

Schedule 2 – Application for Registration of Indigenous Land Use Agreement (clause 5.1)



NNTT Office Use

File Number:

Date lodged:

State/s covered by agreement:

To the Native Title Registrar:

Native Title Act 1993 s.24 CG

**Application for registration of an
AREA AGREEMENT
on the Register of Indigenous Land Use Agreements**

Application for registration of an area agreement pursuant to ss.24CA to 24CL of the **Native Title Act 1993** (Cth) (the Act), r.7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (the Regulations) and r.9(2) of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (the PBC Regulations).

Note:

Only use this form to apply for registration of an Area Agreement under s.24CG of the **Native Title Act 1993**. Separate forms are available for Body Corporate and Alternative Procedure Agreements. Read the notes at the back of the form before completing this application.

Area Agreement Application

Short name for agreement:

Yawuru Area Agreement

Part A – Parties

1. The name of the party applying for registration is:

State of Western Australia

Representative (if any):

Executive Director
Office of Native Title, Department of the Attorney General

Contact person:

Gary Hamley
Executive Director, Office of Native Title

Contact address:

Level 2 Governor Stirling Tower
197 St Georges Terrace
Perth WA 6000

Telephone (daytime):

08 9222 9613

Fax:

08 9222 9977

Email:

ghamely@dpc.wa.gov.au

Note: This information (excluding email, telephone, and fax numbers) will be included for the applicant party in the public notice and, if registered, on the ILUA Register.

Signature of party applying for registration or party's representative

Date

2. Other parties to the agreement (do not include the applicant party again)

Note: This information (excluding email, telephone, and fax numbers) will be included in the public notice and on the ILUA Register.

Party name:

Minister for Lands

Representative (if any):

Manager
Kimberley Pilbara - State Land Services
Department of Regional Development and Lands

Contact person:

Murray Raven
Manager, Kimberley Pilbara - State Land Services

Contact address:

PO Box 1575, Midland WA 6936

Telephone (daytime):

(08) 9347 5100

Fax:

(08) 9347 5003

Email:

Murray.raven@lands.rdl.wa.gov.au

Party name:

Conservation Commission of Western Australia

Representative (if any):

Acting Director

Contact person:

Gordon Graham

Contact address:

Corner Australia II Drive and Hackett Drive
Crawley WA 6009

Telephone (daytime):

08 9389 1766

Fax:

08 9389 8603

Email:

gordong@conservation.wa.gov.au

Party name:

Conservation and Land Management Executive Body

Representative (if any):

Director General, Department of Environment and Conservation

Contact person:

Keiran McNamara, Director General

Contact address:

Locked Bag 104
Bentley Delivery Centre
Perth WA 6983

Telephone (daytime):

08 6467 5501

Fax:

08 6467 5562

Email:

Keiran.mcnamara@dec.wa.gov.au

Note: If there are more than three other parties please include their details as an attachment and indicate here how many parties: Four other parties

3. Representative Aboriginal/ Torres Strait Islander Bodies for the area (see s203AD of the Act)

Are there any representative bodies for **any** of the area covered by the agreement?

Yes **No**

If *yes*, is any representative body for any of the area a **party** to the agreement?

Yes **No**

State which of the parties, if any, are representative bodies for the agreement area.

Kimberley Land Council Aboriginal Corporation

Note: If there is a representative body (or bodies) and none is party to the agreement, attach a signed statement from a party, who is a member of the native title group, setting out the following information:

- Which representative body (or bodies) was informed of the native title group's intention to enter the agreement?
- Who in the native title group informed the representative body?
- When and how was the representative body informed?

4. Native Title Parties - where there is at least one registered native title claimant or native title body corporate

Complete this section only if there is at least one registered native title claimant or registered native title body corporate for any of the land or waters in the ILUA area. If there is no registered native title claimant or native title body corporate go straight to section 5.

Section applies

[A] Mandatory Native Title Parties (the Native Title Group):

- (a) If there are registered native title claimants for any of the land or waters in the area, are all such registered native title claimants parties to the agreement?

Yes **Not applicable**

- (b) If there are registered native title bodies corporate for any of the land or waters in the area, are all such registered native title bodies corporate parties to the agreement?

Yes **Not applicable**

- (c) If there is any part of the ILUA area where there is no registered native title claimant or native title body corporate are one or more of the following, parties to the agreement (there must be at least one)?

(i) any person who claims to hold native title in relation to the area

Yes No

If yes please identify which party or parties

Yawuru Native Title Group

(ii) any representative body for the area?

Yes No

[B] Other native title parties:

Are there any other native title parties?

Yes No

If yes please identify which party or parties

N/a

5. Native Title Parties – where there is no registered native title claimant or native title body corporate

Complete this section if there are no registered native title claimants or native title bodies corporate for any of the land or waters in the ILUA area.

Section applies

Are **one or more** of the following, parties to the agreement (there must be at least one):

(a) any person who claims to hold native title in relation to land or waters in the area?

Yes No

If yes please identify which party or parties

Yawuru Native Title Group

(b) any representative body for the area?

Yes No

6. Government parties

Are any of the following parties to the agreement?

Commonwealth government or authority

Yes No

If yes please identify which party or parties

n/a

State / Territory government or authority

Yes No

If yes please identify which party or parties

State of Western Australia
Minister for Lands
Conservation Commission of Western Australia
Conservation and Land Management Executive Body
Marine Parks and Reserves Authority

7. Any other comments in relation to parties?

None

PART B – Authorisation/certification

1. The application is certified by all relevant representative bodies.

Yes

Note: If the application is to be certified all representative bodies for the ILUA area must certify. If the application is certified, a copy of the certification **must** accompany this application.

2. If the application is not certified

Section applies

If the application is **not** certified, information that shows the identification and authorisation requirements of s.24CG(3)(b) of the Act have been met must be provided here or in an attachment.

Statement 1: Have all reasonable efforts (including consulting **all** representative bodies for the area) been made to identify all holders and potential holders of native title and have all those identified authorised the making of the agreement?

Yes

Statement 2: In the space provided (or as an attachment), please set out the grounds on which the Registrar should be satisfied that the above requirements have been met. If you are including this information as an attachment please label as ‘Information about identification and authorisation’

PART C – Timeframe

Does the agreement specify a period during which it will operate?

Yes No

If yes, please write the period here and specify where it is located in the agreement.

n/a

PART D – Required Statements

1. Consent to future acts

Does the agreement contain one or more statements by **all** the parties consenting to the doing of a particular future act, or class of acts, whether or not subject to conditions?

Note: these statements can only be about acts that will occur after registration.

Yes No

If **yes**, please specify where each such statement is located in the agreement (*e.g. Clause 5 and 6 plus definitions*).

Clause 4.1

2. Acts excluded from the right to negotiate

Does the agreement include a statement or statements to the effect that the ‘right to negotiate’ provisions of the Native Title Act are not intended to apply to any / all of the future acts included in the agreement?

Yes No

Note: Unless this is specifically stated in the agreement, then the ILUA will not displace the ‘right to negotiate’ provisions in relation to the future acts covered by the agreement.

If **yes**, please specify where each such statement is located in the agreement.

Clause 4.4

3. Is any surrender of native title intended to extinguish native title?

If the agreement provides for a surrender of native title to government, is that surrender intended to extinguish, or have extinguished (i.e. if the surrender has already occurred), native title rights and interests?

Yes No

If *yes*, please specify where each such statement is located in the agreement.

6.7, 8 and 9.1

Please note; the relevant government is required to be party to the agreement where there is a surrender of native title which is intended to extinguish that native title.

4. Validation of future acts

Does the agreement provide for the validating of a future act or class of acts that have already been done (ie; before signing of the agreement), whether or not subject to conditions?

Yes No

If *yes*, please specify where each such statement is located in the agreement.

Clause 8

5. Intermediate period acts affected

Does the agreement provide for changing the effects on native title of an intermediate period act or class of acts?

Yes No

If *yes*, please note where each such statement is located in the agreement.

N/a

6. Any other comments about the future act statements in the agreement?

None

PART E – Checklist

The application **must** be accompanied by the following documents (where relevant) pursuant to the Act, r.7(2) of the Regulations and r.9(2) of the PBC regulations.

1	s.24CG(2)	A copy of the agreement including any attachments or appendices	<input checked="" type="checkbox"/> Yes
2	r.7(2)(a)	A copy of each determination of native title for each party that is a registered native title body corporate	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes
3	r.7(2)(b)	A statement by each party to the agreement, signed by or for the party, that the party agrees to the application being made	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> In agreement Please specify where: Clause 5
4	r.7(2)(c)	An extract from the Register of Native Title Claims giving details of each party that is a registered claimant	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes
5	r.7(2)(d) and r.5	A written description of the ILUA area including any areas that are excluded from the ILUA area.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In agreement Please specify where:
		A map of the ILUA area showing geographic coordinates	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In agreement Please specify where: Schedule 1
6	r.7(2)(e) and r.5	In relation to any area where the surrender of native title is intended to extinguish native title rights and interests; a written description of that area	<input type="checkbox"/> Not applicable <input type="checkbox"/> Yes <input checked="" type="checkbox"/> In agreement Please specify where: Schedules 4, 5 and 6
		A map showing geographic coordinates of that area	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes <input type="checkbox"/> In agreement
7	s.24CG(3)	If the application is certified, a copy of the certification mentioned in s.24CG(3)(a)	<input type="checkbox"/> Not applicable <input checked="" type="checkbox"/> Yes

		If the application is not certified, a statement setting out how requirements for identification and authorisation have been met	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes <input type="checkbox"/> In application <input type="checkbox"/> Attached
8	r.7(2)(g) r.9(2)PBC Regulations	If a registered native title body corporate covers any of the ILUA area, and the relevant representative body is not a party, a document as mentioned in r.9(2) of the PBC Regulations	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes
9	r.7(4)	If no representative body is a party, a statement signed by a native title party that one representative body was informed of the native title group's intention to enter into the agreement.	<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Yes <input type="checkbox"/> In agreement Please specify where:

NOTES – to assist applicants

The Registrar actively encourages parties to provide drafts of a proposed application and accompanying documentation including the agreement and will provide an assessment against the criteria. However applicants are ultimately responsible for ensuring that their applications fulfil the statutory criteria by carefully examining their application, agreement and attachments in the context of the Native Title Act and associated Regulations.

Completion of an application for registration of an area agreement

Section 24CG of the *Native Title Act 1993* (Cth) (the Act) sets out the requirements for an application for registration of an area agreement.

Regulation 7 of the Native Title (Indigenous Land Use Agreements) Regulations 1999 (the Regulations) sets out the information and the documents which must accompany an application for registration.

The National Native Title Tribunal (the Tribunal) has developed this application form and notes to assist applicants in applying for registration of an area agreement. When filling in the application please reference relevant clauses in the agreement.

When not to use this form

An area agreement must not be made if there are one or more registered native title bodies corporate for all of the agreement area (s.24CC).

This means where one or more determinations of native title have been made over the whole area and prescribed body corporates (PBCs) have been registered on the National Native Title Register (NNTR).

If there are registered PBCs on the NNTR for the whole area, use a ‘body corporate’ agreement.

How your application should be set out

Please provide the information and answer the questions on the form provided.

If you need to use attachments, give each page of the attachment a heading which includes the ILUA name, a reference to the relevant ‘PART’ and number, what the attachment is about, a page number and the total number of pages in the attachment (e.g. ‘Application for Registration Burya Exco EPL63 Agreement: Attachment to PART E (5): Area description; page 2 of 3’).

Short name of agreement

Please give the agreement a short name (no more than 5 words) to aid future reference.

Such a name might include the name of a party (or parties) to the agreement and/or a geographical name identifying the area covered, e.g. Burya Exco EPL63 Agreement.

PART A – Parties Information required in application

Applicant party name and contact address

Any party to the agreement can apply but all parties must have agreed to the application being made, refer to s.24CG and r.7(2)(b) of the Act.

Print the name, contact person name, address and telephone and facsimile numbers of the applicant party. If the applicant is represented, please provide details of the representative; the contact address may be that of the representative.

Note: the full name and contact address will appear in the public notice and on the Register.

Other parties

Names of other parties to the agreement r.7(3)(a)

Print the full name of the party, contact person name, address, and telephone and facsimile numbers for each of the other parties to the agreement other than the applicant.

Note: the full name and contact address of each party will appear in the public notice and on the Register.

Representative body parties r.7(3)(b)

Identify any party that is a recognised representative body (see s.203AD). Is there a representative body (or bodies) for any of the area covered by the agreement, but none is a party, was one such body informed of the native title group's intention to enter into the agreement? s.24CD(7) and r.7(4)?

If there are any representative bodies, and none is a party to the agreement, **attach a statement** from a party who is a member of the native title group. This statement should give information about whether any member of the native title group has informed a representative body of its intention to enter into the agreement. It should include details of **how** and **when** they informed the representative body (see checklist).

Native title group s.24CD

All persons (people and organisations) in the native title group **must** be parties to the agreement. s.24CD(1).

The composition of the **native title group** will vary depending on a number of factors set out in s.24CD of the Act.

Select which of the following applies to your agreement and answer the questions under **either** section 4 or 5 in Part A:

Section 4: Applies if there is a registered native title claimant *or* a registered native title body corporate in relation to *any* of the land or waters in the area. In this case the *native title group* consists of

(s.24CD(2)):

- (a) All registered native title claimants in relation to land or waters in the area; and
- (b) All registered native title bodies corporate in relation to land or waters in the area;
- (c) If there is any area where there is neither a registered native title claimant nor a registered native title body corporate the native title group must also include one or more of the following:

any person who claims to hold native title in relation to that area (this might be one or more of the registered native title claimants in (a) or a member or members of the registered native title body corporate in (b).

any representative Aboriginal/Torres Strait Islander body for that area.

If section 4 applies, any other person who claims to hold native title and/or any representative body for the area **may** also be party to the agreement. s.24CD(4).

Section 5: Applies where there is **no** registered native title claimant and **no** registered native title body corporate for any of the area. In this case the **native title group** consists of one or more of the following (s.24CD(3)):

Any person who claims to hold native title in relation to land or waters in the area;

Any representative body for the area.

To assist the Registrar, please identify in which area each party that makes up the native title group is claiming native title unless they all claim for the whole area. This can be done in the 'other comments' box at section 7 of Part A.

Government parties s.24CD(5) and r.7(3)(c)

State whether the Commonwealth, State, or Territory **governments** or any Commonwealth, State, or Territory **authorities** are parties to the agreement by marking 'yes' or 'no' on the appropriate boxes on the form.

If the agreement makes provision for the extinguishment of native title rights and interests by surrender, then the relevant Commonwealth, State, or Territory government **must** be a party to the agreement. If they are not the agreement cannot be registered.

The effect of s.24EBA(1)–(3) is that the Commonwealth, State, or Territory must be a party if the agreement provides for the validating of future acts that have already been done (see Part H, **Validation of future acts**). If they are not a party, this will not stop registration, but it may mean that the acts have not been validated.

**PART B –
Authorisation/
certification**

All ILUAs have to be properly authorised.

In addition, the relevant representative body/s can certify the application. All representative bodies that the ILUA area covers must certify if the application is to be certified. If the application is not certified, then detailed information about the identification of native title parties and their authorisation of the agreement must be included with the application. There are also special requirements for Area ILUAs that include a determined area. Refer to r.7(2)(g).

**PART C –
Timeframe**

Period of operation of the agreement r.7(3)(d)

If applicable; refer to the relevant clauses which specify the period during which the agreement will operate. This information will be recorded on the Register.

**PART D –
Required
statements**

Consent to future acts s.24EB(1)(b) and r.7(5)(a)

Does the agreement contain statements to the effect that the **parties** consent to the doing of a future act or class of future acts? (Whether or not subject to conditions?)

Mark ‘yes’ or ‘no’ on the appropriate box on the form.

If ‘yes’, give the location in the agreement of each statement to the effect that the **parties** consent to the doing of a future act or class of acts.

It is often necessary to include linked clauses and/or definitions to make sure the ‘statements’ can be understood.

Note: the surrender of native title is a future act and any statement that the parties consent to the surrender of native title should also be included here. These consents refer to acts that will occur after registration.

Note: each statement will appear in the public notice and on the Register.

Acts excluded from right to negotiate

Acts excluded from right to negotiate s.24EB(1)(c) and r.7(5)(b).

Does the agreement contain a statement to the effect that the parties intend that the right to negotiate provisions of the Native Title Act will not apply to the future act or class of future acts?

Mark ‘yes’ or ‘no’ on the appropriate box on the form.

If ‘yes’, give the location in the agreement of the statement that provides for this.

Note: if the agreement does not say the right to negotiate provisions do not apply then the acts will still have to comply with the ordinary procedural requirements of the Native Title Act as well as any requirements in the agreement.

Note: each statement will appear in the public notice and on the Register.

Is any surrender of native title intended to extinguish native title?

Surrender of native title s.24EB(1)(d) and r.7(5)(c) and s.24EBA(4)(b) and r.7(5)(g)

Does the agreement contain a statement to the effect that the surrender of native title is intended **to extinguish or to have extinguished** native title rights and interests?

Mark 'yes' or 'no' on the appropriate box on the form.

If 'yes', give the location in the agreement of the statement that provides for this.

Note: each statement will appear in the public notice and on the Register.

Validation of future acts

Note: this part applies only to future acts that have **already** been done, that are not intermediate period acts' (as defined in s.232A of the Act)

Does the agreement provide for the validating of a particular future act, or class of acts, (whether or not subject to conditions) that have already been done? (s.24EBA(1)(a)(i) and r.7(5)(d))

Mark 'yes' or 'no' on the appropriate box on the form.

If 'yes', give the location in the agreement of each statement that provides for this.

NB: the relevant government needs to be a party.

Note: each statement will appear in the public notice and on the Register.

Intermediate period acts affected

Does the agreement change the effect on native title of a validated intermediate period act or class of acts? (s.24EBA(1)(a)(iii) and r.7(5)(f)). Mark 'yes' or 'no' on the appropriate box on the form. If 'yes', give the location in the agreement of each statement that provides for this.

Note: each statement will appear in the public notice and on the Register.

Part E -Checklist

Please note that all required documents and information must be submitted with the application. Use this checklist to make sure all the required documents and information have been provided.

Attachments

Ensure that a **copy of the agreement** and all other relevant documents are attached (see checklist).

Lodgement

Three copies of the application form and attachments (including copies of the agreement and any maps) should be lodged at the **National Native Title Tribunal or sent to GPO Box 9973 in your capital city**. For the addresses of our Registries visit www.nntt.gov.au

If you are not able to provide three (3) copies processing times may be extended. The Registrar will assess the application and will only proceed to notify the application if it complies.

- **APPLICATION FOR REGISTRATION**

- **Yawuru Area Agreement ILUA**

- **ATTACHMENT TO PART A(2): ADDITIONAL PARTIES**

Party name:

Kimberley Land Council Aboriginal Corporation

Representative (if any):

Chief Executive Officer
Kimberley Land Council Aboriginal Corporation

Contact person:

Wayne Bergmann
Chief Executive Officer

Contact address:

PO Box 2145
BROOME WA 6725

Telephone (daytime):

(08) 9193 6199

Fax:

(08) 9193 6279

Email:

Wayne.bergmann@klc.org.au

Party name:

Pat Dodson, Frank Sebastian (Yawuru Native Title Group)

Representative (if any):

Contact person:

Jacki Turfrey

Contact address:

PO Box 425
BROOME WA 6725

Telephone (daytime):

(08) 9192 5155

Fax:

(08) 9193 7352

Email:

Jacki.turfrey@klc.org.au

Party name:

Marine Parks and Reserves Authority

Representative (if any):

Executive Officer

Contact person:

Alena Kessell

Contact address:

Suite 3, Level 3, Queensgate Building
10 William Street
Fremantle WA 6160

Telephone (daytime):

08 9336 0106

Fax:

08 9430 5408

Email:

alena.kessell@dec.wa.gov.au

Party name:

Shire of Broome

Representative (if any):

Chief Executive Officer
Shire of Broome

Contact person:

Kenn Donohoe
Chief Executive Officer

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BROOME WA 6725

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