

NATIVE TITLE PROCESS AGREEMENT
BETWEEN
THE NYIKINA MANGALA PEOPLE
AND
THE SHIRE OF DERBY WEST KIMBERLEY

DERBY MARCH 2004

**This document was prepared by the National Native Title Tribunal to reflect
the intentions of the parties.**

THIS AGREEMENT is made on _____ between the following parties:

1. Anthony Watson, Daisy Lungunan, Elizabeth Riley, John Watson, Lionel Jumburra, Lucy Marshall, Mary Watson, Maude Ningella, Neil Buckle, Neville Poelina, Patsy Yamboo, Peter Francis, Willie Lennard and Peter Clancey in their capacities as applicants and native title claim group members on the Nyikina Mangala WC99/25; WG6099/98 claimant application for a determination of native title.

2. **Shire of Derby West Kimberley**

1.0 ACKNOWLEDGEMENTS

- 1.1 The parties agree that the Nyikina Mangala People are the traditional owners of the land and waters identified in the Nyikina Mangala People's native title determination application which is on the Register of Native Title Claims held by the NNTT.
- 1.2 The Shire of Derby West Kimberley is a duly constituted Local Government under the *Local Government Act 1995* (WA) and has statutory rights and responsibilities in relation to the land the subject of the Nyikina Mangala People's native title determination application.
- 1.3 The arrival of non-Aboriginal people brought massive changes to this land and to its indigenous people. However the Shire of Derby West Kimberley acknowledges and respects their law, their customs and their traditions and their special relationship with the land. The Shire of Derby West Kimberley also acknowledges and respects the rights of the Aboriginal people to speak for their country and the duties imposed on them to look after their traditional country, in accordance with their traditional laws and customs.

2.0 DEFINITIONS

In this agreement:

“**ILUA**” means an Indigenous Land Use Agreement pursuant to the *Native Title Act 1993*.

“**Nyikina Mangala claim area**” means the area of lands and waters, claimed in the Nyikina Mangala People’s native title determination application.

“**Nyikina Mangala People**” means the Nyikina Mangala native title claim group as described in Native Title Determination Application WC99/25 WG6099/1998.

Nyikina Mangala Native Title Working Group (NMNTWG) is the group set out in Paragraph 6.

“**Native Title Act**” means the *Native Title Act 1993* (Cth).

“**KLC**” means the Kimberley Land Council, which is a representative body pursuant to s203 AD *Native Title Act 1993*.

“**NNTT**” means the National Native Title Tribunal established pursuant to s107 *Native Title Act 1993*.

“**Shire**” means Shire of Derby West Kimberley, the Local Government as constituted under the *Local Government Act 1995* (WA).

3.0 PURPOSE

- 3.1 The purpose of this agreement is to agree a process for negotiating an ILUA, or other agreements on native title, between the parties.
- 3.2 The parties are committed to negotiating an agreement that will begin a new relationship based on mutual respect, understanding and trust, and will provide certainty for all parties.

4.0 BACKGROUND

- 4.1 The Nyikina Mangala People's original native title application (WC96/66) was notified by the NNTT on 4 November 1996. The Shire was formally joined as a party on 18 February 1997.

The Nyikina Mangala People's filed a combined native title determination application in the Federal Court on 21 September 1999 and was registered by the NNTT on 28 September 1999.

The Nyikina Mangala People's native title determination application was referred by the Federal Court of Australia to the NNTT for mediation pursuant to s86B of the *Native Title Act* on 12 October 2000. The parties acknowledge that this agreement arises from and forms part of the mediation provisions of the *Native Title Act*.

5.0 AGREEMENT AREA

- 5.1 The parties to this agreement may negotiate in relation to any part of the Nyikina Mangala claim area (which may include, subsequently, any area subject of a further Nyikina Mangala native title

determination application) which is within the district of the Shire.

6.0 PROCESS

To progress the negotiations towards the development and implementation of an ILUA between the Nyikina Mangala People and the Shire, the following approach will be taken:

- 6.1.1 A working group shall be established and known as the Nyikina Mangala Native Title Working Group (NMNTWG).
- 6.1.2 The NMNTWG's role will include but not be limited to:
 - a) negotiating on the subject matter under the head of 'Matters for Negotiation' (paragraph 8);
 - b) liaising with the parties; and
 - c) facilitating consultation with relevant stakeholders and the general public, and developing a procedure for making public comments to the media.
- 6.2. The composition of the NMNTWG will be:
 - a) three Shire staff;
 - b) up to three Shire Councillors;
 - c) members of the Nyikina and Mangala People; and
 - d) two representatives of the KLC.
- 6.3. The NMNTWG shall develop and recommend to the parties and their representatives an ILUA or any other native title agreements as required.

Unless the parties otherwise agree, the meetings of the NMNTWG will be chaired by a member of the NNTT.

6.4 The parties agree that:

- a) any decisions of the NMNTWG concerning the ILUA will be made by consensus and are subject to ratification by the full Council of the Shire and the Nyikina Mangala People respectively;
- b) seven days before each meeting, the NNTT will circulate a draft agenda for the meeting to each member of the NMNTWG for comment and agreement;
- c) all material relevant to the conduct of meetings, including agenda, minutes and draft documents shall be circulated to each member of the NMNTWG as soon as possible before each meeting; and
- d) it is the aim of the NMNTWG to have negotiated and agreed an ILUA in registrable form by February 2005.

6.5 If the parties are in dispute in relation to any matter arising out of or in connection with the agreement, the parties shall attempt to negotiate any such dispute between themselves. Where necessary, and practical, the parties shall refer the matter to a person or an entity agreed to by them to act as a mediator of the dispute.

Subject to Clause 13.2 of this agreement (which states there is no intention under the terms of this agreement to create legal relations) neither party shall commence legal proceedings in relation to any dispute until such time as all efforts have been

made to resolve the dispute under the terms of this clause.

7.0 RESOURCING

- 7.1 The parties agree to pursue all available funding sources to adequately fund the process set out in paragraph 6 of this Agreement.
- 7.2 The parties acknowledge that funding constraints may result in:
- a) alterations to the process as agreed to by the parties; and
 - b) unequal contribution of resources towards this agreement by the parties.

8.0 MATTERS FOR NEGOTIATION

- 8.1 The following is a list of matters that the parties intend to address during the negotiation of an ILUA and/or other agreement relating to native title:
- a) communication and consultation between the Shire and the Nyikina Mangala people in relation to the exercise of the statutory duties of the Shire;
 - b) capital works and Infrastructure;
 - c) cultural resource management;
 - d) environmental assessment;
 - e) financial resourcing of the process of negotiation in relation to this ILUA;
 - f) Aboriginal heritage
 - g) Involvement of the NNTT;

- h) Issues related to Aboriginal people living in or visiting the Shire from other areas of the Kimberley;
- i) land and natural resources management;
- j) land tenure [including Aboriginal Community Living Area applications and former ALT reserves];
- k) Matters relating particularly to the Nyikina Mangala People's native title determination application;
- l) Management of reserves vested in the Shire;
- m) Timing and process for third parties to become involved in specific matters;
- n) Certain aspects of coordinated tourism development;
- o) town planning schemes and district planning schemes, including zoning;
- p) Surface and subterranean water management;
- q) Aboriginal signage; And
- r) Aboriginal Heritage survey in relation to town of Derby

8.2 The following is a list of matters that the parties intend to address during discussions in relation to a potential agreement concerning cultural and community matters:

- a) Cross cultural training;
- b) Economic development opportunities for Aboriginal people;
- c) Insurance and indemnity on lands managed or vested in the Shire;
- d) Intellectual and cultural property protection;

- e) Issues related to Aboriginal people living in or visiting the Shire from other areas of the Kimberley;
- f) Law enforcement;
- g) The Shire's Aboriginal employment strategy;
- h) DIA reconciliation grants;
- i) Land management in general;
- j) Potential partnerships on ILC and pastoral excision land;
- k) Recognition of the importance of National Aboriginal and Torres Strait Islander Week; and
- l) The appointment by the Shire of Aboriginal liaison staff; and
- m) Numbala Nunga Aged Care Facility.

8.3 The following is a list of matters that the parties intend to address in relation to the development of the potential Service Delivery Agreement:

- a) Aboriginal community issues (for example, coordinated service delivery);
- b) Public and environmental health; and
- c) Development of a Statement of Commitment of Local Government services to Aboriginal communities.

9.0 CONFIDENTIALITY

9.1 The parties acknowledge the desirability of conducting all negotiation and mediation in confidence.

9.2 The parties agree that communications between the parties touching upon this agreement, whether oral or in writing:

- a) are conducted on a without prejudice basis;

- b) shall not be disclosed in any court or tribunal proceedings except as may be agreed to by the parties or as may be required by law; and
- c) shall not otherwise be disclosed or published, except as may be agreed to by the parties or as may be required by law.

9.3 This agreement shall not prevent the KLC consulting the Nyikina Mangala People about any matters arising out of this agreement.

10.0 THIRD PARTY INTERESTS

10.1 The parties acknowledge that the agreement making process will require consultation with third parties including:

- a) relevant stakeholders;
- b) the general public; and
- c) the West Australian Government.

10.2 The parties will only consult with third parties after agreement with the Working Group. When a party has a statutory requirement to consult such parties, it will so advise the Working Group.

11.0 TERMINATION

The agreement can be terminated at any time by either party upon giving twenty-eight days written notice to the other party.

12.0 VARIATIONS TO THE AGREEMENT

The parties agree that this agreement can be amended at any time upon the agreement in writing of the parties.

13.0 EFFECT OF SIGNING THE AGREEMENT

13.1 The parties hereby agree to use their best endeavours to conduct negotiations for an ILUA or other agreements on native title between the parties.

13.2 This agreement is not intended to be legally binding.

THE COMMON SEAL of the)
Shire of Derby West Kimberley)
was affixed by authority of a)
Resolution of the Council)
in the presence of:)

.....

Elsia Archer
Shire President

.....

Jonathan Throssell
Chief Executive Officer

SIGNED by the Applicants and native title claim group members)
on their own behalf and on)
behalf of the Nyikina Mangala People)

Anthony Watson

Daisy Lungunan

Elizabeth Riley

John Watson

Lionel Jumburra

Lucy Marshall

Mary Watson

Maude Ningella

Neil Buckle

Neville Poelina

Patsy Yamboo

Peter Francis

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Willie Lennard

.....

Peter Clancey

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