

PART 2 – CONSENTS TO FUTURE ACTS

Notes:

- (1) *There are, broadly speaking, three different aspects to this part:*
 - (a) *in the ILUA (Surrender - Third Party) Area, the State may grant freehold or leases (which are or may be 'future acts') and, upon such grants native title is surrendered and extinguished. The ILUA (Non Extinguishment) Area includes areas that may eventually become parts of the ILUA (Surrender – Third Party) Areas by the State granting freehold or leases. As the State grants any freeholds or leases in the areas subject to clause 12.2(1) whereby native title is surrendered and extinguished there will be a corresponding reduction in the extent of the ILUA (Non Extinguishment) Area. Native title may also be surrendered in the area of the road within the Packsaddle Road Area;*
 - (b) *in the ILUA (Surrender - MG) Area, the State may grant freehold for the benefit of the MG People (which are or may nevertheless be 'future acts'), and upon such grants native title is surrendered and extinguished,*
 - (c) *in the ILUA (Non-extinguishment) Area, the State may grant or create a number of different interests in land (which are or may be 'future acts'), and the 'non-extinguishment principle' (defined in the NTA) will apply. The ILUA (Non Extinguishment) Area includes areas that may eventually become parts of the ILUA (Surrender – Third Party) Areas by the State granting freehold or leases under clause 12.2(1). As the State grants any freehold or leases in the areas subject to clause 12.2(1) there will be a corresponding reduction in the extent of the ILUA (Non Extinguishment) Areas.*
- (2) *Some of those areas overlap. For example, some land is the subject of the ILUA (Surrender - Third Party) Area and the ILUA (Non-extinguishment) Area. This is because a non-extinguishing act may be done in the overlap area before any surrender of native title, and because native title may never actually be surrendered in the whole of the (Surrender - Third Party) Area because the surrender is conditional upon certain things happening (e.g. the State granting a lease or freehold).*

12. SURRENDER OF NATIVE TITLE

12.1 No Right to Negotiate

- (1) Part 2 Division 3 Subdivision P of the NTA does not apply in relation to anything done under this clause 12.
- (2) For the avoidance of doubt, none of the other procedural requirements in Part 2 Division 3 (other than Subdivisions C and E) of the NTA apply in relation to anything done under this clause 12.

12.2 Surrender of native title for third party grants

- (1) The Parties consent to the State transferring or granting to any person (including the State, LandCorp or any instrumentality or agency of the State) a freehold title or lease in any part of the following areas ("*ILUA (Surrender - Third Party) Area*") for the following purposes:

- (a) the M2 Maximum Farm Area (not including the M2 Extinguished Area) - for agriculture;
- (b) the Green Swamp Acquisition Area and the Green Swamp Additional Acquisition Area - for agriculture;
- (c) the Ord West Bank Development Area except the Old Station Billabong Buffer Area, the Ord West Bank Special Buffer Area A and the Ord West Bank Special Buffer Area B - for agriculture;
- (d) the Ord East Bank Acquisition Area - for agriculture;
- (e) the Packsaddle Agriculture Area - for agriculture;
- (f) the Mantinea ~~Acquisition~~ Development Area (not including the area of Reserves 1061 and 18810) - for agriculture; and for residential, rural residential, commercial and industrial purposes and associated purposes;
- (g) the Kununurra Additional Acquisition Area - for residential, commercial and industrial purposes and associated purposes;
- (h) the Government Land Acquisition Area - for government purposes (including the construction, maintenance and use of public works as defined in the *Public Works Act 1902* (WA)) and associated purposes; and
- (i) the CPC Freehold Surrender Area and reserve 1166 - for the transfer of freehold title to the CPC Freehold Area to CPC.

Note: These areas are depicted on Map 2B in Schedule 2.

- (2) Upon a transfer or grant in accordance with clause 12.2(1) native title is surrendered and extinguished in the land and waters the subject of the transfer or grant.
- (3) The State must give notice to the MG Corporation of any transfer or grant and consequent surrender of native title under this clause 12.2.

Note: Any failure to give such notice would not invalidate the transfer or grant or affect the surrender of native title.

12.3 Surrender of native title by transfer to MG Corporation

- (1) The Parties consent to the State transferring to the MG Corporation freehold titles in any parts of the following areas:
 - (a) Packsaddle Freehold Area;
 - (b) East Kununurra Additional Area; and
 - (c) Portion of Former Kununurra Lot 239

Note: The areas which make up the ILUA (Surrender - MG) Area are depicted on Map 2C in Schedule 2.

- (2) Upon a transfer in accordance with clause 12.3(1) native title is surrendered and extinguished in the land and waters the subject of the transfer.

12.4 Surrender of native title in the Packsaddle Road Area

- (1) The Parties consent to the construction by any person of a road and associated infrastructure within a corridor up to 40 metres wide within the Packsaddle

Road Area to be nominated in writing by the State to the MG Corporation prior to commencement of construction.

- (2) Prior to the nomination under clause 12.4(1) the State shall:
 - (a) consult with the MG Corporation regarding the proposed alignment of the road and associated infrastructure within the Packsaddle Road Area; and
 - (b) advise the MG Corporation in writing of the proposed alignment of the road and associated infrastructure within the Packsaddle Road Area.
- (3) Upon the nomination of the corridor in accordance with clause 12.4(1), native title is surrendered and extinguished in the area of the corridor.

13. NON-EXTINGUISHING ACTS TO WHICH SECTION 24KA WOULD OTHERWISE APPLY

13.1 Non-extinguishment principle applies

The non-extinguishment principle applies to acts done under this clause 13, and to the exercise of rights or obligation created by acts done under this clause 13.

13.2 No Right to Negotiate

- (1) Part 2 Division 3 Subdivision P of the NTA does not apply in relation to anything done under this clause 13.
- (2) For the avoidance of doubt, none of the other procedural requirements in Part 2 Division 3 (other than Subdivisions C and E) of the NTA apply in relation to anything done under this clause 13.

13.3 Infrastructure Within Ord Irrigation Scheme Area

- (1) Except in relation to any land the subject of paragraph 9.1 (exclusive possession) of the MG#1 Determination, ~~T~~the Parties consent to the State doing acts under this deed within the Ord Irrigation Scheme Area which would otherwise be the subject of subsections 24KA(1), (1A), (2), (3) and (4) of the NTA for the purposes of or associated with:
 - (a) the development of the M2 Development Area, the Green Swamp Acquisition Area and the Green Swamp Additional Acquisition Area and the Green Swamp Extinguished Area, the Mantinea Development Area, the Ord West Bank Development Area, the Ord East Bank Acquisition Area or the Packsaddle Acquisition Area for agriculture;
 - (b) the development of the Kununurra Additional Acquisition Area and the Mantinea Development Area for residential, commercial and industrial purposes;
 - (c) the development of the Government Land Acquisition Area for government purposes; and
 - (d) the grant or transfer of freehold in the CPC Freehold Area to CPC, and that such acts will be valid.
- (2) Except in relation to clause 13.3(3)(b), prior to the doing of any act under clause 13.3(1) the State shall:
 - (a) notify the MG Corporation of the act;
 - (b) provide the MG Corporation with 20 Business Days to provide comments to the State in relation to the doing of the act; and
 - (c) comply with clause 56.
- (3) Without limiting clause 13.3(1), the Parties acknowledge and agree that, notwithstanding the existence of native title, the State may:
 - (a) drill wells or bores in the Ord Irrigation Scheme Area for the purposes of geotechnical or hydrological investigations; and

- (b) conduct any other examination or survey under section 34 of the LAA within the Ord Irrigation Scheme Area.

14. NON-EXTINGUISHING ACTS TO WHICH PART 2 DIVISION 3 SUBDIVISION P OF THE NTA WOULD OTHERWISE APPLY

14.1 Non-extinguishment principle applies

The non-extinguishment principle applies to acts done under this clause 14, and to the exercise of rights or obligation created by acts done under this clause 14.

14.2 No Right to Negotiate

- (1) Part 2 Division 3 Subdivision P of the NTA does not apply in relation to anything done under this clause 14.
- (2) For the avoidance of doubt, none of the other procedural requirements in Part 2 Division 3 (other than Subdivisions C and E) of the NTA apply in relation to anything done under this clause 14.

14.3 Non-extinguishing transfers to MG Corporation

- (1) The Parties consent to the State transferring to the MG Corporation freehold titles in the following parts of the ILUA (Non-extinguishment) Area:
 - (a) the M2 Development Area (not including the M2 Extinguished Area) in accordance with clause 31;
 - (b) the Ord West Bank Development Area in accordance with clause 33;
 - (c) the Mantinea Development Area (not including the area of Reserves 1061 and 18810) in accordance with clause 32;
 - (d) Geeboowama CLA on Deposited Plan 35249, Lot 923;
 - (e) Janama Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 925;
 - (f) Yuna Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 926;
 - (g) Munthanmar CLA on Deposited Plan 35949, Lot 928;
 - (h) Jimbilum CLA on Deposited Plan 26369, Lot 859;
 - (i) Yirrallalem 1 CLA on Deposited Plan 35245, Lot 936;
 - (j) Yirrallalem 2 CLA on Deposited Plan 35246, Lot 937; and
 - (k) subject to clause 43 8, Wesley Springs CLA on Deposited Plan 36331.

Notes:

- (1) *Areas (a) to (c) as depicted on Map 2A in Schedule 2.*
- (2) *Areas (d) to (k) (CLAs) as depicted on Map 2 and Map 13 in Schedule 2.*
- (2) The Parties consent to the State transferring to Wirrum Aboriginal Corporation the Bell Springs CLA and easement access to Bell Springs CLA on Deposited Plan 35250, Lot 930.
- (3) The Parties consent to the State transferring to the MG Corporation easement access in the following parts of the ILUA (Non-Extinguishment) Area:
 - (a) easement access to Geeboowama CLA on Deposited Plan 35249, Lot 923;

- (b) easement access to Janama Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 925;
 - (c) easement access to Yuna Springs CLA (to the extent it is not within reserve 1063) on Deposited Plan 35248, Lot 926;
 - (d) easement access to Munthanmar CLA on Deposited Plan 35949, Lot 928;
 - (e) easement access to Jimbilum CLA on Deposited Plan 26369, Lot 859;
 - (f) easement access to Yirrallalem 1 CLA on Deposited Plan 35245, Lot 936; and
 - (g) easement access to Yirrallalem 2 CLA on Deposited Plan 35246, Lot 937.
- (4) The Parties consent to the State transferring to the MG Corporation freehold titles in the New Conservation Areas.

14.4 Other acts within the ILUA (Surrender - Third Party) Area

Note. The purpose of creating these reserves is to provide for access to the areas referred to in clause ~~12.1~~ 12.2 (surrender of native title for third party grants) prior to when native title is surrendered and extinguished by the transferring or granting a freehold title or lease under clause ~~12.1~~ 12.2 (surrender of native title for third party grants).

- (1) The Parties consent to the State creating reserves in the areas referred to in clause 12.2(1) for the respective purposes referred to in clause 12.2(1) prior to the surrender of native title in accordance with this deed, and to the placing of the care control and management of any such reserve with any person.
- (2) Except in relation to any land the subject of paragraph 9.1 (exclusive possession) of the MG#1 Determination, the Parties consent to the State and any other person (including a management body under a reserve) granting any licence, easement or profit a prendre, or doing any other act (including a Quarrying Future Act but not including a Mining Future Act) in the areas referred to in clause 12.2(1) prior to the surrender of native title in accordance with this deed, for the respective purposes referred to in clause 12.2(1) and for the purposes of extraction of raw materials.

14.5 Other acts within the buffer areas

- (1) The Parties consent to:
 - (a) the State creating reserves in the areas referred to in ~~clause 14.3(1)~~ clause 14.3(1)(a)-(c) for the purposes of buffer and infrastructure and associated purposes prior to the transfer of freehold title to those areas in accordance with this deed, and to the placing of the care control and management of any such reserve with any person; and
 - (b) the MG Corporation granting leases of the areas referred to in ~~clause 14.3(1)~~ clause 14.3(1)(a)-(c) to an EME.
- (2) Except in relation to any land the subject of paragraph 9.1 (exclusive possession) of the MG#1 Determination the Parties consent to the State and any other person (including a management body under a reserve) granting any licence, easement or profit a prendre, or doing any other act (including a Quarrying Future Act but not including a Mining Future Act) in the areas referred to in ~~clause 14.3(1)~~ clause 14.3(1)(a)-(c) prior to the transfer of

freehold title to those areas in accordance with this deed, for the purposes of buffer and infrastructure, extraction of raw materials, and associated purposes.

- (3) If freehold has been transferred to the MG Corporation under ~~clause 14.3(1)~~ clause 14.3(1)(a)-(c) then, without prejudice to any rights or entitlements arising under the *Mining Act 1978* (WA), the LAA or otherwise in respect of the MG Corporation's ownership of that freehold title, the Parties consent to the State doing any Mining Future Act or Quarrying Future Act in the area of such a freehold title.

14.6 Raw materials areas

- (1) Except in relation to any land the subject of paragraph 9.1 (exclusive possession) of the MG#1 Determination, the Parties consent to the State creating reserves in the Raw Materials Areas and the M2 Raw Materials Areas and any Additional Raw Materials Areas for the purposes of extracting raw materials, and to the placing of care control and management of such reserves with any person.
- (2) The Parties consent to the State granting to any person (including the State or any instrumentality or agency of the State) a lease, licence, easement, profit a prendre or other interest (including a Quarrying Future Act but not including a Mining Future Act) in the Raw Materials Areas and the M2 Raw Materials Areas and any Additional Raw Materials Areas for the purposes of extracting raw materials.

14.7 Access to the Ord Irrigation Scheme Area to perform works

Except in relation to any land the subject of paragraph 9.1 (exclusive possession) of the MG#1 Determination and without limiting clauses 14.4, 14.5 and 14.6, the Parties consent to the State:

- (1) by its officers employees agents and contractors, entering upon the land and waters in the Ord Irrigation Scheme Area and performing such works in relation to the development of the land for the purposes referred to in clause 12.2(1) as the State (in its absolute discretion) thinks fit;
- (2) by instrument in writing, authorising any other person to enter upon the land and waters in the Ord Irrigation Scheme Area and perform such works in relation to the development of the land for the purposes referred to in clause 12.2(1) as that person (in their absolute discretion) thinks fit; and
- (3) granting to any person (including the State or any instrumentality or agency of the State) a lease, licence, easement or profit a prendre, and creating any reserve or doing any other act which affects native title, in the Ord Irrigation Scheme Area for the purposes of constructing and operating irrigation infrastructure (including, without limitation, pumping stations and pipes to supply water from the Ord River to the Ord East and West Bank Development Area and the Mantinea Development Area).

14.8 Other acts within the New Conservation Areas

- (1) The Parties consent to:
 - (a) the State creating reserves in the New Conservation Areas for the purposes of conservation and traditional Aboriginal uses, and placing the

- care control and management of the reserves with the Conservation Commission;
- (b) the MG Corporation granting leases of the New Conservation Areas to the State; and
 - (c) the State, the Conservation Commission, CALM and the MG Corporation entering into management agreements, and creating management plans, under the CALM Act in relation to the New Conservation Areas.
- (2) If freehold has been transferred to the MG Corporation under clause 14.3(4) ~~clause 14.3(2)~~ then, without prejudice to any rights or entitlements arising under the *Mining Act 1978* (WA) or otherwise in respect of the MG Corporation's ownership of that freehold title, the Parties consent to the State doing any Mining Future Act or Quarrying Future Act in a New Conservation Area which is the subject of such a freehold title.

14.9 Creation of specific reserves

- (1) The Parties consent to the State creating reserves within the Mantinea Foreshore Reserve Area and the Ord West Bank Foreshore Reserve Area for the purposes of public access and recreation and protection of Aboriginal heritage, and placing the care control and management of such reserves with the Shire of Wyndham-East Kimberley or with any officer, agency, instrumentality or statutory authority of the State.

Note: These areas are depicted on Map 2A in Schedule 2.

- (2) The Parties consent to the State creating a reserve within the Packsaddle Creek Reserve Area for the purposes of recreation and watercourse protection, and placing the care control and management of such reserves with the Shire of Wyndham-East Kimberley or with any officer, agency, instrumentality or statutory authority of the State.

14.10 Grant of licences and easements to CPC

- (1) The Parties consent to the State granting grazing licences under section 91 of the LAA to CPC or its nominee, in accordance with the State's obligations under the Land Exchange Agreement, within any area surrendered under clause 54.1 other than the Community Living Areas, the East Kununurra Additional Area, Kununurra Additional 29 Acquisition Area, the Government Land Acquisition Area, Zimmerman Area, Weaber Area, Livistona Area, Pincombe Area and Ningbing West Area.
- (2) The Parties consent to the State granting licences, easements or rights of way to CPC or its nominee within any part of the areas the subject of clause 14.10(1) in accordance with clause 54.3.
- (3) The Parties consent to the State granting an easement over part of the Ord West Bank Development Area (except any part of that area falling within the Ord West Bank Special Buffer Area A, Ord West Bank Special Buffer Area B or the Old Station Billabong Buffer Area) to allow access from the Ivanhoe Crossing to the CPC Freehold Area.

14.11 Grant of right includes its exercise

For the avoidance of doubt, the authorisation to do any act (including the granting of a lease, licence, easement or profit a prendre, or the creation of a reserve) under this clause 14 includes the exercise of any right or obligation created by that act by the person on whom the right or obligation is conferred.

14.12 Other legislative processes unaffected

- (1) Except to the extent expressly provided in this clause 14, nothing in this clause 14 affects the rights and obligation of the State or any other person under any other law of the State or the Commonwealth or under the common law.
- (2) Without limiting clause 14.12(1), nothing in this clause 14:
 - (a) derogates from the *Aboriginal Heritage Act 1972* (WA) or the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) or any other legislation dealing with Aboriginal heritage or the environment;
 - (b) prevents the State from doing any act that affects native title in accordance with the NTA or in accordance with another clause of this deed; or
 - (c) derogates from any rights and obligations in relation to access to and the conduct of works on freehold land or on any other non-native title interest.

15. TAKING ORDERS IN BUFFER AREAS

- (1) If freehold has been transferred to the MG Corporation under ~~clause 14.3(1) or 14.3(2)~~ clause 14.3(1)(a)-(c) then the Parties consent to the State issuing a taking order under the LAA to extinguish native title in an area the subject of such a freehold title for the purposes of agriculture provided that:
- (a) the taking order is consistent with the laws of the State and any environmental conditions or approvals relating to the Buffer Areas; and
 - (b) that the area the subject of the taking order does not include or is not reasonably expected to include Aboriginal Sites.

Note: This does not affect rights as a holder of freehold title.

- (2) Part 2 Division 3 Subdivision P of the NTA does not apply in relation to anything done under clause 15(1).