under the <i>Land Act, 1994</i> .
<i>Approved Management Plan</i>	Commencement of an <i>Approved Management Plan</i> developed in accordance with Step 1 of the procedure in Schedule 11.

## SCHEDULE 8 - HIGH IMPACT ACTIVITIES

This Schedule contains classes of activities which are *High Impact Activities* (refer to sub-clause 35.5 - Part 3 and sub-clause 48.5 - Part 4)

*Activities* covered by the *Agreement* need to be assessed for compliance on an *Activity* by *Activity* basis.

For example, where a project involves multiple *Activities* (such as statutory approvals, tenure grants, and construction *Activities*), each one must be assessed separately as to whether it is a *Low Impact Activity*, a *Medium Impact Activity* or a *High Impact Activity*.

Short Description	Class of Activities
<i>High Impact Infrastructure</i>	Anything which consists of the construction or establishment of infrastructure, structures, improvements and earthworks which are not <i>Low Impact Infrastructure</i> or <i>Medium Impact Infrastructure</i> .
Preventing the Exercise of <i>Native Title</i>	Anything which prevents the exercise and enjoyment of <i>Native Title</i> unless the <i>Activity</i> is:- a) temporary; b) undertaken for reasons of public health or public safety; or c) required by law.  <i>Example</i> - Enclosing an area by a fence or other structure which prevents the <i>Native Title Claim Group</i> from entering the area.
Disturbance to an <i>Established Cultural Heritage Area</i>	Anything which involves disturbing the surface of the ground or the bed or subsoil under waters in a location which is an <i>Established Cultural Heritage Area</i> .

## SCHEDULE 9 – COMPLIANCE NOTICE

This Schedule contains a template setting out the information and general format for the giving of *Notice* by the *Local Government* for some types of *Activities* that may affect *Native Title* and/or *Aboriginal Cultural Heritage* (refer to sub-clause 35.5 - Part 3, and sub-clause 48.5 - Part 4.)

### Native Title and Aboriginal Cultural Heritage Notice<sup>22</sup>

Note: Some italicised words and phrases are defined in Schedule 1 of the ILUA

#### To: The Jagera, Yuggera and Ugarapul People

.....  
..... (insert address)

#### 1. Purpose of Notice

This is a *Notice* for the purpose of ensuring that certain *Activities* comply, for purposes of *Native Title* and/or *Aboriginal Cultural Heritage*, with an indigenous land use agreement between Ipswich City Council and the *Jagera, Yuggera and Ugarapul People* ("the ILUA").

The *Notice* refers to  a *Single Activity* or  *Multiple Activities*. Tick relevant box.

#### 2. Category of Activities

Under the ILUA this *Notice* is given to: (only tick one box)

Inform about proposed *Medium Impact Activities* (Schedule 7 of the ILUA).

If the above box is ticked a response is generally not required unless a proposed management plan is attached and the approved management procedure detailed in Schedule 11 of the ILUA then applies.

OR

Inform about proposed *High Impact Activities* (Schedule 8 of the ILUA).

If the above box is ticked a response may be provided within 15 business days to indicate that either:

- 'Consultation' regarding 'Native Title' (Schedule 11 of the ILUA) is to be completed.
- A 'Clearance Procedure' regarding 'Aboriginal Cultural Heritage' (Schedule 12 of the ILUA) is to be completed.

Note: where there is a response to this *Notice* within the specified period, *Local Government* must take whatever measures are required under the ILUA.

#### 3. Proposed Activity

The general description of the proposed *Activities* is attached and marked A. The description should include details of:

- the nature, scope and objectives of the *Activities*;
- how the *Activities* will be performed;
- any natural resources proposed to be obtained from the area; and
- the likely impact of the *Activities* on the environment.



Attach description of the Activity.

<sup>22</sup> Through the *Consultative Committee*, the *Parties* may continue to refine this *Notice* template.

4. **Freehold or Non Freehold**

The tenure of the land or waters affected by the proposed *Activities* is:

- Freehold Land* (or other *Extinguishment Area*). **OR**
- Non-Freehold Land*. **OR**
- Both *Freehold Land* (or other *Extinguishment Area*) AND *Non-Freehold Land*.

General information about how an assessment of *Native Title* extinguishment in the *Extinguishment Area* was reached (*complete if relevant*):

.....

.....  *Attach additional relevant material.*

5. **Description of the Land or Waters**

Certain activities are proposed on, or in relation to, the following land or waters:

Lot description (if applicable): .....

Size of Lot (approximately): .....

Street address (if applicable): .....

General description of the location: .....

6. **Maps**

A map/s of the area affected by the proposed *Activities* and surrounding landscape (called the "Project Area") is attached and marked B.

Wherever possible a cadastral map and a topographical map should be attached that:

- depict the Project Area and label (if scale permits) relevant areas or features (including creeks, roads and if possible vegetation);
- clearly depict areas excluded from the Project Area (if applicable and possible);
- include a locality map; and
- contain a geographic or grid reference system (if possible including a scale bar).

 *Attach maps.*

7. **How to Respond to this Notice**

A response to this *Notice* needs to be given (under the ILUA) by (*insert date*) .....  
Any response should be in writing using the contact details referred to below.

Signed by Council Representative	..... Signature	
	..... Print Name	..... Date / / 20
Contact Details	..... Phone: Fax:	
	..... Email:	
	..... Postal address:	
	.....	

## SCHEDULE 10 - NATIVE TITLE CONSULTATION PROCEDURE

This Schedule sets out the process of consultation between the *Native Title Party* and the *Local Government* in relation to certain *Native Title* compliance matters in Part 3 of the *Agreement* (refer to sub-clause 36.2).

**STEP 1  
Assessment**

The *Local Government* assesses all *Activities* (including projects) against the Low Impact (Schedule 6), Medium Impact (Schedule 7) and High Impact (Schedule 8) categories in the ILUA including assessment of:

- whether the *Activity* is proposed for *Freehold Land* or other *Extinguishment Areas*
- nature of proposed *Activity*
- degree of impact on exercise and enjoyment of *Native Title*



**STEP 2  
Notice**

The *Local Government* gives *Notice* to the *Native Title Party* for *Medium Impact Activities* and *High Impact Activities*.



**STEP 3  
Site Inspection  
& Statement or  
Clearance**

Within 10 business days of the *Notice*, the *Native Title Party* undertakes a site inspection for all *High Impact Activities*.

Within 5 business days of the site inspection the *Aboriginal Cultural Heritage Corporation* gives the *Local Government* either:



Statement requiring native title meeting (Go to Step 4)    OR    Clearance statement (Nothing more is required)



**STEP 4  
Meeting**

The *Native Title Party* and the *Local Government* representatives meet to jointly review the *Local Government's* plans relating to the proposed *Activity* and the nature and extent of possible impacts on *Native Title*. The *Local Government* and the *Native Title Party* consider any reasonable options for avoiding or reducing those impacts.



**STEP 5  
Report  
Prepared,  
Review &  
Optional  
Meeting**

The *Local Government* prepares a draft *Native Title* management report containing recommendations for avoiding or reducing impacts. After a mutual review and if requested by the *Native Title Party* a meeting to discuss the draft *Native Title* management report, the *Local Government* adopts a final report containing recommendations.



**STEP 6  
Implementation**

The recommendations in the *Native Title* management report are implemented (e.g. reasonable design changes to minimise impacts, practical provision to allow ongoing exercise of some *Native Title* rights, landscaping to incorporate traditional food plants, signage with *Traditional Owner* recognition).

## SCHEDULE 11 - APPROVED MANAGEMENT PLAN

This Schedule sets out the procedure for completing an *Approved Management Plan* (refer to Clause 37).

From time to time, there may be strategic projects which the *Local Government* will propose for a particular area and where it would be beneficial for the *Native Title Party* to be involved early in the design stage. In such a circumstance, the *Local Government* can fulfil any related compliance procedure conditions in Parts 3 and 4 of this *Agreement* upon implementation of an *Approved Management Plan*.

The commencement of an *Approved Management Plan* is a *Medium Impact Activity* (under Schedule 7). Initially the *Local Government* must give *Notice* of its proposal to develop a plan (Step 1 of the procedure in this Schedule).

The *Native Title Party* may require provisions to be included in the *Approved Management Plan* about ongoing *Consultation* and a *Clearance Procedure* (Step 6 of the procedure in this Schedule).

When there is consensus as to the terms of an *Approved Management Plan* implementation of the plan meets *Native Title* and *Aboriginal Cultural Heritage* compliance conditions under this *Agreement*.

### **STEP 1 Notice of the Proposal**

The *Local Government* prepares background advice and a draft outline of the proposed management plan and gives to the *Native Title Party* a *Notice* under sub-clause 35.3 and sub-clause 48.3 together with a copy of the draft outline (called the "Notice of the Proposal").

### **STEP 2 Background Information & Optional Site Visit**

The *Native Title Party* is, if one is requested, given an initial site visit and provides within 20 business days from the *Notice of the Proposal*, initial background information to inform the drafting of a management plan

### **STEP 3 Draft Management Plan**

The *Local Government*, or a person on its behalf, prepares the draft management plan in relation to an area, *Activity* or group of *Activities* having regard to the requirements of this *Agreement* and any initial background information supplied by the *Native Title Party* (called the "Draft Management Plan").

### **STEP 4 Response to Draft Plan**

The *Local Government* gives a copy of the Draft Management Plan to the *Native Title Party* with an accompanying written advice (such as a letter) which:-

- (a) invites the *Native Title Party* to participate in consultations about the Draft Management Plan; and
- (b) requests that the *Native Title Party* reply in writing within no more than 10 business days stating whether it would like to participate in consultations.

### **STEP 5 Plan Approved or Further Consultation**

Where:-

(a) The *Native Title Party*:

- a. replies in the way, and within the time referred to in Step 4, that it does not want to participate; or

- b. the *Native Title Party* does not reply in the way and within the time referred to in Step 2 at all

the Draft Management Plan will be deemed to be an *Approved Management Plan*.

- (b) The *Native Title Party* replies in the way, and within the time referred to in Step 4, that it does want to participate in consultations - the *Parties* will proceed to Step 6.

---

**STEP 6  
Consultation  
Plan  
Developed**

The *Local Government* and the *Native Title Party* will consult with a view to reaching consensus about the content of the Draft Management Plan in the following ways:-

- (a) The *Local Government* and the *Native Title Party* will together develop a specific consultation plan taking into account the location, size and complexity of the content and issues addressed by the Draft Management Plan and the consultation plan will set out the actions required of each *Party* to complete the consultation and agreed timeframes for those actions.
- (b) The consultation plan will ensure that the *Parties* complete their action items (including provision of any direction, information, advice and feedback) in a timely manner.
- (c) The consultation plan will provide for a meeting or other mechanism through which consensus about the Draft Management Plan can be reached and recorded.

---

**STEP 7  
Management  
Plan  
Completed**

Where the consultation results in consensus about the content of the Draft Management Plan, the consultation procedure is deemed to be completed and it becomes an *Approved Management Plan*. This consensus is deemed to have been achieved only where:-

- a) the consensus is officially recorded in the minutes of the *Consultative Committee*; or
  - b) the *Native Title Party* provides the *Local Government* with a written *Notice* confirming that consensus has been achieved.
-

## SCHEDULE 12 - CULTURAL HERITAGE CLEARANCE PROCEDURE

This Schedule sets out the *Clearance Procedure* to be followed by the *Native Title Party* (through the *Aboriginal Cultural Heritage Corporation*) and the *Local Government* in relation to certain *Aboriginal Cultural Heritage* compliance matters in Part 4 of the *Agreement* (refer to Clause 48).

The *Clearance Procedure* for purposes of Part 4 of the *Agreement* may be either of the following:

1. The *Parties* may develop a customised procedure for addressing *Aboriginal Cultural Heritage* for particular areas or *Activities*.
2. When a customised procedure is not developed, the *Clearance Procedure* will be the *Standard Procedure* set out in paragraph 2 below.

### 1. Customised Procedure

The *Parties* may develop a customised procedure for addressing *Aboriginal Cultural Heritage* for particular areas or *Activities* (separate to the procedures in paragraph 2).

The customised procedure will be deemed to be a complete *Clearance Procedure* where a written *Notice* to that effect is provided by or on behalf of the *Aboriginal Cultural Heritage Corporation* to the *Local Government*.

*Example* - A customised procedure may be included for a particular area in an *Approved Management Plan* (Schedule 11) for that area. The *Parties* may also develop a customised procedure to determine in advance that a whole area, such as the outskirts of a township, has been *Cleared*.

### 2. Standard Procedure

A standard procedure will generally apply. The procedure is detailed in the following steps.

#### STEP 1 Assessment

The *Local Government* assesses all *Activities* (including projects) against the Low Impact (Schedule 6), Medium Impact (Schedule 7) and High Impact (Schedule 8) categories in the ILUA including assessment of:

- nature of previous use in area
- any known *Aboriginal Cultural Heritage*
- nature of proposed *Activity*
- degree of existing disturbance



#### STEP 2 Notice

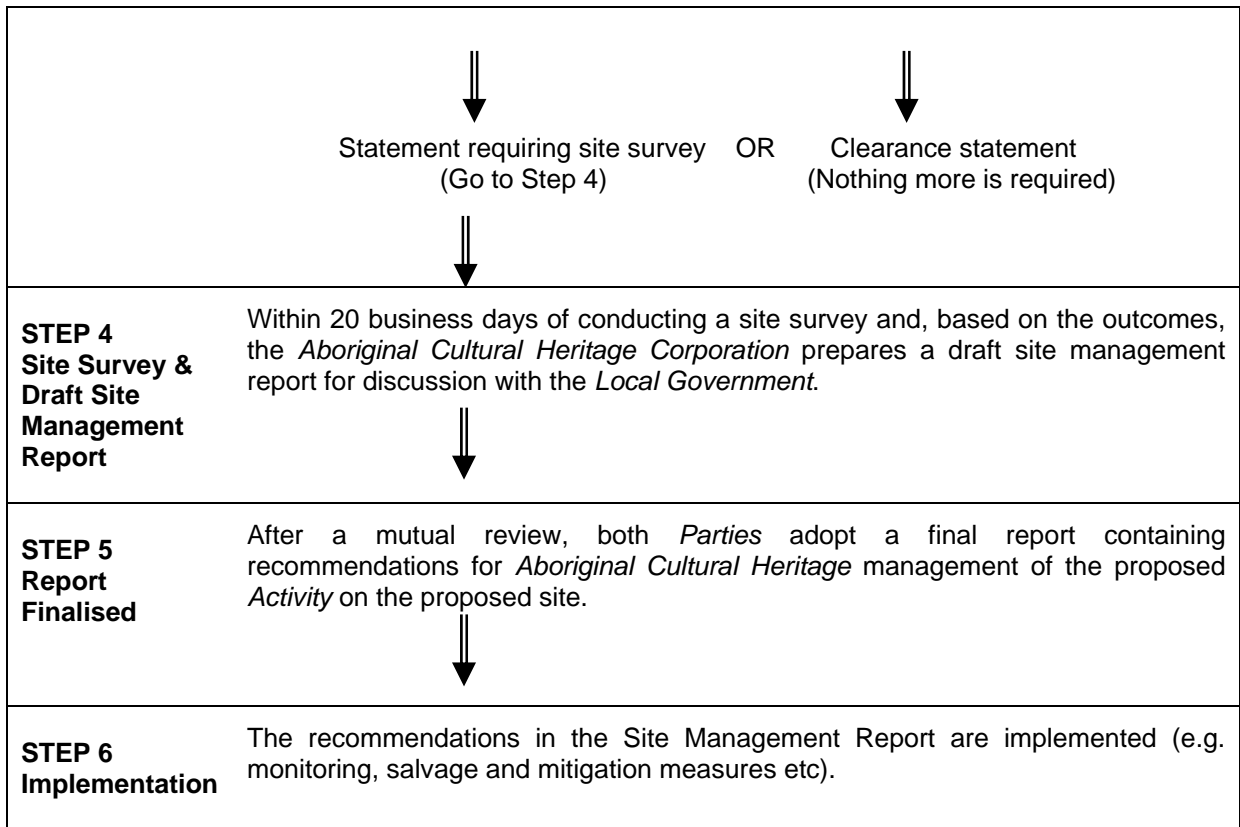
The *Local Government* gives *Notice* to the *Aboriginal Party* in accordance with Clause 49 for *Medium Impact Activities* and *High Impact Activities*.



#### STEP 3 Site Inspection & Statement or Clearance

Within 10 business days of the *Notice*, the *Aboriginal Cultural Heritage Corporation* undertakes a site inspection for all *High Impact Activities*.

Within 5 business days of the site inspection the *Aboriginal Cultural Heritage Corporation* gives the *Local Government* either:



## SCHEDULE 13 - REMUNERATION FOR CULTURAL HERITAGE AND NATIVE TITLE SERVICES

This Schedule contains the agreed remuneration arrangements between the *Parties in relation to the involvement of the Native Title Party, an Aboriginal Corporation, a Native Title Body Corporate and an Aboriginal Cultural Heritage Corporation* in the implementation of the *Agreement* including any *Consultation and Clearance Procedures* required under this *Agreement* (refer to Clause 51).

These remuneration arrangements are *additional* to the other outcomes contained in Part 5 of the *Agreement*.

The remuneration under this *Agreement* will comprise two components:-

### **Component 1 - General Retainer Amount**

In exchange for the proper performance by the *Native Title Party, an Aboriginal Corporation, a Native Title Body Corporate, an Aboriginal Cultural Heritage Corporation* and their representatives under Part 3, Part 4 and Part 5 of this *Agreement*, the *Local Government* will pay an annual general retainer amount (called "the general retainer") on the following terms:-

- (a) For the calendar year commencing 1 January 2008 the general retainer will be an amount of \$30,000.00.
- (b) For the calendar year commencing 1 January 2009 and each subsequent calendar year for which Part 3, Part 4 and Part 5 of the *Agreement* remain in effect, the general retainer amount will be increased by reference to *CPI* for the immediately preceding year for which figures are published.
- (c) The *Local Government* will pay the general retainer for each calendar year provided that the *Native Title Party, an Aboriginal Corporation, a Native Title Body Corporate, an Aboriginal Cultural Heritage Corporation* and their representatives have not failed to comply with their responsibilities under this *Agreement* on four or more recorded occasions in the previous year. The *Consultative Committee* will be responsible for recording any such failures.
- (d) Where under the immediately preceding paragraph the *Local Government* is required to pay the general retainer amount, the following arrangements for payment will apply:
  - (i) In order for the *Local Government* to make the payment, the *Native Title Party* must:
    - A. first have developed and adopted written rules (which may be changed from time to time) determining how the general retainer amount will be distributed between the Jagera People, Yuggera People and Ugarapul People; and
    - B. supply a copy of the written rules, and any changes to the written rules from time to time, to the *Consultative Committee*.
  - (ii) The *Local Government* will calculate the relevant annual amount by reference to *CPI* and advise the *Native Title Party's* representatives at the following *Consultative Committee* meeting. The annual amount will be divided into four equal quarterly payments (i.e. quarterly payments will be made in intervals of three months).
  - (iii) The *Native Title Party's* representatives at the *Consultative Committee* meeting referred to in paragraph (d) (ii) must advise the *Local Government* which entity should receive each of the quarterly payments either at that meeting (the advice to be minuted), or in writing shortly after the meeting.
  - (iv) The entity to receive each of the quarterly payments must, reasonably soon after the end of each quarter (i.e. in April, July, September and January), send a tax invoice to the *Local Government*.

- (v) The tax invoice will, where the law requires, include a GST component and the *Local Government* will be responsible for payment of the GST component.
- (vi) Each payment made by the *Local Government* in accordance with these arrangements will discharge the *Local Government's* responsibility to make the payment under this *Agreement* for the period to which it relates.
- (vii) Where the *Local Government* is required to pay the general retainer under paragraphs (a), (b) and (c) but is unable to effect payment because any of the arrangements in paragraph (d) have not been satisfied (e.g. a tax invoice is not supplied), the *Local Government* will delay the relevant payment until the outstanding arrangements have been satisfied.

### **Component 2 - Clearance Procedure Amount**

Where the *Native Title Party*, an *Aboriginal Cultural Heritage Corporation*, any *Jagera, Yuggera or Ugarapul Person* or any other person on their behalf, provides services to enable completion of a *Clearance Procedure* in any particular case, the *Local Government* will pay for those services under the terms of a separate remuneration agreement between the *Local Government* and the *Aboriginal Cultural Heritage Corporation*.

## SCHEDULE 14 - OPTION FOR COMPULSORY ACQUISITION OF NATIVE TITLE BY AGREEMENT FOR THE FREEHOLDING OF LAND

This Schedule contains a policy of the *Local Government* under which, where it needs to clear *Native Title* over a particular area for the purpose of freeholding or other purposes, it considers the option of compulsory acquisition of *Native Title* by agreement between the *Parties* (refer to Clause 54.1(a)).

1. From time to time the *Local Government* may apply for a grant of freehold title from the State of Queensland or other dealings inconsistent with the continuing existence of *Native Title* in relation to *Non-Freehold Land*
2. Where *Native Title* needs to be dealt with for purposes of a freeholding application or other inconsistent dealing, the *Parties* acknowledge that the *Local Government* may seek to deal with *Native Title* in any of the following ways:-
  - 2.1 under an indigenous land use agreement separate to this *Agreement*;
  - 2.2 by way of a lawful compulsory acquisition separate to this *Agreement*
  - 2.3 by way of a lawful compulsory consistent with this *Agreement* (particularly this Schedule); or
  - 2.4 in any other way provided for by law.
3. The *Local Government* may seek to deal with *Native Title* under paragraph 2.3 of this Schedule but where an outcome is not achieved reasonably expeditiously, may proceed to deal with *Native Title* in any other available way (including under paragraph 2.1, 2.2 or 2.4).
4. Paragraph 2.3 of this Schedule essentially provides a way in which the *Local Government* can undertake a compulsory acquisition of *Native Title* with the advance agreement of the *Jagera, Yuggera and Ugarapul People* and a means by which the *Local Government* obtains a release and discharge of any compensation liability arising out of the compulsory acquisition from the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People*.
5. The *Local Government* may decide to proceed under paragraph 2.3 of this Schedule where:-
  - 5.1 it has obtained an in-principle indication from the State of Queensland through a Government Department that it will make a freehold grant or undertake some other land dealing inconsistent with the continuing existence of *Native Title*;
  - 5.2 there is a Government policy in place which enables the *Local Government* to seek a concessional discount on any purchase price associated with the grant or the dedication on the basis that the *Local Government* deals with *Native Title*;
  - 5.3 a compulsory acquisition of *Native Title* can be lawfully undertaken; and
  - 5.4 the *Local Government* is confident that the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* are the only persons who might hold *Native Title* in the area proposed for the compulsory acquisition.
6. Where the *Local Government* decides to proceed under paragraph 2.3 of this Schedule it will:-
  - 6.1 give *Notice* to the *Native Title Party* (on behalf of the *Jagera, Yuggera and Ugarapul People*); and
  - 6.2 include in the *Notice* the following:

- (a) Details of the area proposed for the compulsory acquisition.
  - (b) The timeframe within which the *Local Government* needs to resolve any compulsory acquisition under paragraph 2.3 of this Schedule.
  - (c) The compensation package which the *Local Government* proposes to provide to the *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* which may include any one or more of the following elements:
    - i) Monetary compensation.
    - ii) The transfer of an interest in certain land (for example a transfer of freehold title in certain land from the *Local Government* to an *Aboriginal Corporation*).
    - iii) Other non-monetary benefits.
7. The *Parties* may negotiate over any of the matters set out in the *Notice* given under the immediately preceding sub-paragraph however agreement must be struck within a reasonable time between the *Parties* about the following:
- (a) That *Native Title Party* and the *Jagera, Yuggera and Ugarapul People* will not object to the compulsory acquisition.
  - (b) The terms of the compensation package.
  - (c) The release and discharge of any compensation liability incurred by the *Local Government* to the *Native Title Party* and *Jagera, Yuggera and Ugarapul People* as a result of the compulsory acquisition.
8. Where agreement is concluded under paragraph (7), any compensation liability incurred by the *Local Government* to the *Native Title Party* and *Jagera, Yuggera and Ugarapul People* is deemed to be discharged and the *Local Government* is discharged of any liability involving or relating to the compensation rights and entitlements of the *Native Title Party* and *Jagera, Yuggera and Ugarapul People* in relation to the compulsory acquisition.
9. Where agreement is not concluded the *Local Government* may proceed under any of the options in subparagraphs 2.1, 2.2, or 2.4 of this Schedule.

## SCHEDULE 15 - WELCOME TO COUNTRY PRINCIPLES AND PROCESSES

This Schedule contains the principles and processes which the *Local Government* will use to develop a "Welcome to Country" protocol to be used in conjunction with the *Native Title Party* at civic events (refer to sub-clause 54.1(b)).

These principles and processes were developed by the *Jagera, Yuggera and Ugarapul Peoples* Family Representative Committee in October 2006.

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### 1. Background

Aboriginal People have occupied Australia for thousands of years. Aboriginal people have a long history and a rich, complex and ancient culture. Many years ago prior to colonisation there are believed to have been more than 3000 *Jagera, Yuggera and Ugarapul People* occupying the country subject to the Native Title Claim *Jagera People #2* claim.

The following sub-clans are a part of the Yagara Language Bloc including the *Jagera* of the Lockyer Valley, *Cooparoojargin* of South Brisbane, *Mianjin* of Brisbane, *Bolingan* of Beenleigh, *Goobanbul* of Cleveland, *Warpai* of Ipswich, *Chepara* of Cooparoo, *Gnoolongpin* of Lytton/Wynnum, *Ugarapul* of West Ipswich and *Gatabil* of Perserverance/Withcott.

The country these groups are associated with reside within Clan Estate Areas starting from the mouth of the Brisbane River, south to the Logan River, West to the foothills of the Great Dividing Range, north to Esk (southern part) and east along the Brisbane River to Sandgate.

In previous years, Welcome Documents and agreement have not been presented to Government, community organisation, cultural groups, events and festival organisers (both Indigenous and Non-Indigenous) who work or reside within the homelands of the *Jagera, Yuggera and Ugarapul People*.

The traditions and customs of the *Jagera, Yuggera and Ugarapul People* have been passed down orally and verbal agreements between Tribes were established to continue the principle of "Speaking for Country". Today some people either misunderstand, disrespect, disregard or are ignorant of the existence of the *Jagera, Yuggera and Ugarapul People's* traditions and customs, in particular the principle of "Speaking for Country". The *Jagera, Yuggera and Ugarapul People* do not attribute blame but seek only that if there is uncertainty that it is best to ask then to offend.

To assist the public with understanding the principle of "Speaking for Country", it was agreed by the Family Representative Committee of the *Jagera, Yuggera and Ugarapul People* that an official *Jagera, Yuggera and Ugarapul People* Welcome Protocol be written for distribution.

The document is the first of a number of Protocols that will be distributed by the *Jagera, Yuggera and*

*Ugarapul People* as part of our commitment in raising awareness of the *Jagera, Yuggera and Ugarapul People* and existence of the principles that are at the heart of their traditions and customs.

It is important to acknowledge that the *Jagera, Yuggera and Ugarapul People* have a united *Native Title Claim* that is registered with the Federal Court of Australia.

Therefore if anyone is organizing an event, festival or conference within the homeland estate of the *Jagera, Yuggera and Ugarapul People*, then it is important that this Welcome Protocol is applied when considering the inclusion of Welcome to Country Speeches, Traditional Dancers, Smoking Ceremonies or Cultural Presentations that pertain to the homeland of the *Jagera, Yuggera and Ugarapul People*.

## **2. Respecting Traditional Custodians**

### **(a) Traditional Custodians**

Traditional custodians is a term often used to refer to the origin Aboriginal inhabitants of an area, who have inherited the traditions and customs associated to that area and are imbued with the custodial responsibility of continuing those traditions and customs and well as the management of sites and the environment.

Today the *Jagera, Yuggera and Ugarapul People* are the descendants of the original Aboriginal inhabitants and are therefore the traditional custodians. The *Jagera, Yuggera and Ugarapul People* continue to maintain their spiritual and cultural connection to the land and waterways, as well as maintaining the continuance of the stories of the ancestors within their homeland estate.

### **(b) Elders**

Traditionally an Elder is one of those selected through initiation and ceremony to possess certain aspects of the Lore and are responsible to the Lore Men or Women who were the keepers and espousers of the principles inherited from the Creator spirits and country.

Due to the fact that a large percentage of the initiation procedures required for preparing a person for the responsibility of Lore have not been retained, some aspects of what is required remain with the present *Jagera, Yuggera and Ugarapul People*, but the extensive preparation and the length of time need is not continued as many sites have been destroyed and some initiation must be undertaken outside of the *Jagera, Yuggera and Ugarapul People's* Homeland Estate. It is not known if neighbouring Tribes still practice the initiation ceremonies required for Lore.

Another factor effecting the application of this form of initiation is the reality that many *Jagera, Yuggera and Ugarapul People* are required to find employment and are not able to take 3 months off work to undergo initiation. Preparation can begin when a person has fulfilled all the requirements of every stage of initiation. There are age determined initiations, but very few progress through to the position of Lore Man or Woman.

To day an Elder is usually considered to be the person who is part of the eldest living generation who has considerable knowledge of the principles for country. Today an Elder is looked up to by the other members of the Clan/s as providing guidance on cultural issues.

In order to maintain the passing on of information pertaining to the Lore and Laws of our society and country, the Elder now occupies both the Elder responsibilities and the responsibilities of Lore Men/Women.

### **(c) Historical Context**

Throughout the previous 80 years many people were forcibly removed from their own Homeland Estates and contained on mission sites within the *Jagera, Yuggera and Ugarapul People's* collective Homeland Estate. Some of the people living within that Homeland Estate are at present Aboriginal and Torres Strait Islander members of our community who live here by choice.

Both the historical and present circumstances and choices are acknowledged by the *Jagera, Yuggera and Ugarapul People* and we recognise that many bring their cultural understanding and practices with them. As a result there are Elders who are people who have historical connection to the area and are recognised by the Aboriginal and Torres Strait Islander community residing within the boundaries of the Homeland Estate of the *Jagera, Yuggera and Ugarapul People*.

Currently there are over 13,000 Aboriginal and Torres Strait Islander persons living within the Brisbane and

Ipswich areas. It is therefore important to recognise the Traditional Custodians with respects to their homelands and culture so as to not impact upon their rights or perpetuate displacement.

Due to the standing and rights of the Traditional Custodians with respect to their homelands it is also important to ensure that there is not a misconception about cultural practices and significant cultural symbols, as Aboriginal People are not a homogenous group and are different Nations with different languages and symbology (included in artwork and body markings).

Consulting with the Traditional Custodians on Welcomes, significant ceremonies and other cultural events will support us in preserving our Laws and Lore and help us to promote awareness and understanding among the broader community about the *Jagera, Yuggera and Ugarapul People* and their Homeland Estate.

### 3. Significant Ceremonies

#### (a) Welcome to Country

A 'Welcome to Country' or 'Traditional Welcome' is the responsibility of the Traditional Custodians of the area in which a Welcome is proposed to take place.

Where a Welcome is being considered at a major community, government or public event the Traditional Custodians are the first to be consulted.

A Welcome is an opportunity for the Traditional Custodians to apply the "Speaking for Country" principle. In the past this was not recognised and the Ancestors of the present *Jagera, Yuggera and Ugarapul People* did not have the opportunity to welcome the newcomers to their homelands.

The following procedure is provided to guide the user of this protocol.

- a) A Welcome to Country, Traditional Welcome or Opening Speeches undertaken within the Homeland Estate of the *Jagera, Yuggera and Ugarapul People* must be delivered by a member of the *Jagera, Yuggera and Ugarapul People*.
- b) The individual requested to undertake the Welcome or Opening Speech must be recognised by the *Jagera, Yuggera and Ugarapul People's* Native Title Family Representatives Committee.
- c) The *Jagera, Yuggera and Ugarapul People's* Native Title Family Representative Committee is to be contacted prior to the activity or events scheduled opening
- d) Where the event is a major statewide, regional, interstate or international event, the *Jagera, Yuggera and Ugarapul People's* Native Title Family Representative Committee must be contacted well in advanced (2 months). Where the event or activity has been organized by a person/company that did not have knowledge of this protocol then a minimum of 48 hours is considered acceptable.
- e) It is unacceptable that a member of the organisation or company coordinating the event/activity undertake the Welcome to Country, or that a person of Aboriginal descent undertake the Welcome to Country other than a *Jagera, Yuggera and Ugarapul Person* approved by the *Jagera, Yuggera and Ugarapul People's* Native Title Family Representative Committee.
- f) The person or organisation coordinating the event/activity understands that a Welcome to Country is a service and fees are attached. This must be provided for when organizing the event/activity.

For further information please contact Eddie Ruska on 0438772199 or (07) 38160311.

#### (b) Acknowledgement of Country

An Acknowledgement of Country is where other people acknowledge and show respect to the Traditional Custodians of the land on which the event is taking place.

An acknowledgement is a sign of respect and should be conducted only after the *Jagera, Yuggera and Ugarapul Elder* (or nominated person) has given the Welcome to Country.

An acknowledgement can be undertaken in place of a Welcome to Country at smaller community events, internal organizational workshops or meetings.

An acknowledgement is not to be used to replace a Welcome to Country, except in instances where the event/activity is being undertaken in an area where an overlap occurs and each registered native title claim group is invited to participate but there is contention.

### **(c) Traditional Dancing and Cultural Performances**

The cultural knowledge passed down to the descendants of the *Jagera, Yuggera and Ugarapul People* is still very rich and active. They consider their culture to be a living culture and will continue to pass down to generations to come.

Traditional Welcome to Country performances through song and dance, didgeridoo playing, smoking ceremonies and welcome songs can only be conducted by the Yuggera Aboriginal Dancers who are officially recognised by the *Jagera, Yuggera and Ugarapul People's* Native Title Family Representative Committee as Jagera, Yuggera and Ugarapul Dancers (called the Nunukul Yuggera Aboriginal Dancers) authorized to perform Welcome to Country song, dance, didgeridoo and smoking ceremonies within the Homeland Estate of the *Jagera, Yuggera and Ugarapul People*.

The authorized Yuggera Aboriginal Dance Troupe will be contacted at least 48 hours prior to cultural activities, festivals, conference, events or functions within the relevant venue or exported from or via the relevant organisation or department.

At no time will a selected group or member from the relevant organisation or department conduct a Welcome to Country, cultural performance or Opening in the form of song, dance, didgeridoo or smoking ceremony or any other form of cultural performance.

The relevant organisation understands that there is a fee for service and will pay the agreed fee via arrangement with the authorized Yuggera Aboriginal Dancers.

The culture of the *Jagera, Yuggera and Ugarapul People* needs to be maintained and Elders, Performance Groups and artists can perform only after approved *Jagera, Yuggera and Ugarapul People* conducts Ceremony first. Other groups and individuals will then be invited to speak by a Traditional Owner.

In the past other dance groups have performed on our country without the prior consensus of the *Jagera, Yuggera and Ugarapul People*. Further, particular dance groups and performers have not only been disrespectful by doing this, but have performed culture within our country under the influence of Drugs and Alcohol. This will definitely not be tolerated. As mention there is a recognised dance group of the *Jagera, Yuggera and Ugarapul People*, known as the Nunukul Yuggera Aboriginal Dancers. The Nunukul Yuggera Aboriginal Dancers are the authorized dance group recognised to perform at Welcome to Country and official ceremonies.

For contact details for the Nunukul Yuggera Aboriginal Dancers is Mr. Eddie Ruska (Manager) 0438772199 or (07) 38160311.

## **4. Conclusion**

Finally, the *Jagera, Yuggera and Ugarapul People* and *Jagera, Yuggera and Ugarapul People's* Family Representatives Committee understand the struggle that Aboriginal People have experienced in the past and in many instances the struggle still continues to this day and extend their welcome to the Aboriginal and Torres Strait Islander people living within their Homeland Estate.

The *Jagera, Yuggera and Ugarapul People* extend their respects to the Elders and leaders of the Aboriginal and Torres Strait Islander community and thank you for respecting and supporting the traditions and customs of the *Jagera, Yuggera and Ugarapul People* as the traditional owners and custodians of the *Jagera, Yuggera and Ugarapul People's* Homeland Estate.