

Peninsula Developmental Road agreements

Summary of the Peninsula Developmental Road Priority Agreement

Overview

The Peninsula Developmental Road Priority Agreement (**PPA**) is an interim agreement between the State and traditional owners that allows the State to undertake particular priority road works on the Peninsula Developmental Road (**PDR**) while it continues to negotiate with the traditional owners concerning Cape York United Number 1 Claim (QUD673/2014).

By entering into the PPA, the State has agreed to negotiate an Indigenous Land Use Agreement (**ILUA**) with relevant traditional owners which will provide the State with the necessary compliance with the *Native Title Act 1993* (Cth) and the *Aboriginal Cultural Heritage Act 2003* (Qld) relating to various road works on the PDR and also provide benefits for traditional owners such as training, jobs and economic development opportunities.

Under the PPA, the Nominated Persons on behalf of the traditional owners and the Cape York Land Council (CYLC) have agreed not to prevent, halt or delay certain priority road works (including applying for a court injunction or challenging the validity of the works) while the negotiation for the ILUA occurs.

These "**Priority Works**" include the South of Hahn River, Sourayas Hill, South of Morehead River and Mein Deviation projects and a number of dam construction and gravel investigation activities related to works proposed to be undertaken on the PDR in 2016 (Coen South, Archer to Wolverton, Rio Tinto Boundary and Musgrave) which were approved under the PDR Program Stage 1 Works Package and Laura Race Course to Little Laura and Little Laura to Fairview which are planned to be undertaken in Stage 2 of the PDR Program.

Parties and term

The PPA is an agreement between representatives of the relevant traditional owners (**Nominated Persons**) for and on behalf of the Applicant in the Cape York United Number 1 Claim, the State of Queensland acting through the Department of Transport and Main Roads and CYLC.

Unless otherwise agreed, the PPA will terminate on 31 March 2016.

Priority Works

The Parties have agreed that while the Priority Works are being undertaken, they will work together to enable the State to implement the minimum requirements under Government Policy for economic opportunities for Indigenous business, employment and training (with certain examples provided, such as minimum hours of Indigenous training).

The State has agreed to use its best endeavours to implement the following principles while undertaking the Priority Works:

- (a) maximisation of employment of Indigenous people in all aspects of the Priority Works;
- (b) ensuring training programs are implemented for Indigenous people in all aspects of the Priority Works;
- (c) implementation of the Cultural Heritage Protection Agreement;
- (d) awarding of contracts conducted in a manner that maximises opportunities for Indigenous business and Indigenous participation including the provision of adequate support to Indigenous businesses;
- (e) conservation and protection of the environment, using best practice standards and environmental approvals, including the removal of rubbish from the Priority Works area;



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- (f) endeavouring to minimise adversely altering natural hydrological systems;
- (g) disturbing the least amount of soil and vegetation reasonably possible, and taking all practical steps to prevent erosion;
- (h) minimising pollution;
- (i) protecting flora and fauna, and preventing the introduction of exotic fauna and noxious flora to the area of the Priority Works; and
- (j) carrying out rehabilitation and re-vegetation in accordance with best practice environmental procedures and environmental approvals.

ILUA negotiations

The Parties have agreed to negotiate in good faith with a view to agreeing on an ILUA for the whole PDR which includes the following provisions:

- (a) consent to the Future Acts (under the *Native Title Act 1993* (Cth)) of the State's proposed PDR road works;
- (b) validation under the *Native Title Act 1993* (Cth) of any PDR road works undertaken or built before the registration of the ILUA;
- (c) environmental management;
- (d) cultural heritage protection;
- (e) Indigenous rights and interests in land;
- (f) financial payments;
- (g) compensation for any authorised or validated effect on native title rights and interests and consideration for quarry material and water taken from native title land including for the Priority Works (whether before or after the registration of the ILUA);
- (h) employment and training;
- (i) Indigenous business development; and
- (j) implementation measures.

The Parties have agreed to use best endeavours to reach agreement about the ILUA by 31 December 2015.

Summary of the Cultural Heritage Protection Agreement

Overview

The Cultural Heritage Protection Agreement (**CHPA**) is a schedule to the PPA.

Compliance with the CHPA satisfies the State's "duty of care" under the *Aboriginal Cultural Heritage Act 2003* (Qld) when undertaking the Priority Works.

Specifically, the CHPA provides for:

- (a) a cultural induction workshop for the State's employees and contractors;
- (b) a cultural heritage field survey of the "Disturbance Footprint"; and
- (c) monitoring during "High Impact Activities",

to be undertaken by relevant Traditional Owners within the Cape York United Number 1 Claim.

Parties and term

The CHPA has been entered into by representatives of the traditional owners for the area (**Nominated Persons**) for and on behalf of the Applicant in the Cape York United Number 1 Claim, the State of Queensland acting through the Department of Transport and Main Roads and CYLC.

Its term is linked to the PPA, such that the CHPA terminates when the PPA terminates – that is, 31 March 2016 unless otherwise agreed. The negotiation of an ILUA for the whole PDR will consider extending the CHPA, or creating a new CHPA, under that ILUA.

Cultural Induction Workshop

The State has agreed to convene a workshop to be presented by CYLC and up to two representatives of the Applicant for the State's employees and contractors engaged in "High Impact Activities".

High Impact Activities means:

- (a) disturbance by machinery of the topsoil or surface rock layer of any previously undisturbed areas within the Agreement Area, including by trenching, drilling or dredging; or
- (b) the removal of native trees within any previously undisturbed areas within the Agreement Area.

Field Survey

The Parties have agreed to undertake a cultural heritage Field Survey of the "Disturbance Footprint", which is defined by reference to mapping attached to the CHPA. The Disturbance Footprint includes any area, excluding the area of existing infrastructure, where High Impact Activities are proposed to be undertaken.

For example, a Field Survey does not need to be undertaken over the area of the existing PDR.

Following appropriate notification by the State, the Nominated Persons on behalf of the Applicant will assemble an agreed Survey Team, which together with representatives of the State, will undertake the Field Survey. During the Field Survey, the Survey Team will identify and salvage Aboriginal Cultural Heritage.

Following the Field Survey, the Survey Team will prepare a Survey Report to be settled with the State. The Survey Report will:

- (a) identify previously undisturbed areas within the Disturbance Footprint which require monitoring during High Impact Activities; and
- (b) make recommendations for the protection and preservation of Aboriginal Cultural Heritage.

Monitoring

Informed by the Field Survey, Monitoring is required for any High Impact Activities undertaken in previously undisturbed areas within the Disturbance Footprint.

For example, Monitoring is not required for disturbance activities by machinery within the footprint of the existing PDR.

Following the relevant Field Survey, the State will provide notice to CYLC confirming the required number of Monitors and when those Monitors are required to undertake Monitoring of High Impact Activities.

High Impact Activities can only commence once the Monitoring procedures have been complied with.