

RECITALS:

Background to native title claims and Ord Stage 2 project

- A. Since the 1960's, the State has developed land in the East Kimberley region of Western Australia for the purposes of the Ord River irrigation project. This has included the damming of the Ord River to form Lake Kununurra and Lake Argyle, the establishment of the town of Kununurra, and the development of approximately 14,000 hectares of farm land.
- B. These developments have had the effect of extinguishing native title rights and interests of the MG People. The MG People have not been compensated for such extinguishment, nor for the other effects of such development on them.
- C. The MG People and others have lodged two applications for determinations of native title over land and waters in the East Kimberley.
- D. In respect of the first of those applications, on 9 December 2003, following years of litigation in the Federal Court and the High Court, the Full Federal Court made the MG#1 Determination. The MG#1 PBC is the registered native title body corporate in respect of the MG#1 Determination and was entered on the Register of Native Title on 31 August 2005 as the registered native title body corporate for the MG#1 Determination Area.
- E. The MG#4 Claim is the second of those applications. It has been entered on the Register of Native Title Claims and, consequently, the MG#4 Claimants have been registered as the native title claimants in relation to their claim area. On the basis of the information provided to the State by the MG#4 Claimants, the State has agreed to negotiate in good faith with a view to agree a consent determination under section 87 of the NTA in respect of the MG#4 Claim.
- F. The town of Kununurra and the Ord Stage 1 Farm Area are within the ILUA Area and are not subject to a native title claim, but are surrounded by and adjoin areas that are the subject of the MG#1 Determination and the MG#4 Claim.
- G. The State wishes to undertake the Ord Stage II project to expand the Ord River irrigation project. This includes the development of the M2, Green Swamp, Mantinea, Packsaddle and Ord East Bank and Ord West Bank areas for irrigated agriculture and associated purposes, and the development of additional residential commercial and industrial land in the Mantinea area and in and around Kununurra.

History of the negotiations

- H. The State and the MG People have engaged in various discussions about the Ord Stage II project over several years. In September 2003, the State and the KLC on behalf of the MG People commenced negotiation of the Ord Global Negotiations Framework Agreement. That Agreement, signed in May 2004, provided for a process of negotiation about the effect of the Ord River irrigation project on the MG People as documented in the ASEIA Report, and about native title and Aboriginal heritage approval for the Ord Stage II project.
- I. On 15 February 2004, pursuant to section 29 of the NTA and section 170 of the LAA, the State issued a notice of intention to take interests, including any native title rights and interests, in the area subject to the section 29 notice.
- J. On 15 February 2004, pursuant to sections 24MD(6A) and (6B) of the NTA and section 170 of the LAA the State issued notices of intention to take interests,

including any native title rights and interests, in the area the subject of the section 24MD(6B) notice.

- K. On 28 December 2004, pursuant to section 29 of the NTA and section 170 of the LAA the State issued notices of intention to take interests, including any native title rights and interests, in the area the subject of that additional section 29 notice.
- L. The compulsory acquisition of the interests in the land and waters the subject of the section 29 notice, the additional section 29 notice and the section 24MD(6B) notice including any native title rights and interests, is authorised by relevant orders of the Minister for Lands under section 165 of LAA.
- M. The MG#1 Determination includes land within the area subject to the section 29 notice and the section 24MD(6B) notice.
- N. The MG#4 Claim includes land within the area subject to the section 29 notice and the additional section 29 notice.
- O. If the compulsory acquisition of the interests in the areas subject to the section 29 notice and the additional section 29 notice, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the NTA and the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(iii) of the NTA.
- P. If the compulsory acquisition of the interests in the area subject to the section 24MD(6B) notice, including any native title rights and interests, affects native title, it will be a future act which passes the freehold test in Part 2 Division 3 of Subdivision M of the NTA to which sections 24MD(6), (6A) and (6B) apply.
- Q. In accordance with Part 2 Division 3 Subdivision P of the NTA, negotiations in good faith in respect of the compulsory acquisition of any native title rights and interests in the areas subject to the section 29 notice and the additional section 29 notice have been conducted between the State, CPC Parties, Green Swamp Parties, the MG#4 Claimants and the MG#1 PBC (and the MG#1 Claimants prior to the determination of the MG#1 PBC as a registered native title body corporate) under the Ord Global Negotiations Framework Agreement and under the December 2004 Ord Global Negotiations Finalisation Agreement.
- R. In November 2004 the State, LandCorp, KLC, MG People, CPC and the Green Swamp Parties signed the Ord Global Negotiations Memorandum of Understanding. This deed and the Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord) are the final agreements contemplated by that Memorandum of Understanding.
- S. On 26 July 2005 the MG#1 PBC was determined by the Full Federal Court of Australia to be the prescribed body corporate in relation to the MG#1 Determination and to act as trustee on behalf of the MG#1 Native Title Holders.
- T. On 31 August 2005 the MG#1 PBC was registered as a registered native title body corporate.

Area subject to section 24MD(6B) notice

- U. In accordance with the intent of the Ord Global Negotiations Framework Agreement, no objections to the compulsory acquisition of native title rights and interests in the area subject to the section 24MD(6B) notice were lodged in accordance with section 24MD(6B)(d) of the NTA; and the State has consulted with the MG#4 Claimants and

the MG#1 PBC (and the MG#1 Claimants prior to the determination of the MG#1 PBC as a registered native title body corporate) about the compulsory acquisition of native title rights and interests in the area the subject of the section 24MD(6B) notice.

Section 31 agreement

- V. The Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord) executed contemporaneously to this deed constitutes an agreement for the purposes of section 31 of the NTA in which the MG#4 Claimants and the MG#1 PBC agree to the compulsory acquisition of any and all of the native title rights and interests in the areas subject to the section 29 notice and the additional section 29 notice, and the conferring of rights and interests in relation to the those areas in accordance with this deed. In some parts of those areas, the compulsory acquisition may only take place if this deed is not registered as an Indigenous Land Use Agreement as referred to in recital W within nine (9) months of execution of this deed.

Indigenous Land Use Agreement (Area Agreement)

- W This deed is intended to be an Indigenous Land Use Agreement Area Agreement under Part 2 Division 3 Subdivision C of the NTA in respect of the ILUA Area. In some parts of the ILUA Area, native title is surrendered and extinguished. In other parts of the ILUA Area (including the New Conservation Areas), interests can be granted and other acts can be done subject to the non-extinguishment principle.

Benefits

- X The State has agreed to provide the MG People with benefits, including payments of money, funding for an Ord Enhancement Scheme, joint management through an interim reserve and subsequent freehold in the New Conservation Areas, joint management of Reserve 31165, land in the Ord Stage II development areas, land in Portion of Former Kununurra Lot 239, the Kununurra Additional Acquisition Area and Yardungarrl and other community living areas, in accordance with this deed
- Y. Carlton Hill is the lessee of Carlton Hill Pastoral Lease, and Crosswalk is the lessee of Ivanhoe Pastoral Lease. The CPC Parties have agreed to surrender some land from their pastoral leases to facilitate the provision by the State of the benefits referred to in recital X, and have agreed to provide other benefits under this deed. This deed also resolves the native title issues in respect of the CPC Freehold Area as contemplated by the Land Exchange Agreement, with the result that the State can grant freehold title to CPC in respect of the CPC Freehold Area in exchange for Carlton Hill and Crosswalk surrendering those parts of their pastoral leases which are needed for the Ord Stage 2 project.

Note: The Ningbing East Area, the Ningbing West Area and some of the CPC Freehold Area fall within Carlton Hill Pastoral Lease. Insofar as this deed deals with other areas that fall within current pastoral lease land, those areas fall within the Ivanhoe Pastoral Lease.

Settlement of compensation issues

- Z. The Minister for Lands on behalf of the State has agreed to the transfer of interests in land in accordance with this deed by way of exchange for native title under section 11 of the LAA and compensation for the acquisition of native title under sections 168, 169 and 212 of the LAA.

AA. The benefits under this deed constitute full and final settlement for the extinguishment and impairment of native title by acts done under or in accordance with this deed, and for past extinguishment of native title in respect of the land and waters the subject of the ILUA Area. This deed also constitutes the State's response to the ASEIA Report, dealing with the effects of the Ord River irrigation project on the MG People as referred to in recital B.

Aboriginal heritage

BB. This deed also deals with Aboriginal heritage issues in relation to the Ord Stage 2 project.