



27th February, 2017

Committee Secretary  
State Development, Natural Resources  
and Agricultural Committee  
Parliament House  
George St  
Brisbane QLD 4000

[sdnraidc@parliament.qld.gov.au](mailto:sdnraidc@parliament.qld.gov.au)

To the Committee,

**RE: LAND, EXPLOSIVES AND OTHER LEGISLATION AMENDMENT BILL  
2018**

The Batavia Traditional Owners Aboriginal Corporation (ICN 7538) include the Atambaya, Northern Kaanju and Yinwum people. The Corporation is a land holding entity in Cape York Peninsula as the result of the QLD State Tenure Resolution Process. Our aim in managing our property is to protect the cultural and natural values of the area by creating ecologically sustainable income streams.

Our property neighbours the newly formed Bromley (Kungkaychi) National Park (CYPAL) and the lots on plan (the **protected land**) referred to in Part 3 of the current Bill.

Request to Amend Bill

Our Corporation is concerned that we have **no legal right to control access and land use on our property** in regards to mining interests.

We ask that the Committee please consider amending the current bill to include:

**Part 3 Amendment of Cape York Peninsula Heritage Act 2007**

**Clause 19 Insertion of new s27A Prohibition on, and dealing with applications for, grant of mining interest in relation to particular land.**

- Insert at (1) (d) lot Lot 2 SP241405 Aboriginal Freehold including the Batavia Nature Refuge - *Loftus, Sinkholes and Wenlock sections*

### Mineral Exploration

Rio Tinto Pty Ltd have recently had Exploration Permits EPM 26308 and EPM 26309 approved on our Batavia Nature Refuge area. We requested the Cape York Land Council (CYLC) to lodge an objection to the Expedited Procedures process concerning these EPM applications.

The objection was lodged and later withdrawn as CYLC deemed that our group didn't have a "strong argument" to object. Essentially, we weren't allocated any resources to put our case together.

Since 2013, we have requested our anthropological material from the Cape York Land Council Aboriginal Corporation and Balkanu- Cape York Development Corporation P/L that resulted in the transfer of lands to the Atambaya, Northern Kaanju and Yinwum people. Access to these materials have been refused.

CYLC withdrew our Native Title claim QUD 6152/1998 Northern Kaanju and Yinwum people after the QLD Land Tenure Resolution process was complete. As such, our property has now been included in the Cape York One Claim QUD 673/2014 without our Corporation's consent.

Without access to our anthropological material, we were unable to put a case together to object to the "Expedited Procedures" process for the EPM's.

### Batavia Nature Refuge Conservation Agreement

The Natural Values of our property are outlined in our Conservation Agreement with the State of QLD to establish the Batavia Nature Refuge (Attachment 1).

The Batavia Traditional Owners Aboriginal Corporation believe the grant of EPM 26308 and EPM 26309 are a "Threatening Process" to the Batavia Nature Refuge Agreement (Section 4).

We can no longer meet our commitments with the State in this Conservation Agreement including:

- **Section 3.2** - the "Management Principles" outlined in the agreement
- **Section 17.1** - the "Management Conditions" outlined in the agreement
- **Section 17.10 (a)** - ensure that use of vehicles and motorbikes off formed tracks or roads is only for managing the Land in accordance with this Agreement, or by the Beneficiaries for traditional activities.

Our inability to meet Section 17.10 (a), by allowing exploration activities on our property, will affect our ability to meet conditions relating to weeds and fire. We are particularly concerned that if new tracks are formed by Rio Tinto Pty Ltd, this will allow for uncontrolled access by pig hunters and visitors who are known to light late season fires on our property.

The cumulative impact of more tracks will affect our Clean Energy Regulator Registered "Batavia Early Dry Season Savanna burning project" which we, as traditional owners, have established as a sustainable income source.

In closing, the Board of Director's of the Batavia Traditional Owners Aboriginal Corporation believe that the amendment to the current bill outlined above meets the intent of the bill in "the protection and cooperative management of cultural and natural values of Cape York Peninsula".

Kind regards,



Lana Polglase

Support Officer (on behalf of the Board of Directors)

Batavia Traditional Owners Aboriginal Corporation



**CONSERVATION AGREEMENT**

**BETWEEN**

**STATE OF QUEENSLAND**

**AND**

**BATAVIA TRADITIONAL OWNERS  
ABORIGINAL CORPORATION (ICN 7538)**

**TO ESTABLISH BATAVIA NATURE REFUGE**

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**BETWEEN:** **State of Queensland** represented by the Department of Environment and Heritage Protection of 400 George Street, Brisbane in the State of Queensland.

(“State”)

**AND:** **The Corporation** specified in Schedule 1.

(“Corporation”)

## RECITALS

- A. The Corporation is the registered owner of the Land and holds that land under the *Aboriginal Land Act 1991* for the benefit of Aboriginal people particularly concerned with the Land and their ancestors and descendants.
- B. The parties agree that the Land should be declared as a nature refuge in accordance with the *Nature Conservation Act 1992* (“the Act”) to protect the Land’s Significant Cultural and Natural Resources.
- C. The parties intend that this Agreement will constitute a conservation agreement under section 45 of the Act.
- D. This Agreement seeks to conserve and provide for the controlled use of natural and cultural resources while acknowledging the continuing presence of sustainable economic and social opportunities for and the activities and entitlements of the Aboriginal people represented by the Corporation.
- E. The State has obtained the written consent, from all persons who, at the Date of this Agreement, have the benefit of an interest over the Land and whose rights under that interest will be affected by the Corporation entering into this Agreement.
- F. To protect the Land’s Significant Cultural and Natural Resources, the Corporation has agreed to manage the Land in accordance with the Management Principles, the Management Intent, the Management Plan (if any) and the terms of this Agreement.
- G. The parties will endeavour to work together in a meaningful and productive manner in implementing this Agreement.
- H. As far as practicable, the State will administer any relevant provisions of the Act in consultation with and having regard to the views and interests of the Corporation.
- I. This Agreement has been negotiated in conjunction with an Indigenous Land Use Agreement (ILUA) between the State and the Native Title Party. Under the ILUA, the Native Title Party and the Atambaya, Northern Kaanju and Yinwum People agreed to exercise any Native Title in relation to the Land only in accordance with the conditions which apply to Beneficiaries as set out in this Agreement.
- J. The parties wish to record the terms of their agreement.

**NOW THE PARTIES AGREE AS FOLLOWS -****1. Interpretation**

1.1 In this Agreement unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them –

“**Aboriginal Cultural Heritage**” has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld).

“**Act**” means the *Nature Conservation Act 1992* (Qld).

“**Agreement**” means this document and all schedules to this document.

“**ALA**” means the *Aboriginal Land Act 1991* (Qld).

“**Beneficiary**” means a person for whose benefit the Land is held under the ALA.

“**Biodiversity**” means the natural diversity of native wildlife, together with the environmental conditions necessary for their survival and includes –

- (a) regional diversity, that is, the diversity of the landscape components of a region, and the functional relationships that affect environmental conditions within ecosystems;
- (b) ecosystem diversity, that is, the diversity of the different types of communities formed by the living organisms and the relations between them;
- (c) species diversity, that is, the diversity of species; and
- (d) genetic diversity, that is, the diversity of genes within each species.

“**Business Day**” means a day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Cairns.

“**Corporation**” means the Corporation described in item 1 of Schedule 1 together with its successors in title and unless inconsistent with the context or subject matter, includes the Corporation’s employees, agents, contractors and invitees.

“**Cultural Resources**” means places or objects on the Land that have anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom.

“**Date of this Agreement**” means the date that the last party executes this Agreement.

“**Declared Pest**” has the same meaning as in the *Land Protection (Pest and Stock Route Management Act) 2002* (Qld).

“**Emergency Event**” means any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes –

- (a) Act of God;
- (b) fire, flood, storm, landslide, wash away;

- (c) cyclone;
- (d) outbreak of disease;
- (e) pest plagues; and
- (f) riot or civil commotion.

“**GST**” has the same meaning as in GST Law.

“**GST Law**” includes *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**ILUA**” means the indigenous land use agreement entered into under the NTA between the Native Title Party and the State of Queensland on or about the Date of this Agreement.

“**Land**” means the Land described in Item 2 of Schedule 1.

“**Management Intent**” means the management intent specified in Schedule 3, or if a management intent is specified at the time of declaration of the Land as a nature refuge under the *Nature Conservation (Protected Areas) Regulation 1994* (Qld), then the management intent specified at the time of declaration.

“**Management Plan**” means a management plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.

“**Management Principles**” means those principles specified in the Act and set out in clause 3.2.

“**Mediation Rules**” means the Mediation Rules as issued by the Institute of Arbitrators and Mediators Australia from time to time.

“**Minister**” means the Minister from time to time administering the Act.

“**Native Title Party**” means Rodney Accoom.

“**Native Title**” has the same meaning as that term in the NTA.

“**Natural Resources**” means the natural and physical features of the Land, including wildlife, soil, water, minerals and air.

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

“**PNG Gas Pipeline ILUA**” means the PNG Gas Pipeline Indigenous Land Use Agreement – Cape York Region relating to NNTT QI2006/43.

“**Registrar of Titles**” means the registrar of titles referred to in the *Land Title Act 1994* (Qld).

“**Significant Cultural and Natural Resources**” includes those resources specified in Schedule 2.

“**State**” means the State of Queensland represented by the Department of Environment and Heritage Protection, acting through the Minister.



“**Supply**” has the same meaning as that term in the GST Law.

“**Tax Invoice**” has the same meaning as that term in the GST Law.

“**Threatening Process**” means any process that is capable of –

- (a) threatening the survival of any protected area, area of major interest, protected wildlife, community or native wildlife or native wildlife habitat;
- (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes; or
- (c) adversely affecting the Cultural Resources.

1.2 A reference to a person includes a reference to corporations and other entities recognised by law.

1.3 In this Agreement the Table of Contents has been inserted for convenience of reference only and is not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.

1.4 A reference to a statute, regulation, ordinance or local law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.

1.5 In this Agreement the headings to the clauses have been inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, any of the terms and conditions of this Agreement.

1.6 The singular includes the plural and vice versa.

1.7 Words importing one gender include a reference to all other genders.

1.8 A covenant or agreement on the part of two or more persons will be deemed to bind them jointly and severally.

1.9 A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendments to them made in accordance with this Agreement.

1.10 In the case of any inconsistency between the schedules and a clause contained in this Agreement, the provisions of the clause will prevail to the extent of any inconsistency.

## **2. Commencement**

2.1 This Agreement will commence on the Date of this Agreement.

2.2 This Agreement is made pursuant to section 45 of the Act and is conditional upon the Governor in Council declaring the Land, by regulation, as a nature refuge, in accordance with the Act.

- 2.3 If the condition in clause 2.2 is not satisfied on or before that date specified in Item 3 of Schedule 1, then the Corporation will continue to manage the Land in accordance with the:
- (a) Management Principles;
  - (b) Management Intent; and
  - (c) terms and conditions of this Agreement.
- 2.4 The Corporation acknowledges the financial contribution and support provided by the State to the Beneficiaries to assist in the formation of the Corporation and the transfer of the Land under ALA.
- 2.5 In consideration of the assistance referred to in clause 2.4 and the Corporation's desire to protect the Land's Significant Cultural and Natural Resources, the Corporation agreed to enter into this Agreement and to the declaration of the Land as a nature refuge.

### **3. Management of the Land**

- 3.1 Subject to clause 2.3, the Corporation will manage the Land in accordance with –
- (a) the Management Principles;
  - (b) the Management Intent;
  - (c) this Agreement; and
  - (d) the Management Plan (if any).
- 3.2 The Management Principles are –
- (a) to conserve the Land's Significant Cultural and Natural Resources;
  - (b) to provide for the controlled use of the Land's Cultural Resources and Natural Resources; and
  - (c) to take into account the interest of the Corporation.
- 3.3 The State will use its best endeavours to
- (a) notify the Corporation that the land has been declared a nature refuge
  - (b) as soon as practicable after the regulation is made under section 46 of the Act.
- 3.4 If the Minister and the Corporation agree that a Management Plan is to be prepared for the Land, the State will
- (a) consult with the Corporation and the Beneficiaries during the preparation of the Management Plan; and
  - (b) provide the Corporation with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.5 The Corporation will manage the Cultural Resources and Natural Resources in accordance with the terms of this Agreement.

#### **4. Threatening Process**

4.1 The Corporation will notify the State as soon as practicable after the Corporation becomes aware of the existence and nature of any Threatening Process on the Land, or on any adjoining land or on any neighbouring land.

4.2 Upon receipt of that notice, the State will discuss with the Corporation what, if any, action is necessary to deal with the Threatening Process.

4.3 Subject to clause 4.2, the parties will use their best endeavours to manage the Threatening Process and minimise the adverse effects on the Land.

4.4 The parties' obligations under this Agreement will continue for the duration of any Threatening Process.

#### **5. Emergency Event**

5.1 Where either of the parties is unable, by reason of an Emergency Event, to carry out, wholly or in part, their obligations under this Agreement, they will give notice of such Emergency Event to the other party as soon as practicable. That notice must contain full particulars of the Emergency Event and upon receipt of that notice, the obligations of the party giving the notice, (so far as they are affected by the Emergency Event) will be suspended for the duration of the Emergency Event.

5.2 The party giving the notice referred to in clause 5.1, will take all steps and use all reasonable diligence to deal with the Emergency Event as soon as practicable.

5.3 If the performance of any obligation under this Agreement is prevented by an Emergency Event, the time for performance will be extended by the duration of the Emergency Event.

5.4 Non-performance by either party of any obligation or condition of this Agreement, resulting from an Emergency Event, will not give rise to any liability to the other party for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with, that non-performance.

5.5 In limiting the effects of an Emergency Event, the Corporation will only take action that has a minimal effect on the Cultural Resources and Natural Resources.

#### **6. Entry by the State**

6.1 If the State gives the Corporation at least 5 Business Days' notice, the Corporation will permit the State to enter the Land for the following purposes -

- (a) to determine if the Land is being managed in accordance with the terms of this Agreement; and
- (b) to carry out the State's rights and obligations under this Agreement and the Act.

6.2 The right of entry under clause 6.1 does not include a right of entry into buildings used primarily for residential purposes.

## **7. Indemnity**

7.1 The State –

- (a) indemnifies; and
- (b) releases and discharges,

the Corporation from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the Corporation, or which the Corporation may pay, sustain, or be put to by reason of, or in consequence of, or in connection with the State's entry onto the Land under clause 6, other than as a result of the negligent act or omission, or the wilful default of the Corporation.

## **8. Assistance to the Corporation**

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Corporation.

8.2 The assistance referred to in clause 8.1 may include -

- (a) advice on the control of pest plants and animals;
- (b) advice on Natural Resource management;
- (c) advice on the protection and preservation of Cultural Resources;
- (d) assistance with the development and implementation of research and monitoring projects;
- (e) assistance with the design and implementation of Biodiversity survey and monitoring regimes;
- (f) assistance with the development and implementation of a Management Plan; and
- (g) assistance with development and installation of interpretive, directional or regulatory signage.

8.3 The assistance provided by the State under clause 8.1 and clause 8.2 is in consideration of the Corporation complying with the terms and conditions of this Agreement.

## **9. Agreement Binding**

9.1 This Agreement is binding on all current and future owners of the Land and on all persons who have an interest in the Land, including lessees and licensees.

9.2 The Corporation will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

9.3 The Corporation will use its best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

## **10. Creation or Change of Lessee**

The Corporation will notify the State of the name and contact details of the person with whom the Corporation has entered into a lease or licence for the whole or part of the Land. Notification will be no later than 10 Business Days after entering into the lease or licence.

## **11. Liability of the State**

The Corporation agrees that the State will not be liable for any act or omission which occurs on the Land as a result of the parties entering into this Agreement, or the subsequent declaration of the Land as a nature refuge in accordance with the Act.

## **12. Registration of Agreement**

Within the time required by the Act, the State will notify the Registrar of Titles that this Agreement has been entered into.

## **13. Compliance with Laws**

13.1 At its own expense, the Corporation will comply with and observe all Acts of Parliament, local laws, regulations or rules for the time being in force which apply to the Corporation's obligations under this Agreement.

13.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 13.1

## **14. Aboriginal Cultural Heritage Protection Laws**

14.1 Nothing in this Agreement affects the rights and obligations of the parties under any law dealing with the preservation or protection of Aboriginal Cultural Heritage.

14.2 All Aboriginal Cultural Heritage in the Land is expressly excluded from the operation of this Agreement for the purposes of sections 23(3)(a)(iii), 24(2)(a)(iii), 25(2)(a)(iii), 26(2)(a)(iii) and 86(b) of the *Aboriginal Cultural Heritage Act 2003*.

## **15. Animals**

15.1 The Corporation may allow only those domestic animals specified in Item 1 of Schedule 4 to have access to the Land.

15.2 The Corporation will not permit those animals specified in Item 2 of Schedule 4 to have access to the Land.

15.3 The Corporation must not permit any person to bring onto the Land any animal or plant which is a Declared Pest.

## **16. Activities on the Land**

16.1 The parties acknowledge that -

- (a) upon registration of this Agreement under section 134 of the Act the Corporation and the Beneficiaries will be bound by this Agreement; and
- (b) under the ILUA the Native Title Party and the Atambaya, Northern Kaanju and Yinwum People have agreed that they will exercise any Native Title on the Land only in accordance with the conditions which apply to Beneficiaries as set out in this Agreement.

## **17. Management Conditions**

17.1 The Corporation must use the Land and conduct land management activities on the Land in such a way that the ecological integrity and diversity of ecosystems are protected.

### *Pest Plants and Animals*

17.2 The Corporation must –

- (a) take all reasonable steps to minimise the introduction of and contain the spread of pest plants and animals on the Land;
- (b) not plant exotic pasture species, or exotic plants with potential to become pests;
- (c) keep a careful watch for unfamiliar plants and animals at sites of disturbance, particularly around yards and places where vehicles commonly enter the Land;
- (d) inform the State about unfamiliar plants or animals that may be pests;
- (e) contain or eradicate new pest plants and animals as promptly as possible;
- (f) carry out pest management in a way that minimises adverse effects on native plants and animals and ecosystems;
- (g) develop, implement and regularly review a pest plant and animal management strategy, with the assistance of the State; and
- (h) use its best endeavours to complete and start implementing the pest plant and animal management strategy referred to in clause 17.2(g), within 2 years of the Date of this Agreement.

### *Fire Management*

17.3 The Corporation must –

- (a) manage fire to maintain the ecological integrity and diversity of native ecosystems and wildlife on the Land;
- (b) develop, implement and regularly review a fire management strategy, with the assistance of the State; and
- (c) use its best endeavours to complete and start implementing the fire management strategy, referred to in clause 17.3(b), within 2 years of the Date of this Agreement.

### *Cattle*

17.4 The Corporation must –

- (a) manage cattle in ways that maintain the ecological integrity and diversity of native ecosystems and wildlife that exist on the Land at the Date of this Agreement;
- (b) not intensify the level of grazing on the Land from that being carried out as at the Date of this Agreement; and
- (c) not provide any artificial watering points or dietary supplements on the Land.

### *Taking of Native Plants and Animals*

17.5 The Corporation must –

- (a) ensure that the taking of native plants and animals by Beneficiaries is done in a way that ensures –
  - (i) the long term survival of the plant or animal on the Land is not threatened; and
  - (ii) there is no long term adverse impact on the ecological integrity and diversity of native ecosystems and wildlife on the Land;
- (b) take reasonable measures to ensure that no person who is not a Beneficiary takes native plants or animals on the Land;
- (c) if protected wildlife listed as endangered, vulnerable or near threatened (as defined in the Act) are identified for the Land, develop and implement management arrangements that may include –
  - (i) a voluntary ban on hunting or using the species for an agreed period;
  - (ii) a system for the sustainable harvest or use of the species; and
  - (iii) any other arrangement that protects the rights of the Beneficiaries and ensures the future of the species in question.

### *Infrastructure*

17.6 The Corporation must –

- (a) consult with the State concerning the siting of substantial structures such as major fences, roads, tracks and buildings to minimise the impact on the Natural Resources and Cultural Resources of the Land; and
- (b) not build new dams on the Land.

### *Monitoring*

17.7 The Corporation must –

- (a) with the assistance of the State, develop a monitoring program to carry out monitoring to assess –
  - (i) the condition of the Land; and
  - (ii) changes in and impacts on, the Natural Resources and Cultural Resources, with a view to continually improving management of the Land; and
- (b) use its best endeavours to complete and start implementing the monitoring program, referred to in clause 17.7(a), within 2 years of the Date of this Agreement.

### *Tourism*

17.8 The Corporation must –

- (a) ensure tourism activities do not have long term adverse impacts on the ecological integrity and diversity of natural ecosystems on the Land; and
- (b) consider advice from the State on proposed tourism activities and their potential impacts and management of the impacts on Natural Resources and Cultural Resources.

### *Forestry*

17.9 The Corporation must not carry out, nor permit to be carried out, any commercial forestry operations on the Land.

### *Other Activities*

17.10 The Corporation must –

- (a) ensure that use of vehicles and motorbikes off formed tracks or roads is only for managing the Land in accordance with this Agreement, or by the Beneficiaries for traditional activities;
- (b) ensure that native plants including trees, shrubs and grasses are not interfered with, destroyed or removed, unless required for managing the Land in accordance with this Agreement, or by the Beneficiaries in accordance with clause 17.5(a);
- (c) provide for the State (or others having access to the Land, or undertaking works, or activities authorised by this Agreement in the vicinity of cultural sites and story places) to be accompanied by appropriate Beneficiaries to ensure culturally appropriate conduct;
- (d) not carry out, or consent to, exploration or mining (including fossicking), extraction, or production of gas, petroleum, minerals or other substances, or the establishment of any transmission lines, or other services, or works on the Land, unless required by law, or with the consent of the State; and



- (e) ensure that waste materials are disposed of in a manner that minimises environmental harm and meets local government standards for remote areas.

17.11 Prior to undertaking any proposed activity on the Land that is not specifically dealt with in clauses 17.2 to 17.10 and which may have the potential to adversely impact on Natural Resources and Cultural Resources, the parties will discuss the proposed activity with a view to minimising the potential adverse impacts.

17.12 The parties will review the management conditions in this clause 17 every 5 years. That review will examine the results of monitoring carried out and where necessary, will modify the management conditions if agreed by the parties.

17.13 The parties acknowledge that parts of the Land are subject to the PNG Gas Pipeline ILUA and nothing in this Agreement affects the operation of the PNG Gas Pipeline ILUA.

## **18. Application of the Act**

The parties acknowledge that the Act continues to apply to the parties –

- (a) except as specified otherwise in this Agreement; and
- (b) in relation to activities done in breach of this Agreement.

## **19. Mediation**

19.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other party, providing details of the dispute and requiring its resolution under this clause 19 (Notice of Dispute).

19.2 Both parties must confer within 20 Business Days after the Notice of Dispute is given to try to resolve the dispute.

19.3 If the dispute is not resolved within 40 Business Days after the Notice of Dispute is given to the other party (First Period), the dispute is to be submitted to mediation in accordance with the provisions of this clause 19.

19.4 The mediation must be conducted at the place specified in Item 4 of Schedule 1, or such other place as the parties agree. The Mediation Rules apply to the mediation.

19.5 If there is any inconsistency between the Mediation Rules and the provisions of this clause 19, the provisions of this clause will prevail to the extent of any inconsistency.

19.6 If the parties have not agreed upon the mediator and the mediator's remuneration within 20 Business Days after the First Period -

- (a) the mediator is the person appointed by; and
- (b) the remuneration of the mediator is the amount or rate determined by,

the President of the Queensland Law Society (President) or the President's nominee, acting on the request of either party to the dispute.

- 19.7 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.
- 19.8 This clause 19 does not prevent either party from obtaining any injunctive, declaratory or other relief from a court which may be urgently required.
- 19.9 Subject to clause 19.8, a party must not commence or maintain a court action or proceeding in relation to a dispute in connection with this Agreement until the dispute has been mediated under this clause 19.

## **20. Default**

- 20.1 If the Corporation is in default in the performance of any obligation under this Agreement, the State may give written notice to the Corporation specifying –
- (a) the default;
  - (b) what action is required to remedy the default; and
  - (c) the time by which the default is to be rectified.
- 20.2 The time specified in the notice given under clause 20.1 must be a reasonable time, having regard to the nature of the default.
- 20.3 If the Corporation fails to rectify the default in accordance with the notice given pursuant to clause 20.1, then –
- (a) the State may rectify the default, or engage others to rectify the default; and
  - (b) withhold or withdraw any assistance to be, or being provided under clause 8.
- 20.4 If the State is in default in the performance of any obligation under this Agreement, the Corporation may give written notice to the State specifying –
- (a) the default;
  - (b) what action is required to remedy the default; and
  - (c) the time by which the default is to be rectified.
- 20.5 The time specified in the notice given under clause 20.4 must be a reasonable time, having regard to the nature of the default.
- 20.6 If the State fails to rectify the default, then the Corporation may invoke the mediation provisions under clause 19.

## **21. Termination**

If the declaration of the nature refuge over the Land is revoked in accordance with the Act, this Agreement will end.

## **22. Notices**

22.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in item 5 of Schedule 1, or any substitute address notified in writing by the relevant addressee from time to time.

22.2 Notice will be deemed to be given –

- (a) 3 Business Days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or
- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

## **23. Severability**

If anything in this Agreement is invalid, unenforceable, illegal or void, then it is severed and the remaining terms continue in force.

## **24. Waiver**

No rights under this Agreement will be deemed to be waived except by written notice signed by each party. A waiver by either party will not prejudice that party's rights in respect of any subsequent breach of this Agreement by the other party. Any failure by either party to enforce any clause of this Agreement, or any forbearance, delay, or indulgence granted by either party to the other will not be construed as a waiver of rights under this Agreement.

## **25. Governing Law**

This Agreement will be governed by and construed according to the law of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of the State of Queensland.

## **26. Costs**

Each party will pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.

## **27. GST**

27.1 The parties acknowledge that GST may be payable on a Supply under this Agreement.

27.2 Where GST is payable upon any Supply under this Agreement, the consideration payable by the recipient to the supplier for the Supply will be adjusted in accordance with clauses 27.3 and 27.4.

- 27.3 Subject to the supplier issuing a valid Tax Invoice, the consideration payable by the recipient to the supplier for the Supply will be increased by the amount equal to that which the supplier is obliged to remit as GST on the Supply ("the Amount").
- 27.4 If it is determined on reasonable grounds that the amount of GST collected from the recipient under this clause 27.3 differs, for any reason, from the amount of GST paid or payable by the supplier, including by reason of -
- (a) any amendment to the GST;
  - (b) the issue of a ruling or advice by the Commissioner of Taxation; or
  - (c) a refund to the supplier in respect of a Supply,
- the recipient will be entitled to a refund of the additional consideration which it paid.
- 27.5 The parties will exchange such information as is reasonably necessary for each to make a reasonable assessment of the Amount.
- 27.6 If a payment to a party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 27.3.

## **28. Execution**

The parties will execute copies of this Agreement with each party retaining an original copy.

## **29. Variation**

This Agreement may not be varied other than by a later written document executed by the parties.

## **30. Entire Agreement**

This Agreement constitutes the entire agreement between the parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.

## **31. Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together will constitute one instrument.

## SCHEDULE 1

### Item 1. Corporation

Batavia Traditional Owners Aboriginal Corporation (ICN 7538)

### Item 2. Land

Part of Lot 2 on SP 241405, Parishes of Blane, Boothby, Berney, Bethell, Templemore, Lovaine, Loftus and Thring, Counties of Dulhunty, Shelburne and York, Cook Shire, containing an area of about 79,157 hectares, as described and depicted on the plan PA545 in Schedule 5

### Item 3. Date for Satisfaction of Condition in Clause 2

12 months after the Date of this Agreement

### Item 4. Place of Mediation

Cairns

### Item 5. Address for Notices

#### Corporation

Address: Cape York Land Council Aboriginal Corporation  
32 Florence Street  
CAIRNS QLD 4870

Postal Address: PO Box 2496  
CAIRNS QLD 4870

Attention: c/- The Principal Legal Officer  
Telephone: (07) 4053 9222  
Facsimile: (07) 4051 0097

#### The State

Address: Department of Environment and Heritage Protection  
400 George Street  
BRISBANE QLD 4000

Postal Address: GPO Box 2454  
BRISBANE QLD 4001

Attention: The Director-General  
Telephone: (07) 3330 6298  
Facsimile: (07) 3330 6306

## SCHEDULE 2

### Significant Cultural and Natural Resources

#### Item 1. Significant Natural Resources

##### Sinkholes Section

The sinkholes section covers 5,191 hectares and is about 12km north-west of the Batavia Downs homestead. The closed forest patches are remnants from when the climate here was wetter. The sinkholes have protected these sensitive plant communities from fire and drought. The closed forest at the sinkholes is unique to the Wenlock catchment. Around 400 hectares or 30% of the total area of this forest type lies within the nature refuge.

The forests are important to a large variety of plants and animals including an endangered *Indigofera* and two vulnerable orchids.

##### Loftus Section

This section covers 73,357 hectares and lies to the east of the Wenlock. It contains many habitats on: sandstone hills and ranges; undulating country on fine grained sedimentary rock; ironstone jump-ups, old loamy and sandy plains; and river and creek flats.

These habitats include tall Messmate woodlands, Broad-leaved *Melaleuca* woodlands, Wenlock River wetlands, closed forests, vine scrubs, heath and perched wetlands.

The sandstone hills and ranges lie mostly in the southern end of the nature refuge. Tall Messmate woodlands cover most of this area. There are also small patches of denser forest in the wetter, protected valleys. These forests and surrounding woodlands are the home for many of the endangered, vulnerable and near threatened plants as well as the Northern Quoll and Cape York Rock-wallaby.

Undulating country on fine grained sedimentary rock occurs in the northern tip of the proposed nature refuge. This area is dominated by Molloy Red Box. This habitat type is important for mammals as the soils are generally more fertile than other soil types in the area.

The ironstone jump-ups are covered by Gum-topped Bloodwood and Cullen's Ironbark, which is good potential habitat for Northern Quolls and Cape York Rock-wallabies. The old loamy and sandy plains cover most of the proposed nature refuge. Much of this is covered by tall messmate woodlands. Tall messmate woodlands provide suitable habitat for Red Goshawks. There are several patches of closed forest on the eastern side of the proposed nature refuge that contain several near threatened plants. There is also important habitat for Palm Cockatoos near the Wenlock River. There are a number of very important, "of concern" wetlands perched in this land type in the nature refuge including a very large wetland north of the Frenchman's Road.

River and creek flats and associated wetlands are essential for most of the animals listed below. See the Wenlock River Section below for more information.

This variety of habitats supports many different plants including one vulnerable and nine that are near threatened. It also supports many different animals including the:

- Northern Quoll;
- Estuarine Crocodile;
- near threatened Black-necked Stork and Palm Cockatoo.

Given the habitats in this section, it is likely that these animals also live here:

- endangered Red Goshawk;
- vulnerable Eclectus Parrot; and
- near threatened Cape York Rock-wallaby.

The area is also likely to contain:

- two endangered tree ferns and an Indigofera;
- five vulnerable plants; and
- 18 additional near threatened plants.

### **Wenlock River Section**

The Wenlock River section covers 609 hectares. This river contains the greatest variety of freshwater fish of any river in Australia.

Important forest grows along the banks. The Wenlock riverbank forest is important for the movement of many animals between the east and west coast. These animals include the Growling Green-eyed Tree-frog, Wompoo Dove, Superb Fruit-dove, Cape York Rat, Giant White-tailed Rat and Common Spotted Cuscus.

The forest along the banks also supports Estuarine Crocodiles, near threatened Palm Cockatoos and Black-necked Storks.

This forest is also an important dry season refuge for woodland animals by providing water and shade. The forest supports many plants that are near threatened and endemic to Cape York Peninsula.

## Regional Ecosystems

The following Regional Ecosystems occur on the Land.

RE	Description
3.10.10	<i>Eucalyptus tetradonta</i> and <i>Corymbia stockeri</i> subsp. <i>stockeri</i> +/- <i>C. nesophila</i> woodland on sandstone plateaus and slopes
3.3.14a	<i>Melaleuca saligna</i> +/- <i>M. viridiflora</i> , <i>Lophostemon suaveolens</i> woodland on drainage swamps
3.3.22a	<i>Corymbia clarksoniana</i> or <i>C. novoguineensis</i> woodland on alluvial plains
3.3.25a	<i>Eucalyptus leptophleba</i> +/- <i>Corymbia tessellaris</i> +/- <i>E. platyphylla</i> woodland on riverine levees and floodplains
3.3.32	<i>Melaleuca viridiflora</i> +/- <i>M. saligna</i> woodland in sinkholes and drainage depressions
3.3.39	Semi-deciduous microphyll vine forest +/- <i>Melaleuca</i> spp. associated with sinkholes (“ <b>of concern</b> ”)
3.3.50a	<i>Melaleuca viridiflora</i> +/- <i>Petalostigma pubescens</i> +/- <i>M. stenostachya</i> low open woodland on low plains
3.3.53x1	<i>Asteromyrtus lysicephala</i> +/- <i>Baeckea frutescens</i> open heath on Jardine River sand plains
3.3.66x1a	Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands (“ <b>of concern</b> ”)
3.3.5a	Evergreen notophyll vine forest on alluvia on major watercourses
3.5.10	<i>Eucalyptus tetradonta</i> and <i>Corymbia nesophila</i> woodland on sandy gently undulating rises and low hills
3.5.10x1	<i>Eucalyptus tetradonta</i> and <i>Corymbia nesophila</i> woodland on sandy gently undulating rises and low hills
3.5.11	<i>Eucalyptus tetradonta</i> and <i>Corymbia nesophila</i> woodland on lower slopes of plains and rises
3.5.19x1	<i>Asteromyrtus lysicephala</i> and <i>Choriceras tricornis</i> open heath on sand sheets
3.5.22x2	<i>Corymbia clarksoniana</i> +/- <i>Erythrophleum chlorostachys</i> +/- <i>Corymbia</i> spp. woodland on plains
3.5.4	Semi-deciduous notophyll vine forest in small patches on northern plateaus
3.5.7x2a	<i>Eucalyptus tetradonta</i> +/- <i>Corymbia clarksoniana</i> woodland on sand plains
3.7.5a	<i>Corymbia stockeri</i> , <i>Eucalyptus cullenii</i> woodland on ironstone knolls and erosional surfaces
3.7.5b	<i>Corymbia stockeri</i> , <i>Eucalyptus cullenii</i> woodland on ironstone knolls and erosional surfaces
3.7.6	<i>Melaleuca stenostachya</i> +/- <i>Acacia leptostachya</i> woodland on lateritic erosional slopes
3.9.4	<i>Eucalyptus leptophleba</i> +/- <i>Corymbia dallachiana</i> open woodland on rolling plains
3.9.5	<i>Corymbia dallachiana</i> +/- <i>Eucalyptus leptophleba</i> open woodland on rolling plains (“ <b>of concern</b> ”)



**Item 2. Significant Cultural Resources**

The Land has significant Indigenous cultural resources. These have not been listed in the Agreement due to cultural sensitivity. Limited work has been undertaken to document these resources. The Corporation reserves the right to list these resources and modify this list in accordance with clause 29 as they are recorded.

### **SCHEDULE 3**

#### **Management Intent**

The Management Intent for the Land is to –

- (a) manage and conserve the Significant Cultural and Natural Resources of the Land;
- (b) permit or restrict, or require to be conducted, particular activities in, on or in relation to the Land;
- (c) permit or restrict the use of the Land for a particular purpose; and
- (d) permit or restrict access to the Land by particular persons or animals.

## **SCHEDULE 4**

### **Animals**

#### **Item 1. Domestic animals which may be brought onto the Land**

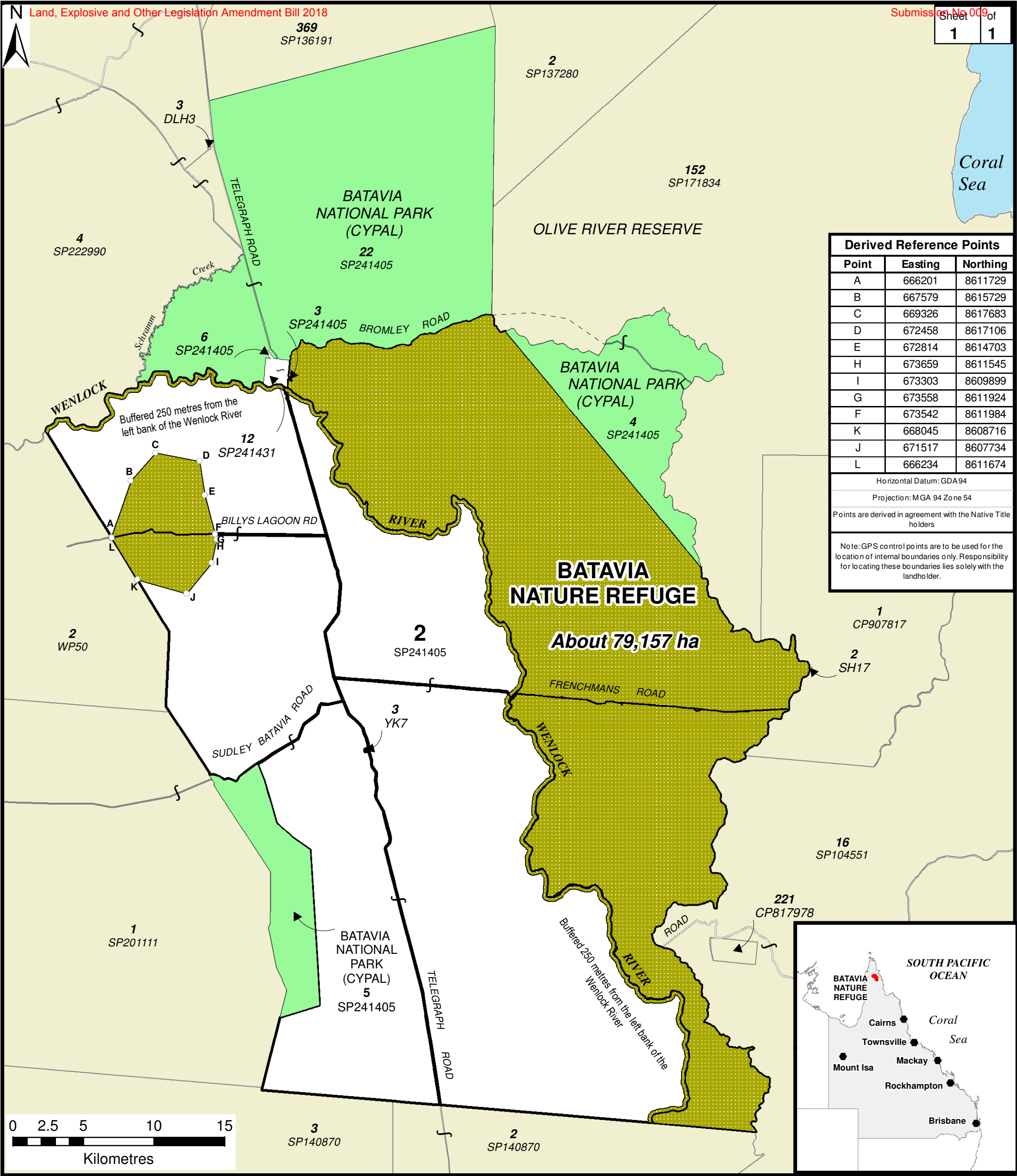
- (a) Cattle for the purposes of sustainable grazing;
- (b) horses for the purposes of sustainable grazing, management and recreation;
- (c) working dogs for the purposes of managing stock;
- (d) domestic dogs which are under the supervision of the Corporation, the Beneficiaries or their invitees; and
- (e) other domestic animals by agreement with the State, provided that they are not inconsistent with conservation of the Land's Significant Cultural and Natural Resources.

#### **Item 2. Specified animals which must not be brought onto the Land**

None specified.

**SCHEDULE 5**  
**Plan of Batavia Nature Refuge**  
**(Attached)**

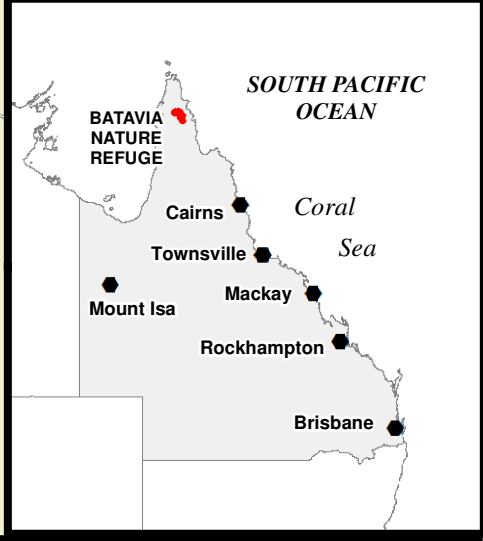





Derived Reference Points		
Point	Easting	Northing
A	666201	8611729
B	667579	8615729
C	669326	8617683
D	672458	8617106
E	672814	8614703
H	673659	8611545
I	673303	8609899
G	673558	8611924
F	673542	8611984
K	668045	8608716
J	671517	8607734
L	666234	8611674

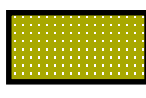
Horizontal Datum: GDA94  
 Projection: MGA 94 Zone 54  
 Points are derived in agreement with the Native Title holders

Note: GPS control points are to be used for the location of internal boundaries only. Responsibility for locating these boundaries lies solely with the landholder.






## PLAN OF BATAVIA NATURE REFUGE



Batavia Nature Refuge



Subject Area (Balance)  
Lot 2 on plan SP241405

<p>© The State of Queensland (Department of Environment and Heritage Protection) 2012.</p> <p><small>Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.</small></p> <p><small>Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Heritage Protection makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Heritage Protection disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might be incurred as a result of the product being inaccurate or incomplete in any way and for any reason.</small></p> <p><small>The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.</small></p> <p><small>Based upon an extraction from the Digital Cadastral Data Base on: 12/09/2012</small></p>	<p><b>PARISH:</b> BERNEY, BETHELL, BLANE, BOOTHBY, LOFTUS, LOVAINE, TEMPLEMORE, THRING, TREVOR</p> <p><b>COUNTY:</b> DULHUNTY, SHELburne, YORK</p> <p><b>LOCALITY:</b> WENLOCK</p> <p><b>LOCAL AUTH:</b> COOK SHIRE</p> <p><b>REGION:</b> CAPE YORK/SAVANNA</p> <p><b>ELECTORATE:</b> COOK</p>	<p>Scale: <b>1:250000</b></p> <p>Note A4 copy is reduced.</p>
<p>NRID: 2284</p> <p>File Ref: CNS8902</p>	<p>PA Number: PA545</p> <p>Map Ref: 7472, 7473</p>	<p>Drawn By: TMB/IWH</p> <p>Date: 12/09/2012</p>

**AP19105**

**Executed as a Deed on the Dates Appearing Below**

SIGNED, SEALED AND DELIVERED for and )  
on behalf of the **Batavia Traditional Owners** )  
**Aboriginal Corporation** by )

Edwin A. WOODLEY

(print name of signatory)

a person duly authorised to act in that )  
capacity )

this 21<sup>st</sup> day of NOVEMBER 2012 )

in the presence of: )

Eunice agie

(print name of witness)



(signature)



(witness signature)

SIGNED, SEALED AND DELIVERED for and )  
on behalf of the **Batavia Traditional Owners** )  
**Aboriginal Corporation** by )

CHRISTOPHER DEAN

(print name of signatory)

a person duly authorised to act in that )  
capacity )

this 21<sup>st</sup> day of NOVEMBER 2012 )

in the presence of: )

Joanne Nelson

(print name of witness)



(signature)



(witness signature)

SIGNED, SEALED AND DELIVERED for and on behalf of the **Batavia Traditional Owners Aboriginal Corporation** by

WALTER DANIEL MOSES

(print name of signatory)

a person duly authorised to act in that capacity

this 21<sup>st</sup> day of NOVEMBER 2012

in the presence of:

WERNER JOE WOODS

(print name of witness)

WALTER DANIEL MOSES

(signature)

WERNER JOE WOODS

(witness signature)

SIGNED, SEALED and DELIVERED for and on behalf of the **STATE OF QUEENSLAND**

this 3<sup>rd</sup> day of OCTOBER 2012

by HON ANDREW POWELL MP

(print name of signatory)

HON ANDREW POWELL MP

(signature)

MINISTER FOR ENVIRONMENT AND HERITAGE PROTECTION  
(designation)

in the presence of:

FIONA PROCTER

(print name of witness)

Fiona Procter

(witness signature)