Queensland Government Native Title Work Procedures

Module JAA: Attachment C

*Template for registered native title claimants and registered native title bodies corporate*

*Commonwealth Native Title Act 1993: s.24JAA*

August 2017
Version history

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# TEMPLATE for registered native title claimants and registered native title bodies corporate

## Notification under section 24JAA of the Commonwealth *Native Title Act 1993 (NTA)*

**By registered post**

<table>
<thead>
<tr>
<th>Part 1 - Key dates</th>
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</thead>
<tbody>
<tr>
<td>Date of issue by the State:______________________</td>
</tr>
<tr>
<td>Notification day:______________________</td>
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<tr>
<td>(NB. This is 5 calendar days after the issue date of the notification to allow for postage.)</td>
</tr>
<tr>
<td>Any comments or requests to be consulted about the proposed future act/s described in this notification must be provided in writing by: _______________ to the person identified in Part 8 below.</td>
</tr>
<tr>
<td>(NB. This date is 2 months from the notification day).</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 2 - Native title parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered native title claimants</td>
</tr>
<tr>
<td>Registered native title body corporate</td>
</tr>
<tr>
<td>Native title representative body</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Part 3 - Location</th>
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<tbody>
<tr>
<td>The location for the proposed future act/s is described as follows:</td>
</tr>
<tr>
<td>Town _____________________________________</td>
</tr>
<tr>
<td>Lot ____________ on Plan ________________</td>
</tr>
<tr>
<td>Part of Lot ____________ on Plan ________________</td>
</tr>
<tr>
<td>Approximate area ____________</td>
</tr>
<tr>
<td>Tenure _____________________________________</td>
</tr>
<tr>
<td>A plan / map is attached showing the locality and specific location.</td>
</tr>
</tbody>
</table>

Queensland Government Native Title Work Procedures - Module JAA - Attachment C, Department of Natural Resources and Mines, 2017
### Part 4 - Future act/s

**Background**

[insert summary of background of project]

**Proposed future act/s**

The State proposes to carry out the following future act/s:

[insert details of future act/s]

**The facility/ies**

The facility/ies identified in the proposed future act/s outlined above fall within the list of facilities within section 24JAA(3) of the NTA -

(check the relevant boxes)

A - Housing
- [ ] public housing provided for Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area

B - facilities
- [ ] public education facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
- [ ] public health facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
- [ ] police facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
- [ ] emergency facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area

C. Staff housing
- [ ] staff housing provided in connection with housing or facilities covered by A or B above

D. Other facilities provided in connection with A, B or C above.
- [ ] things listed in section 24KA(2) - ____________________________
- [ ] sewerage treatment facilities
- [ ] things prescribed by regulation - ____________________________.

### Part 5 - Indigenous cultural heritage

[Insert details about how Indigenous cultural heritage has been addressed or will be addressed prior to construction.]
### Part 6 - Seeking your comments

The State is seeking your comments on the proposed future act/s described in this notification.

Please note that this is not a right of veto but an opportunity for you to provide comments about the proposed future act/s in relation to the registered native title rights and interests.

You must provide any comments in writing within the 2 month notification period (see **Part 1 - Key Dates**).

### Part 7 - Request to be consulted

A registered native title claimant or a registered native title body corporate can make a request to the State to be consulted about the proposed future act/s.

If consultation is requested, the State will consult with you about ways of minimising the impact of the future act/s on your registered native title rights and interests in relation to the land and/or waters and, if relevant, any access to the land or waters or the way in which any thing authorised by the future act/s might be done.

You must make this request in writing within the 2 month notification period (see **Key Dates**).

If consultation is requested there is a further 2 month period for undertaking the requested consultation, ie. up until 4 months from the notification day.

### Part 8 - Contact details

If you have any queries about the notification, please contact -

[insert officer contact details - name, postal address, e-mail, phone number]

Please send any comments about the future act/s or request to be consulted to

[insert officer and address details - name, postal address, e-mail]

### Part 9 - Attachments

- **Map / plan**
- [List any other attachments]
Queensland Government Native Title Work Procedures

Module JAA: Attachment D

Template for Native Title Representative Bodies

Commonwealth Native Title Act 1993: s.24JAA

August 2017
Version history

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# TEMPLATE for Native Title Representative Bodies

**Notification under section 24JAA of the Commonwealth Native Title Act 1993 (NTA)**

*By registered post*

**Part 1 - Key dates**

| Date of issue by the State: ____________________________ |
| Notification day: ____________________________  |
| (NB. This is 5 calendar days after the issue date of the notification to allow for postage.) |

Any comments about the proposed future act/s described in this notification must be provided in writing by: ____________________________ to the person identified in Part 8 below.  
(NB. This date is 2 months from the notification day).

**Part 2 - Native title parties**

| Registered native title claimants | [insert details or N/A] |
| Registered native title body corporate | [insert details or N/A] |
| Native title representative body | [insert details] |
### Part 3 - Location

The location for the proposed future act/s is described as follows:

<table>
<thead>
<tr>
<th>Town</th>
<th>Lot on Plan</th>
<th>Part of Lot on Plan</th>
<th>Approximate area</th>
<th>Tenure</th>
</tr>
</thead>
</table>

A plan/map is attached showing the locality and specific location.

### Part 4 - Future act/s

#### Background

[insert summary of background of project]

#### Proposed future act/s

The State proposes to carry out the following future act/s:

#### [insert details of future act/s]

#### The facilities

The facility/ies identified in the proposed future act/s outlined above fall within the list of facilities within section 24JAA(3) of the NTA - (check the relevant boxes)

- **A - Housing**
  - ☐ public housing provided for Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area

- **B - facilities**
  - ☐ public education facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
  - ☐ public health facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
  - ☐ police facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
  - ☐ emergency facilities for the benefit of Aboriginal people or Torres Strait Islanders living in, or in the vicinity of the area
C. Staff housing
   - staff housing provided in connection with housing or facilities covered by A or B above
D. Other facilities provided in connection with A, B or C above.
   - things listed in section 24KA(2) - ___________________________
   - sewerage treatment facilities
   - things prescribed by regulation - __________

Part 5 - Indigenous cultural heritage

[Insert details about how Indigenous cultural heritage has been addressed or will be addressed prior to construction.]

Part 6 - Seeking your comments

The State is seeking your comments on the proposed future act/s described in this notification.

Please note that this is not a right of veto but an opportunity for you to provide comments about the proposed future act/s in relation to the registered native title rights and interests.

You must provide any comments in writing within the 2 month notification period (see Part 1 - Key Dates).

Part 7 - Contact details

If you have any queries about the notification, please contact -

[insert officer contact details - name, postal address, e-mail, phone number]

Please send any comments about the future act/s or request to be consulted to -

[insert officer and address details - name, postal address, e-mail]

Part 8 - Attachments

Map / plan
[List any other attachments]
Queensland Government Native Title Work Procedures

Module JAA: Attachment A

Consultation process guideline for public housing

August 2017
Version history

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Part 1: Introduction

Consultation forms a key part of the procedural rights process under section 24JAA of the Commonwealth Native Title Act 1993 (NTA). This requirement is set out in Part 7 of Module JAA.

This Guideline seeks to assist officers in carrying out that consultation.

The Guideline is based upon section 24JAA of the NTA, the relevant Explanatory Memorandum and State native title policy.

Consultation on the proposed future act must also comply with any requirements determined by way of legislative instrument. At the time of publishing, there is no relevant legislative instrument.1

Part 2: Legislative requirements for consultation

The consultation process under section 24JAA is only triggered where the registered native title bodies corporate and/or registered native title claimants advise in writing that they wish to be consulted about the doing of the proposed future act in so far as it affects their native title rights and interests.

This request must be made within the required time period set out in the notice, that is, within the period of 2 months beginning on the notification day.

If a request to be consulted is made, then you must consult with the native title party about -

(a) ways of minimising the impact of the future act/s on their registered native title rights and interests in relation to the land and waters

and

(b) if relevant:

(i) any access to the land or waters

(ii) the way in which any thing authorised by the future act/s might be done.

The Explanatory Memorandum advises that the legislative instrument, when made, may specify requirements as to the manner of consultation and matters to be dealt with through consultation.2 It advises -

It may require the action body to hold one or more face to face meeting with native title claimants or body corporate who have requested consultation, provide translators during consultation, or address issues of the design, location and nature of the proposed act.

Part 3: Policy requirements for consultation

The key basic necessities for life are food, water and shelter. The need for improved shelter, that is housing, is currently a key priority for Australian Governments.

The National Partnership Agreement on Remote Indigenous Housing advises in its objective -

---

1 Once a legislative instrument has been made, the requirements determined by the legislative instrument will be incorporated into this Guideline.

2 [1.14], Explanatory Memorandum to the Native Title Amendment Bill (No.1) 2010
Housing investment for the benefit of Indigenous people in remote Indigenous communities is a central plank to achieving the targets for ‘Closing the Gap’ on Indigenous disadvantage.\(^3\)

As part of Closing the Gap on Indigenous disadvantage, the Council of Australian Governments is committed to reforming housing and infrastructure arrangements in remote Indigenous communities. This will address significant overcrowding, homelessness, poor housing conditions and severe housing shortages in remote Indigenous communities. Improving housing conditions will provide the foundation for lasting improvements in health, education and employment and make a major contribution towards closing the gap in Indigenous disadvantage.\(^4\)

It is therefore important that the State deliver this public housing as quickly and efficiently as possible, in compliance with the NTA.

This is why two separate consultation guidelines have been developed for public housing and other government infrastructure.

This Guideline for public housing sets out a straightforward but solid consultation process focussed on the matters that must be consulted about as set out in Part 2.

In contrast, the Guideline for other government infrastructure (Attachment B) sets out an enhanced consultation process. The State considers that the consultation process for the non-housing government infrastructure provides an opportunity for the State to deliver a greater benefit to the native title holders and the Indigenous community in which the infrastructure will be located.

**Part 4: What is to ‘consult’?**

The Macquarie Dictionary defines consult as -

1. to seek counsel from; ask advice of
2. to refer to for information
3. to have regard for (a person’s interest, convenience, etc.) in making plans
4. to consider or deliberate; take counsel; confer.

Therefore, the consultation right is not a veto or consent right.

The State is not seeking the native title party’s consent to the proposed future act nor is it seeking their agreement through the consultation process.

However, it is hoped that through the consultation process, the native title party feels that their concerns have been heard and understood, even if those concerns are unable to be addressed to their satisfaction.

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Any relevant concerns, issues and comments raised by the native title party must be considered before making the final decision to proceed with the proposed future act. In some cases, this may result in proceeding in a modified way.

To guide the consultation, the relevant principles contained in the Guidelines for Best Practice Flexible and Sustainable Agreement Making should be followed.

Part 5: Time for consultation

As soon as the native title party requests to be consulted (provided the request is made in the required time period) you may commence the consultation process. The consultation period ends 4 months from the notification day, unless it is shortened. It can only be shortened if each native title party who requested to be consulted advise in writing that they have been consulted.

This means you will have at a minimum 2 months in which to consult. More, if the native title party requests to be consulted earlier in the notification period.

Part 6: Steps for consultation

This part sets out the process for consultation in a number of steps. By following the steps, you are ensuring that your consultation process meets the requirements under the NTA.

The steps are set out in the flowchart at the end of this Attachment.

Step 1 - Receipt of request to be consulted

In response to the section 24JAA notification, you have received a request to be consulted about the proposed future act. This may or may not have been accompanied by comments.

The right to consultation only arises where the request is made within the 2 month notification period, and it is made by the registered native title body corporate and/or registered native title claimants.

Provided the report has not been provided to the Commonwealth Minister, discretion may be used as to the date the request is received. For example, if the request was received a day late, then you may wish to consider the consultation request.

If no consultation request is made within the required time period, then proceed directly to Part 8 of Module JAA.

Step 2 - Contact the native title party

Your next step is to contact the native title party, i.e. the registered native title body corporate and/or registered native title claimants, to arrange a meeting.

This should be done by way of letter using Template A.
At a minimum, one meeting must be held with the native title party. It is probably best that the meeting be held in the relevant Indigenous community. However, an offer can be made that the meeting be held elsewhere, if the native title party would prefer.

If there is more than one native title party, you may wish to offer separate meetings. However, joint consultations could be held where the native title parties agree. To seek guidance on this point, contact the Claim Resolution unit of Aboriginal and Torres Strait Islander Land Services (ATSILS).

**Step 3 - Contact the trustee of the Indigenous land**

It is very likely that you have already contacted the trustee, e.g. the Council, about the proposed future act before commencing the section 24JAA process. This is because your proposed future act is likely to require an approval from the trustee, such as a trustee lease.

It is recommended that you now contact or recontact the trustee to -

- (a) advise the trustee of where you are at in the native title process
- (b) advise that a meeting has been arranged with the native title party for x date
- (c) seek permission to enter the trust area (i.e. the Indigenous land) to hold the meeting.

**Step 4 - Prepare for the meeting**

In preparing for the meeting consider the following -

- (a) all relevant comments received from the native title party - Annexure 8.5
- (b) preparation of visual material, e.g. maps, plans, design drawings
- (c) travel arrangements - flights, car hire and accommodation
- (d) catering
- (e) what, if any, next steps you might consider.

Departments and agencies are responsible for adequately resourcing the consultation by way of both budget and appropriately skilled personnel. This includes responding to reasonable requests from the native title party for resourcing required for their participation, including travel or meeting costs and obtaining appropriate professional advice, etc. 5

**Step 5 - Holding the meeting**

The meeting is a time to consult, that is, explain the proposed future act (including through maps, plans, etc.), listen and answer questions.

To meet the legislative requirement, the conversation at the meeting should be directed to discussing -

- (a) ways of minimising the impact of the future act on the registered native title rights and interests
- (b) the access to the future act area (if relevant)
- (c) the way in which the future act may be done (if relevant).

---

5 Under the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth), a registered native title body corporate may charge the State a fee for costs when performing certain activities in relation to future acts. In the case of section 24JAA, it may charge the State for costs it incurs in relation to the consultation process.
The conversation should also include discussing the location, nature of the proposed future act and its design.

Make sure someone takes notes at the meeting so that the consultation can be accurately recorded.

Where possible, use part of the meeting to go and have a look at the proposed future act area. This may provide a useful way to explain the proposed future act, proposed dealing area and access.

**Step 6 - Any further consultation**

It is possible that as a result of the meeting further consultation is required or requested by the native title party.

This could be in the form of another meeting or through provision of further information (such as modified plans/design drawings) for comment. A further option may be holding a meeting by way of teleconference or video conference. However, this will be dependant upon the technology available and whether it is appropriate in the circumstances.

The type of, and need for, further consultation will need to be decided on a case by case basis.

**Step 7 - Finalise details of proposed future act and proposed dealing area**

Having considered the relevant comments and also the consultation outcomes, decide whether you will-

(a) proceed as is, i.e. with no changes
(b) proceed in a modified way, e.g. adjusting the location or certain aspect of the design of a building
(c) not proceed.

**Step 8 - Advise native title party of outcome of consultation**

As a final step, advise the native title party of the outcome of the consultation.

Use Template C. Where appropriate, you may wish to also use this letter to request the native title party to respond in writing that they have been consulted. This will allow you to proceed to the next step without having to wait for the 2 month consultation period to end. Remember, if there is more than one native title party, you must receive the response from all notified native title parties.

You have now completed the consultation process. Please proceed to Part 8 of Module JAA which deals with your next step - Report to the Commonwealth Minister.
Flowchart - Steps for consultation process

Step 1 - Receipt of comments and request to be consulted

Step 2 - Contact registered native title bodies corporate / registered native title claimants to arrange meeting

Step 3 - Contact the trustee

Step 4 - Prepare for meeting, including consideration of comments

Step 5 - Meeting

Step 6 - Further consultation

Step 7 - Finalise details of proposed dealing area and future act

Step 8 - Advise registered native title bodies corporate / registered native title claimants of outcome of consultation

Notification day

End of notification period

2 months

End of consultation period

Report provided to Commonwealth

Commence future act

2 months, unless native title party shortens it in writing
Queensland Government Native Title Work Procedures

Module JAA: Attachment B

Consultation process guideline for other government infrastructure

August 2017
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Part 2: Legislative requirements for consultation

Part 3: Policy considerations and requirements for consultation

Part 4: Enhanced consultation process

Part 5: What is to ‘consult’ and to ‘negotiate’?

Part 6: Time for consultation

Part 7: Steps for consultation / negotiation

  Step 1 - Receipt of request to be consulted

  Step 2 - Contact the native title party

  Step 3 - Contact the trustee of the Indigenous land

  Step 4 - Prepare for the meeting

  Step 5 - Holding the meeting

  Step 6 - Any further consultation / negotiation

  Step 7 - Reaching and signing of agreement

  Step 8 - Finalise details of proposed future act and proposed dealing area

  Step 9 - Advise native title party of outcome of consultation / negotiation, where agreement cannot be reached
Part 1: Introduction

Consultation forms a key part of the procedural rights process under section 24JAA of the Commonwealth *Native Title Act 1993* (NTA). This requirement is set out in Part 7 of Module JAA.

This Guideline seeks to assist officers in carrying out that consultation.

The Guideline is based upon section 24JAA of the NTA, the relevant Explanatory Memorandum and State native title policy.

Consultation on the proposed future act must also comply with any requirements determined by way of legislative instrument. At the time of publishing, there is no relevant legislative instrument.¹

Part 2: Legislative requirements for consultation

The consultation process under section 24JAA is only triggered where the registered native title bodies corporate and/or registered native title claimants advise in writing that they wish to be consulted about the doing of the proposed future act in so far as it affects their native title rights and interests.

This request must be made within the required time period set out in the notice, that is, within the period of 2 months beginning on the notification day.

If a request to be consulted is made, then you must consult with the native title party about -

(a) ways of minimising the impact of the future act/s on their registered native title rights and interests in relation to the land and waters

and

(b) if relevant:

(i) any access to the land or waters

(ii) the way in which any thing authorised by the future act/s might be done.

The Explanatory Memorandum advises that the legislative instrument, when made, may specify requirements as to the manner of consultation and matters to be dealt with through consultation.² It advises -

*It may require the action body to hold one or more face to face meeting with native title claimants or body corporate who have requested consultation, provide translators during consultation, or address issues of the design, location and nature of the proposed act.*

Part 3: Policy considerations and requirements for consultation

The key basic necessities for life are food, water and shelter. The need for improved shelter, that is housing, is currently a key priority for Australian Governments.

The National Partnership Agreement on Remote Indigenous Housing advises in its objective -

---

¹ Once a legislative instrument has been made, the requirements determined by the legislative instrument will be incorporated into this Guideline.
² [1.14], *Explanatory Memorandum to the Native Title Amendment Bill (No.1) 2010*
Housing investment for the benefit of Indigenous people in remote Indigenous communities is a central plank to achieving the targets for ‘Closing the Gap’ on Indigenous disadvantage.\(^3\)

As part of Closing the Gap on Indigenous disadvantage, the Council of Australian Governments is committed to reforming

housing and infrastructure arrangements in remote Indigenous communities. This will address significant overcrowding, homelessness, poor housing conditions and severe housing shortages in remote Indigenous communities. Improving housing conditions will provide the foundation for lasting improvements in health, education and employment and make a major contribution towards closing the gap in Indigenous disadvantage.\(^4\)

It is therefore important that the State deliver this public housing as quickly and efficiently as possible, in compliance with the NTA.

This is why two separate consultation guidelines have been developed for public housing and other government infrastructure.

This Guideline for public housing (Attachment A) sets out a straightforward but solid consultation process focussed on the matters that must be consulted about as set out in Part 2.

In contrast, the Guideline for other government infrastructure sets out an enhanced consultation process. The State considers that the consultation process for the non-housing government infrastructure provides an opportunity for the State to deliver a greater benefit to the native title holders and the Indigenous community in which the infrastructure will be located.

**Part 4: Enhanced consultation process**

The key elements of the enhanced consultation process is as follows -

Converting the required consultation process to a negotiation process

Negotiating about a broader range of matters -

(a) the things which must be consulted about under section 24JAA - see Part 2.

(b) cultural heritage - this could form an agreement for the purposes of the *Aboriginal Cultural Heritage Act 2003* or *Torres Strait Islander Cultural Heritage Act 2003*

(c) addressing other community needs, eg. playground equipment, landscaping a park area, including an office space in a building for a registered native title body corporate or a community worker, constructing a cultural centre, new text books for school children

Reaching an agreement in the form of a template Infrastructure Agreement about the things that are negotiated.

\(^3\) Clause 11 - [http://www.coag.gov.au](http://www.coag.gov.au)

This enhanced consultation process is not seeking the native title party’s consent to the proposed future act.

This Agreement is not in the form of an Indigenous land use agreement. This is because the Agreement is not providing consent to the proposed future act nor is it dealing with native title compensation for the doing of the future act.

If agreement cannot be reached, then the proposed future act still proceeds under section 24JAA. Not only is it still valid under section 24JAA but it is also essential community infrastructure that should not be unnecessarily delayed.

As this infrastructure is still essential community infrastructure the timeframe is the same as that required for consultation under section 24JAA.

To guide the negotiations, the principles contained in the Guidelines for Best Practice Flexible and Sustainable Agreement Making should be followed.

**Part 5: What is to ‘consult’ and to ‘negotiate’?**

The Macquarie Dictionary defines *consult* as -

1. to seek counsel from; ask advice of
2. to refer to for information
3. to have regard for (a person’s interest, convenience, etc.) in making plans
4. to consider or deliberate; take counsel; confer.

The Macquarie Dictionary defines -

- ‘negotiate’ as (amongst other things) -
  1. to treat with another or others, as in the preparation of a treaty, or in preliminaries to a business deal
  2. to arrange for or to bring about by discussion and settlement of terms

- ‘negotiation’ as -

> Mutual discussion and arrangement of the terms of a transaction or agreement.

The Guidelines for Best Practice - Flexible and Sustainable Agreement Making assist in the negotiation process by providing practical guidance for government parties on the behaviours, attitudes and practices to achieve flexible, broad and efficient agreements that may be adapted to the circumstances of the particular agreement.

As the validity for the proposed future act is through section 24JAA, the consultation / negotiation right is not a veto or consent right. However, under the enhanced process the State is seeking the native title party’s agreement about the things to be consulted and negotiated as set out in Part 4.

It is hoped that through the enhanced consultation process, the native title party feels that their concerns have been heard and understood, even if those concerns are unable to be addressed to their satisfaction or agreement is able to be reached.
Where agreement has not been reached, you must still consider any relevant concerns, issues and comments raised by the native title party before making the final decision to proceed with the proposed future act. In some cases, this may result in proceeding in a modified way.

**Part 6: Time for consultation**

As soon as the native title party requests to be consulted (provided the request is made in the required time period) you may commence the consultation process.

The consultation period ends 4 months from the notification day, unless it is shortened. It can only be shortened if each notified native title party who requested to be consulted advise in writing that they have been consulted.

This means you will have at a minimum 2 months in which to consult. More, if the native title party requests to be consulted earlier in the notification period.

**Part 7: Steps for consultation / negotiation**

This part sets out the process for consultation / negotiation in a number of steps. By following the steps, you are ensuring that the enhanced consultation process meets the requirements under the NTA.

The steps are set out in the flowchart at the end of this Attachment.

**Step 1 - Receipt of request to be consulted**

In response to the section 24JAA notification, you have received a request to be consulted about the proposed future act. This may or may not have been accompanied by comments.

The right to consultation only arises where the request is made within the 2 month notification period, and it is made by the registered native title body corporate and/or registered native title claimants.

Provided the report has not been provided to the Commonwealth Minister, discretion may be used as to the date the request is received. For example, if the request was received a day late, then you may wish to consider the consultation request.

If no consultation request is made within the required time period, then proceed directly to **Part 8 of Module JAA**.

**Step 2 - Contact the native title party**

Your next step is to contact the native title party, i.e. the registered native title body corporate and/or registered native title claimants, to arrange a meeting.

This should be done by way of letter using Template B.

At a minimum, one meeting must be held with the native title party. It is probably best that the meeting be held in the relevant Indigenous community. However, an offer can be made that the meeting be held elsewhere, if the native title party would prefer.
If there is more than one native title party, you may wish to offer separate meetings. However, joint consultations could be held where the native title parties agree. To seek guidance on this point, contact the Claim Resolution unit of Aboriginal and Torres Strait Islander Land Services (ATSILS).

**Step 3 - Contact the trustee of the Indigenous land**

It is very likely that you have already contacted the trustee, e.g. the Council, about the proposed future act before commencing the section 24JAA process. This is because your proposed future act is likely to require an approval from the trustee, such as a trustee lease.

It is recommended that you now contact or recontact the trustee to -

(a) advise the trustee of where you are at in the native title process
(b) advise that a meeting has been arranged with the native title party for x date
(c) seek permission to enter the trust area (i.e. the Indigenous land) to hold the meeting.

**Step 4 - Prepare for the meeting**

In preparing for the meeting consider the following -

(a) all relevant comments received from the native title party - Annexure 8.5
(b) preparation of visual material, e.g. maps, plans, design drawings
(c) travel arrangements - flights, car hire and accommodation
(d) catering
(e) what, if any, next steps you might consider.

Departments and agencies are responsible for adequately resourcing the consultation by way of both budget and appropriately skilled personnel. This includes responding to reasonable requests from the native title party for resourcing required for their participation, including travel or meeting costs and obtaining appropriate professional advice, etc.  

**Step 5 - Holding the meeting**

The meeting is a time to consult and negotiate, that is, explain the proposed future act (including through maps, plans, etc.), listen and answer questions.

To meet the legislative and policy requirements, you must consult and negotiate, with a view to reaching an agreement, about

(a) ways of minimising the impact of the future act on the registered native title rights and interests
(b) the access to the future act area (if relevant)
(c) the way in which the future act may be done (if relevant)

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5 Under the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth), a registered native title body corporate may charge the State a fee for costs when performing certain activities in relation to future acts. In the case of section 24JAA, it may charge the State for costs it incurs in relation to the consultation process.
(d) cultural heritage - this could form an agreement for the purposes of the Aboriginal Cultural Heritage Act 2003 or Torres Strait Islander Cultural Heritage Act 2003

(e) addressing other community needs, eg. donation towards playground equipment, landscaping a park area, including an office space in a building for a community worker, constructing a cultural centre, donation of new text books for school children.

Where a physical act on the ground is committed to, the trustee will need to provide approval. Also, it may be a future act in itself.

The conversation should also include discussing the location, nature of the proposed future act and its design.

In carrying out the negotiation, the principles contained in the Guidelines for Best Practice Flexible and Sustainable Agreement Making should be followed.

Make sure someone takes notes at the meeting so that the consultation / negotiation can be accurately recorded.

Where possible, use part of the meeting to go and have a look at the proposed future act area. This may provide a useful way to explain the proposed future act, proposed dealing area and access.

**Step 6 - Any further consultation / negotiation**

It is possible that as a result of the meeting further consultation / negotiation is required or requested by the native title party.

This could be in the form of another meeting or through provision of further information (such as modified plans/design drawings) for comment. A further option may be holding a meeting by way of teleconference or video conference. However, this will be dependant upon the technology available and whether it is appropriate in the circumstances.

The type of, and need for, further consultation / negotiation will need to be decided on a case by case basis.

**Step 7 - Reaching and signing of agreement**

If agreement has been reached, it must be recorded in the template Infrastructure Agreement.

The Agreement must then be signed by -

(a) the State representative

(b) where there is a registered native title claim - all of the registered native title claimants

(c) where there is a determination of native title - the registered native title body corporate.

The State should be the final party to sign.

If agreement was not able to be reached, proceed to Step 8.
The Agreement will also advise that the native title party has been consulted for the purposes of section 24JAA of the NTA. This means that once all parties have signed, the Report can be provided to the Commonwealth Minister before the end of the consultation period. This will allow the future act to proceed as soon as possible.

**Step 8 - Finalise details of proposed future act and proposed dealing area**

If agreement was not able to be reached, consider the relevant comments and the consultation / negotiation outcomes to decide whether you will -

(a) proceed as is, i.e. with no changes  
(b) proceed in a modified way, e.g. adjusting the location or certain aspect of the design of a building  
(c) not proceed.

If agreement was able to be reached, take all steps that can be taken, apart from proceeding with the proposed future act, to ensure that commitments made in the Agreement can be actioned and the proposed future act can proceed once the Report has been made to the Commonwealth Minister.

**Step 9 - Advise native title party of outcome of consultation / negotiation, where agreement cannot be reached**

As a final step, where agreement cannot be reached, advise the native title party of the outcome of the consultation.

Use Template C. Where appropriate, you may wish to also use this letter to request the native title party to respond in writing that they have been consulted. This will allow you to proceed to issue the Report to the Commonwealth Minister without having to wait for the 2 month consultation period to end. Remember, if there is more than one native title party, you must receive the response from all native title parties.

You have now completed the consultation process. Please proceed to Part 8 of Module JAA which deals with your next step - Report to the Commonwealth Minister.
Flowchart - Steps for consultation process

Step 1 - Receipt of comments and request to be consulted

Step 2 - Contact registered native title bodies corporate / registered native title claimants to arrange meeting

Step 3 - Contact the trustee

Step 4 - Prepare for meeting, including consideration of comments

Step 5 - Meeting

Step 6 - Further consultation / negotiation

Step 7 - Reaching and signing of Agreement

Step 8 - Finalise details of proposed dealing area and future act

Step 9 - Where agreement cannot be reached, advise registered native title bodies corporate / registered native title claimants of outcome of consultation

Notification day

End of notification period

2 months

End of consultation period

2 months, unless native title party shortens it in writing

Report provided to Commonwealth

Commence future act
GUIDELINES
FOR BEST PRACTICE
FLEXIBLE AND SUSTAINABLE AGREEMENT MAKING

Joint Working Group on Indigenous Land Settlements
August 2009
The Joint Working Group on Indigenous Land Settlements acknowledges that each State and Territory will have different approaches to certain aspects of agreement-making and implementation, depending upon its settlement history, legislative framework, programs and policies. The Working Group also acknowledges that every native title claim and negotiation is unique.

These guidelines will be interpreted and implemented by State and Territory government parties consistent with the priorities and policy approaches of their jurisdictions, and with regard to the particular requirements of each case.
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INTRODUCTION

The unrealised potential of native title

1. The recognition of native title can significantly contribute to the social, cultural, spiritual and economic wellbeing of Indigenous Australians. As recognised in the Preamble to the Native Title Act 1993 (NTA), the efficient and effective resolution of native title has the potential to:

   • afford Indigenous Australians the ‘full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture fully entitle them to aspire’
   • rectify consequences of past injustices perpetrated against Indigenous Australians, and
   • provide benefits to the broader Australian community, including the advancement of reconciliation and the creation of certainty of land tenure.

2. However, this potential has not been fully realised. The system has become constrained by technical and inflexible legal practices and processes.

Australian Governments’ commitment to a new approach to native title

3. At the Native Title Ministers’ Meeting on 18 July 2008, Australian Governments acknowledged that the backlog of undetermined native title applications, and the time it can take to resolve claims, is unsatisfactory.

4. Governments recognised that real advances in native title require all parties to adjust their attitudes and expectations. They committed to work proactively in their jurisdictions to resolve native title through non-technical and flexible approaches. They agreed:

   • to develop innovative policy options for progressing native title through interest-based, negotiated settlements where possible
   • the native title system can facilitate broader settlement packages that offer a range of real opportunities and practical outcomes for Indigenous Australians
   • to establish and pursue jurisdiction-specific targets to benchmark progress, and
   • to meet regularly to assess progress, share experiences and to develop a strategic approach for the effective resolution of native title.

Purpose of the Best Practice Guide

5. This Best Practice Guide is designed to provide practical guidance for government parties on the behaviours, attitudes and practices that can achieve flexible, broad and efficient resolutions of native title. It identifies a range of common factors indicative of successful broader land settlements that may be applied or adapted to the circumstances of particular settlements.

6. This Guide complements Mediation Guidelines: Guidelines for the behaviour of parties and their representatives in mediation in the National Native Title Tribunal.

7. Broader land settlements to which the guidelines could apply include:

   • native title settlements (eg consent determinations and Indigenous Land Use Agreements (ILUAs))
   • non-native title settlements, and
settlements which include a mix of both native title and non-native title outcomes.

8. These Guidelines are divided into three parts, which reflect distinct phases of broader land settlement negotiations.

9. Part One provides guidance on how to adequately prepare for the early stages of a negotiation. These guidelines encourage government parties to adopt behaviours, attitudes and practices early in the negotiation process that will ensure agreements deliver outcomes attuned to the needs and interests of all parties.

10. Part Two provides guidance on the substantive stage of the negotiation process. These guidelines encourage government parties to adopt an interest-based approach to negotiations, to remain flexible as to the potential benefits that might be provided and to act in good faith throughout the negotiation.

11. Part Three provides guidance on the successful implementation of agreements, so that appropriate corporate and governance frameworks are in place to ensure the delivery of sustainable benefits into the future.
1 EARLY NEGOTIATION

12. Prior to the commencement of negotiations, government parties should endeavour to:
   a. ensure all parties are authorised to commence negotiations
   b. identify and complete necessary research
   c. outline outcomes sought so that relevant policy parameters can be defined and understood by all parties
   d. agree on the broad structure, timeframes, parameters and purpose of the negotiations
   e. agree on roles and responsibilities of all parties, and
   f. seek to assist with the resolution of inter and intra-Indigenous conflict, where possible and appropriate.

13. The level of research to be completed will depend on the nature of the negotiation and the outcomes sought. However, government parties should identify any research that is necessary to support the negotiation and ensure it is completed before the commencement of negotiations.

14. In some circumstances tenure material will inform the negotiation process, particularly in circumstances where a native title outcome is not being sought. Where possible, government parties should be prepared to share tenure information and any other information that may assist a negotiation, subject to confidentiality and privacy requirements. In some cases, tenure information could shape the negotiations, rather than connection reports or connection evidence.

15. Government parties should also have done some preparation to know what programs or benefits might be able to be offered and be aware of what benefits they can commit to (see Guideline 6 for examples of potential benefits).

2. Engage proactively to enable timely and efficient outcomes

16. Two issues that can contribute to significant delays in resolving a claim are overlapping claims and connection evidence.

17. Where appropriate, government parties should proactively engage to do what they can to resolve overlaps that occur in negotiations. It is not equitable to deny negotiations to particular Indigenous groups simply because their claim is relatively difficult due to overlapping claims. Nor does it provide certainty for other potential land users.

18. Overlaps should be considered on a case by case basis. For example, some marginal or unsubstantiated overlaps can be more practically dealt with by excising part of the claim subject to the overlap, consenting to a partial determination where there is no overlap, or agreeing to a degree of shared rights in the overlapping area.

19. For more substantive overlaps, tools such as land summits, regional settlements and targeted mediation and litigation could be used.

20. The production of connection and tenure information early on may assist to focus the negotiations through early assessment of the magnitude of overlaps, the degree to which native title has already been extinguished, and claim boundaries.

21. Government parties should provide information in their possession where possible, including:
a. relevant tenure material, and
b. access to any relevant connection material (taking into account confidentiality requirements).

22. Where appropriate, government parties should also engage with all other agencies (for example, local government) that might be able to contribute to the process and be proactive in accessing and disseminating all relevant information.

3. Determine who the right people for country are early in the negotiation process

23. Government parties need to be satisfied they are dealing with the right people for country before commencing negotiations for a broader land settlement. A focus on interest-based negotiations with the right people for country will also assist all parties to establish the strengths and weaknesses of the underlying native title claim.

24. Any one of the following factors can assist in establishing whether an Indigenous party represents the right people for country:
   a. existence of a registered claim or ILUA with no overlaps
   b. recognition by the relevant Native Title Representative Bodies (NTRBs) that the group comprises the ‘right people’
   c. demonstrated genealogical affiliation to ancestors who occupied the area at settlement
   d. evidence of past dealings with State and Territory government over the particular area, and
   e. evidence that shows the group’s traditional and contemporary link to the land, including access, responsibility for caring for country, important sites, traditional laws and activities.

4. Consult effectively to achieve a sustainable agreement

25. A settlement is more likely to be successful when it is understood and accepted by the parties and the broader community affected by the settlement. Trust, ownership and commitment is built and maintained by inclusive decision making and transparency.

26. NTRBs, or other parties representing claimants, have a crucial role in ensuring that all Indigenous parties are consulted and have the opportunity to approve the content of the negotiated agreements.

5. Promote equitable engagement of negotiating parties

27. Government parties should promote the effective engagement of all parties involved in the negotiation of an agreement. Where appropriate, government parties should encourage the appointment of experienced negotiators and support teams that have a good understanding of the interests they are representing and how those interests could be best served.

6. Consider potential benefits prior to the commencement of a negotiation

28. As noted in Guideline One, government parties should spend time researching and considering the nature of the benefits they can possibly provide. This will ensure that when substantive negotiations commence parties have a clear idea of the parameters within which agreement can be found.
29. Sustainable benefits can be financial or non-financial and could include, but are not limited to:
   a. land
   b. employment, education, mentorship and training opportunities
   c. business start-up assistance or provision of an established business
   d. provision of longer term assets and investments
   e. licences to hunt, fish, camp or organise cultural events in the agreement area
   f. co-operative management arrangements, for example, of a national park
   g. ongoing commitment to collaborate on future projects
   h. timed funding for the relevant Prescribed Body Corporate (PBC), and
   i. multi-lateral land access agreements between the Commonwealth, State and local governments and third parties.

30. In addition to early consideration of the type of benefits to be provided, government parties should remain open and flexible throughout negotiations. A range of benefits, tailored to concerns and interests will enhance commitments to long term relationships and the negotiation of agreements.

7. Engage parties who have ongoing responsibilities early on

31. Those who will have responsibility to implement an agreement should be involved in its negotiation so that they can inform, shape and ultimately own the process of implementation. This is particularly the case for government parties where it is likely the government negotiators will not themselves be providing all of the benefits.

8. Consider engaging in a regional settlement

32. In some circumstances, it might be appropriate to use a settlement on a regional basis to reach an agreement. A regional settlement may involve claims brought by different claim groups in the same region, or an amalgamation of claims by the same claim group within a region.

33. Regional settlements do not necessarily require the collective resolution of every issue in every claim within particular regions. For example, claims could involve collaboration on specific aspects such as research into, or negotiation or mediation of common issues, and leave any issues of substantial difference, such as the actual determination of native title, for resolution on an individual claim basis. In some circumstances, however, it may be possible to achieve substantive resolution of all claims within a region through a smaller number of sub-regional processes, or possibly a single process.

34. Regional resolutions may assist in overcoming specific issues, including overlaps and cross-jurisdictional claims. For example, regional settlements offer the possibility of negotiating shared rights or withdrawal of one group, by offering practical benefits in lieu of continuing to assert native title rights in the overlapping area.

35. In determining the appropriateness of a cross-jurisdictional approach, parties should engage early in the negotiation process and look for synergies between:
   a. the types of tenure and legislative schemes involved
   b. policies and programs of respective governments
c. the resources and views of respective NTRBs, and  
d. the willingness or capacity of non-government and non-Indigenous parties to be involved in cross-jurisdictional negotiations.

9. Acknowledge that a clear commitment to the delivery of appropriate sustainable benefits encourages constructive negotiations

36. Government parties should demonstrate a clear intention and capacity to provide appropriate sustainable benefits to engender the goodwill necessary for Indigenous parties to fully engage in the negotiating process.

10. Acknowledge that successful broader land settlements bring benefits to all parties

37. Government parties should recognise and acknowledge that all stakeholders can benefit from an agreed broader land settlement. This can contribute to improved relationships and a shared commitment to achieving high quality outcomes.
2 SUBSTANTIVE NEGOTIATION

11. **Develop good working relationships to assist in reaching and implementing agreements**

38. Sustainable outcomes can only be achieved through an ongoing relationship based on trust, respect and understanding.

39. To develop trust, parties must have a strong commitment to the settlement and delivery of agreed sustainable benefits. Another important requirement in developing trust can be the protection of confidentiality.

40. Any person with specific responsibilities under the agreement should be involved in the negotiations so that they can inform, shape and ultimately own the process of implementation. This will facilitate an ongoing relationship and promote commitment to the implementation of the agreement.

12. **Exercise cultural awareness and sensitivity when convening the negotiation**

41. Government parties should take the time to develop awareness of the most appropriate and effective ways to communicate with the Indigenous parties involved. This includes creating an atmosphere in which Indigenous parties feel comfortable discussing their concerns. It also includes observing cultural rules regarding who can discuss certain cultural matters, and may even include awareness of different understandings of the meaning of terms.

42. An important aspect of developing good relationships is for all non-Indigenous parties to have an understanding of what Indigenous parties are being asked to do, to potentially 'give up' and to think creatively about what measures can be implemented to assist Indigenous parties to maintain community and culture.

43. Government parties should consider using skilled interpreters to facilitate claimants' participation in negotiations, where English is a second language.

44. Governments recognise the importance of allowing sufficient time for Indigenous methods of decision-making.

13. **Employ an interest-based approach to negotiations and avoid technical or positional bargaining**

45. An interest-based approach should be employed in negotiations with the aim of providing benefits based upon the aspirations of the parties, as opposed to narrow and technical definitions of what may constitute native title rights. Government parties should be open to considering and initiating innovative solutions, rather than holding a fixed bargaining position.

46. Government parties should also be flexible in resolving issues that arise during negotiations, including being prepared to use independent experts to resolve issues.

47. This approach will allow more flexibility for all parties and provide increased incentives to reach agreement.

48. Government parties should identify interests and the best way to satisfy those interests as early as possible. Governments should also be clear as to why they and other parties hold particular interests and identify workable solutions that could meet those interests.
49. An interest-based approach should also be used to identify any potential areas of inter- and intra-Indigenous conflict, and whether a regional settlement would be appropriate in areas subject to various competing Indigenous interests.

50. Government parties should also have an appreciation of the interests they represent in comparison with other negotiation parties. If their interests are less extensive than other parties, this should be reflected in the way they negotiate and the issues they become involved in.

51. Government parties should endeavour to demonstrate how a negotiated settlement can better serve the interests of native title parties through a benefits package that meets the practical needs and aspirations of native title parties.

52. Where government parties consider a formal native title determination is required to meet their needs, they should recognise that there may be differing but legitimate views regarding the evidence required to reach a positive determination of native title under the NTA.

53. In considering the evidence available, government parties should therefore ensure that they do not become entrenched in unyielding positions on the particular evidence they consider is required, and carefully consider whether their view of the evidence is overly burdensome or unnecessary given the requirements of the NTA.

14. Take a flexible approach to the negotiation and benefits offered

54. An interest-based approach requires flexibility on the part of government parties, in regard to the process of the negotiation and consideration of:
   a. the range of benefits offered (both monetary and non-monetary)
   b. material presented, and
   c. policy positions and process (e.g. some issues might be better resolved at a regional level, while, other issues might be better dealt with separately with particular Indigenous parties).

55. Government parties should have the flexibility to, within reason and legislative parameters, adapt the benefits on offer to match the interests of Indigenous parties. This may involve, for example, being flexible in how government programs are provided, including eligibility requirements.

15. Ensure that positions on key points are made clear at the commencement of negotiations

56. Clarifying the position of government parties early in the negotiation will ensure expectations are managed and time and energy is not diverted to misguided targets. To achieve this, government parties must identify issues properly and explore options. Government parties should ensure that information about possible benefits is conveyed to the parties at the earliest possible opportunity.

57. The focus should be on working towards mutually beneficial and sustainable solutions. While it may not always be possible to have a solution in line with all Indigenous parties' aspirations, government parties should seek positive solutions that benefit claimants.
58. Early in negotiations, before parties commit to the agreement, government parties should ensure that the benefits and obligations being offered are practical and sustainable.

59. Where possible and appropriate, Government parties should evaluate the agreements against their objectives and establish appropriate processes such as schedules of ongoing commitments and periodic review meetings to reality test the options. A realistic assessment of whether the agreed benefits and obligations can be carried out is critical to ensuring effective implementation.

60. Government parties should adhere to model litigant principles, where negotiating an agreement or litigating a claim. This requires government parties to act honestly and fairly, including:
   a. not causing unnecessary delay
   b. assessing potential liability/likelihood of success early and settling legitimate claims without litigation
   c. impartiality and consistency in handling claims
   d. engaging in alternative dispute resolution where possible
   e. not relying on technical defences unless it would result in prejudice
   f. not taking advantage of a claimant who lacks resources, and
   g. Government leadership should influence the behaviour of other parties in this regard.

61. It is also imperative that government parties act in good faith at all stages throughout the negotiation. While these guidelines support good faith negotiations, it is also important that government parties:
   a. conduct themselves with integrity, honesty, cooperation and courtesy during negotiations
   b. comply with agreed negotiation procedures including attendance at meetings
   c. make a genuine attempt to reach agreement
   d. disclose relevant information as appropriate for the purposes of the negotiations
   e. comply with agreed timeframes and ensure the timely production of relevant materials, and
   f. effectively and efficiently participate in mediation through adequate preparation and a clear understanding of the issues.

62. The obligation to act in good faith does not require government parties to act in the interests of the other party at the expense of its own interests. In recognising that not all disputes can be successfully mediated, these principles do not require parties to reach an agreement.
3 IMPLEMENTATION

18. Allocate adequate resources to implement the agreement

63. Delivering sustainable benefits requires the allocation of appropriate resources and cooperation from all parties. Government parties should ensure there are adequate resources so that longer term commitments are met.

19. Ensure agreements clearly identify roles and responsibilities, and are written in plain English

64. A clear, plain English agreement is an important aspect in assisting present and future generations to understand and implement the agreement.

65. Agreements should be drafted so that:
   a. they are self contained and self evident and able to be used by people who were not necessarily present or part of negotiations
   b. the roles and responsibilities of each party are clearly set out, including where appropriate schedules of roles and responsibilities in relation to the provision of particular benefits, and
   c. timelines and timeframes for implementation of particular aspects are included, and review and monitoring mechanisms are incorporated, including timelines for review.

20. Assess the viability of implementation, in particular, the capacity of the parties to fulfil obligations

66. A realistic assessment of whether the agreed benefits can be provided over the life of the agreement is critical to ensuring effective implementation. Government parties should determine before they commit to the agreement that the benefits and obligations are practicable and suitable. Government parties should also consider capacity issues as a part of the agreement.

21. Acknowledge that sustainable benefits include the provision of relevant capacity building and governance frameworks

67. A sustainable benefit is not just a large lump sum or asset. It is a benefit that will deliver benefits now and in the future. When negotiating sustainable benefits parties should acknowledge that some capacity building or governance training may need to be included as part of those benefits.

68. Government parties should consider with Indigenous parties whether new skills or expert advice will be necessary to realise the full potential of sustainable benefits and address this in the terms of the agreement where appropriate. For example, it is common that Indigenous parties may aspire to owning businesses or utilising revenue streams from lump sum cash payments. Where this is the case it may be necessary to investigate appropriate corporate structures and have external expert financial advice, or to provide small business management training.

69. In many cases, the most appropriate form of assistance regarding sustainable benefits, capacity building and governance frameworks will be to broker the involvement of government agencies charged with relevant responsibilities, including the development and implementation of national and jurisdiction-specific Indigenous economic development strategies.

Part 3 - Implementation
70. In order for settlements to deliver sustainable benefits, appropriate corporate structures need to be adopted by Indigenous parties to assist them to deal effectively with issues including tax, governance and accountability.

71. Where appropriate, Government parties should be prepared to provide advice on structures that are acceptable to them in the context of a particular settlement. This will allow the structure of the agreement to be considered early in negotiations.

22. **Utilise legal safeguards for implementation.**

72. Legal devices such as caveats and contractual terms specifying evaluation and monitoring requirements can guarantee land is dealt with according to the terms of the agreement.

23. **Foster an ongoing commitment to implementation.**

73. There should be a recognition and understanding, at the start of the negotiations, of the ongoing commitment necessary to implementation over the life of the agreement. This also ensures the relevant resources and people will be available at the end of negotiations to implement that commitment.

24. **Review agreements to ensure the requirements are still being met.**

74. Where relevant, it is important that review mechanisms are built into agreements to ensure the objectives of the agreement are met.
Queensland Government Native Title Work Procedures

Module JAA: Attachment F

Report by the State of Queensland under section 24JAA of the Commonwealth Native Title Act 1993

August 2017
Version history

<table>
<thead>
<tr>
<th>Version</th>
<th>Comments</th>
<th>Date published</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>August 2017</td>
</tr>
</tbody>
</table>

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Report by the State of Queensland under section 24JAA of the Commonwealth *Native Title Act 1993*

This report is provided under section 24JAA(16) of the Commonwealth *Native Title Act 1993* (NTA).

This report was completed on [insert date].

[Insert either -

‘As there are no registered native title bodies corporate or registered native title claimants, this report is provided after the completion of the 2 month consultation period.’

or

‘As no requests to be consulted were made within the 2 month consultation period, this report is provided after the completion of the 2 month consultation period.’

or

‘As there was a request/s to be consulted within the 2 month consultation period, this report is provided after completion of the 4 month consultation period.’

or

‘As there was a request/s to be consulted within the 2 month consultation period and the native title party confirmed in writing (attached) that they were consulted, this report is provided before the completion of the 4 month consultation period.’

The details of the notification and/or consultation process undertaken by the State of Queensland is set out in the table below.

If you have any queries in relation to the information in this report, please contact -

[insert name, title, postal address, phone, fax and e-mail details]
<table>
<thead>
<tr>
<th>Indigenous community</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed future act/s will take place within [insert name of Indigenous community].</td>
</tr>
<tr>
<td>The current tenure is [insert type of tenure] falling within the list of tenures in section 24JAA(1)(b) of the NTA.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed future act/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed future act/s is/are -</td>
</tr>
<tr>
<td>[insert details of the proposed future act/s, eg. registration of a trustee lease for… Use the details in Part 4 of the Notification]</td>
</tr>
<tr>
<td>The proposed future act/s meet/s the requirements in sections 24JA(1)(c) and (3) of the NTA.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The relevant native title parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>The relevant native title parties for the area to be covered by the future act/s are</td>
</tr>
<tr>
<td>Registered native title body corporate</td>
</tr>
<tr>
<td>[Insert name of body corporate, claim name, QUD and QC number] or [Insert ‘Not Applicable’]</td>
</tr>
<tr>
<td>Registered native title claimants</td>
</tr>
<tr>
<td>[Insert name of each registered claimant, claim name, QUD and QC number] or [Insert ‘Not Applicable’]</td>
</tr>
<tr>
<td>Native title representative body</td>
</tr>
<tr>
<td>[Insert name of representative body]</td>
</tr>
</tbody>
</table>
### Notification (see copy attached)

<table>
<thead>
<tr>
<th>Date of issue</th>
<th>[insert date of issue]</th>
</tr>
</thead>
<tbody>
<tr>
<td>The notification was issued by the State on</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notification day</th>
<th>[insert notification day date]</th>
</tr>
</thead>
<tbody>
<tr>
<td>To address the requirement in section 24JAA(12) of the NTA, the notification day was post-dated to 5 calendar days after the date of issue. The notification day was</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required statements</th>
<th>[insert notification day date]</th>
</tr>
</thead>
<tbody>
<tr>
<td>The notification contains statements that comments and requests to be consulted must be made within 2 months from the notification day, as required by section 24JAA(11) of the NTA.</td>
<td></td>
</tr>
</tbody>
</table>

### Opportunity to comment

As part of the notification/s, comments about the proposed future act/s were requested to be provided in writing by [insert date].

<table>
<thead>
<tr>
<th>Comments received</th>
<th>[insert either - ]</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘No comments were received from the notified parties in the required time period.’</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>‘Comments were received from the notified parties in the required time period.’</td>
<td>Insert a summary of the comments received and how you addressed those comments. Attach copies of comments and any response provided.]</td>
</tr>
</tbody>
</table>

### Consultation

<table>
<thead>
<tr>
<th>[insert either - ]</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>‘As there were no registered native title bodies corporate or registered native title claimants, there was no consultation required to be undertaken - section 24JAA(13) of the NTA.’</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>‘In the notification/s, requests to be consulted about the proposed future act/s were to be provided in writing by [insert date]. However, no requests for consultation were received in the required time period.’</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>‘In the notification/s, requests to be consulted about the proposed future act/s were to be provided in writing by [insert date]. A request/s for consultation was made by [insert name/s of native title party] on [insert date]. This request/s was made within the required time period.'</td>
<td></td>
</tr>
</tbody>
</table>
**Consultation process**
Consultation was undertaken with [insert name/s of native title party] about ways to minimise the impact of the future act/s on their registered native title rights and interests, and, where relevant, any access to the area covered by the future act/s or the way in which the future act/s might be done - section 24JAA(14) of the NTA.

Consultation followed the process contained in the State’s native title policy - [insert either - Module JAA - Attachment A - Consultation process guideline for public housing if dealing involves public housing or Module JAA - Attachment B - Consultation process guideline for other government infrastructure if dealing involves non-public housing infrastructure].

Consultation commenced on [insert date] and was concluded on [insert date].

[Insert details about the consultation process, including how and where it occurred, who attended, what was discussed, particular key issues raised, the fact that an infrastructure agreement was reached, etc]

**Outcome of consultation**
Insert either -

‘The consultation process resulted in an agreed outcome about the proposed future act/s.’

or

‘The consultation process did not result in an agreed outcome. The native title party disagrees with the proposed future act/s proceeding because -

[Insert details about those grounds]

After considering the issues raised during consultation, the State will proceed with the proposed future act/s.’

**Attachment/s**

Copy of notification
Copy of comments received [delete if not applicable]
Copy of any response to comments [delete if not applicable]
[List any other attachments]
Queensland Government Native Title Work Procedures

Module JAA: Attachment E
Letter Templates for Consultation
Commonwealth Native Title Act 1993: s.24JAA

August 2017
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Dear

Consultation under section 24JAA of the Commonwealth *Native Title Act 1993*

Thank you for your letter dated xxxx in which you provided comments and requested to be consulted about xxxx [insert description of future act].

The State would like to commence the consultation process with you as soon as possible.

In that regard, we would like to arrange to meet with you at xxxx to discuss the proposed future act, in particular, to discuss -

   (a) ways of minimising the impact of the future act on your registered native title rights and interests; and
   (b) the access to the future act area; and
   (c) the way in which the future act may be done.

If possible, the State is seeking to hold the meeting within a month’s time. Please respond as soon as possible, as the date for the consultation period to end is xxxx.

Translator?

Catering/travel/etc????

Could you please contact xxxx on xxxx, to arrange a meeting time.

Thank you.

Yours sincerely

xxxx
Dear

Consultation under section 24JAA of the Commonwealth *Native Title Act 1993*

Thank you for your letter dated xxxx in which you provided comments and requested to be consulted about xxxx [insert description of future act].

The State would like to commence the consultation process with you as soon as possible.

In that regard, we would like to arrange to meet with you at xxxx to discuss the proposed future act, in particular, to discuss -

(a) ways of minimising the impact of the future act on your registered native title rights and interests; and
(b) the access to the future act area; and
(c) the way in which the future act may be done.

As part of the consultation process, the State is also seeking to negotiate with you and reach agreement about the things listed above, including cultural heritage, and to identify other needs for which the State may be able to provide some assistance.

If possible, the State is seeking to hold the meeting within a month’s time. Please respond as soon as possible, as the date for the consultation period to end is xxxx.

Translator?

Catering/travel/etc????

Could you please contact xxxx on xxxx, to arrange a meeting time.

Thank you.

Yours sincerely

xxxx
Template C - Advising outcome of consultation

Dear

Consultation under section 24JAA of the Commonwealth *Native Title Act 1993*

Thank you for meeting with officers from the Department of xxxx, as part of the consultation process under section 24JAA of the Commonwealth *Native Title Act 1993* (NTA) for xxxx [insert description of future act].

Based upon the discussion at the meeting and comments you previously provided, I note that xxx [insert a summary of key concerns].

I have taken into account all relevant comments and concerns raised.

The Department has addressed xxxx (insert how you have addressed all or some of their concerns. If no concerns could be addressed advise why).

The Department now intends to xxxx (insert what you are going to do, eg. proceed with future act, etc)

Please do not hesitate to contact xxxx on xxxx, if you have any queries in relation to this matter.

Thank you.

Yours sincerely

xxxx

* Where appropriate, insert the following towards the end of the letter - *Could you please respond by way of letter to confirm that you have been consulted. By providing the letter, the consultation period is completed and allows the State to provide the report to the Commonwealth Minister at an earlier stage.*
Process for native title requirements for public housing and other government infrastructure on Indigenous land

State agency carries out native title assessment in accordance with State Government Native Title Work Procedures

Native title assessed as extinguished

Native title may or does continue to exist

Proposed dealing is covered by an existing registered ILUA

Proposed dealing falls within section 24JAA, NTA

Proposed dealing is covered by an existing registered ILUA

Unless dealing falls within section 24JAA, an ILUA is required to be negotiated and registered for the government infrastructure.

Yes

No

Proceed in accordance with ILUA

Is a request for consultation made?

Yes

Use enhanced consultation process, seeking to reach agreement. Template Infrastructure Agreement

Is agreement reached within consultation period?

Yes

Sign agreement.

No

Proceed under 24JAA process and in accordance with commitments under the Infrastructure Agreement

No

Is in principle agreement reached within 6 months?

Yes

Proceed under registered ILUA.

No

Advise the Program Office, before proceeding under Module JAA.

Does the proposed dealing involve the provision of public housing?

Yes

No

Proceed once 24JAA process completed.

That subject to the decision of the Executive Director of the Remote Indigenous Land and Infrastructure Program Office, Department of Communities, about the prospects of obtaining an ILUA within the timeframes required to meet the State’s obligations under the National Partnership Agreement on Remote Indigenous Housing, commence section 24JAA process by issue of notice.

Program Office Board may either approve to continue ILUA negotiations or refer to PMC.

If referred to PMC, PMC can make directions as it considers appropriate including approval to compulsorily acquire native title.

Proceed in accordance with PMC directions, e.g. compulsory acquisition

Is a request for consultation made?

Yes

Use enhanced consultation process, seeking to reach agreement. Template Infrastructure Agreement

Is agreement reached within consultation period?

Yes

Sign agreement.

No

Proceed under 24JAA process and in accordance with commitments under the Infrastructure Agreement

Note: This process does not preclude an agency deciding in the first instance to proceed by way of a registered Indigenous land use agreement.
SECTION 24JAA
GOVERNMENT INFRASTRUCTURE
AGREEMENT

This Agreement is in two Parts.

Part A: Particular Terms - contains the terms which are specific to this Agreement.

Part B: General Terms - contains the standard terms forming part of this Agreement.
RECITALS

A. The State intends [Insert if required: to enter into a Lease with the Trustee of the Lease Area] to construct, operate, use, maintain and/or repair the Government Infrastructure on the Agreement Area for the benefit of Indigenous people living on, or in the vicinity of, the Agreement Area. To the extent those acts are Future Acts the Non-Extinguishment Principle applies pursuant to section 24JAA of the NTA. Benefits provided under this Agreement do not constitute native title compensation for the purposes of the NTA.

B. [Note: insert this recital if there is a Registered Native Title Body Corporate for any part of the Agreement Area, otherwise this recital should be deleted] [Insert: party name] is the Registered Native Title Body Corporate for the [Insert either: Agreement Area/part of the Agreement Area] and holds Native Title [Insert: in trust/as agent] for the [Insert: name] People.

C. [Note: Insert this recital if there is/are Registered Native Title Claimant(s) for any part of the Agreement Area] [Insert: party names] are the Registered Native Title Claimant(s) on their own behalf and on behalf of the [Insert: name of Native Title Claim Group(s)] for the [Insert: Agreement Area/part of the Agreement Area].

D. [Note: Insert this recital if the Trustee is a party to the agreement] The Trustee is the trustee for the Agreement Area.

E. In relation to the Government Infrastructure Acts the State, in accordance with section 24JAA of the NTA:

   (i) gave the Notice to [Insert as necessary: Registered Native Title Claimants/Registered Native Title Body Corporate/Representative Body] on [Insert details] in accordance with sections 24JAA(10)–(12) of the NTA;

   (ii) the [Insert as relevant: Registered Native Title Body Corporate and/or Registered Native Title Claimant] requested in writing to be consulted about the doing of the Government Infrastructure Acts on [Insert date]; and

   (iii) pursuant to that request a Consultation Meeting(s) [Insert as appropriate: was/were] held on [Insert details].

F. This Agreement has been entered into as a result of:

   (i) the Consultation Meeting between the State and [Insert as necessary: Registered Native Title Claimants/Registered Native Title Body Corporate]; and

   (ii) [Insert if appropriate] further consultation subsequent to the Consultation Meeting between the parties to this Agreement.
G. [Insert this recital if cultural heritage forms part of the agreement] This Agreement is also intended to address the duty of care under the [Insert either: ACHA/TSICHA] in relation to Cultural Heritage in the Agreement Area.

PART A: PARTICULAR TERMS

1. Parties

State of Queensland acting through the [Insert the relevant State Department or Agency] (“State”)

Street Address: ________________________________
Postal Address: ________________________________
Facsimile: __________________
Telephone: __________________
Email: __________________

Registered Native Title Body Corporate:

[Insert the name of the Registered Native Title Body Corporate for the Agreement Area]
RNTBC ICN: __________________

Street Address: ________________________________
Postal Address: ________________________________
Facsimile: __________________
Telephone: __________________
Email: __________________
Registered Native Title Claimants:

[Insert the names of the individual Registered Native Title Claimants] on their own behalf and on behalf of [Insert the name of the Native Title Claim Group]

Street Address: _______________________________________
Postal Address: _______________________________________
Facsimile: ____________________
Telephone: ____________________
Email: _______________________

Trustee:
[Insert the Trustee’s name]
ABN/ACN: _______________________

Street Address: _______________________________________
Postal Address: _______________________________________
Facsimile: ____________________
Telephone: ____________________
Email: _______________________
2. **Agreement Area**

[Note: Insert written description of the Agreement Area, e.g. a ‘lot on plan’ description or part thereof, street address etc]

as indicated on the map(s) and as described in the Notice attached at Schedule 2.

3. **Government Infrastructure**

[Note: mark with ‘X’ whichever of the following applies and insert the s24JAA type of facility, eg school, nurses quarters, water pipeline, etc]

- Public education facilities - ______________________________
- Public health facilities- ________________________________
- Police facilities- _________________________________
- Emergency facilities - _________________________________
- Staff housing provided in connection with any of the above facilities - _________________________________
- A facility listed under section 24KA(2) provided in connection with any of the above facilities - _________________________________

- Sewerage treatment facility provided in connection with any of the above facilities

See the Notice attached at Schedule 2 for any further information in regard to the Government Infrastructure.

4. **Community Benefits**

[Note: Mark with ‘X’ whichever of the following two statements applies]

- Community Benefits are provided for under this Agreement (see Part B, clause 4 and Schedule 4)
- Community benefits are NOT provided for under this Agreement.
5. Cultural Heritage

[Note: Mark with ‘X’ whichever of the following two statements applies]

☐ This agreement is NOT ‘another agreement’ for the purposes of the [Insert either: ACHA/TSICHA].

☐ This agreement is ‘another agreement’ for the purposes of the [Insert either: ACHA/TSICHA].

Aboriginal / Torres Strait Islander Party:

[Insert name of Aboriginal / Torres Strait Islander Party for the purposes of Part B, clause 6.1]
Executed as a deed by the parties on the dates appearing below.
[Note: The parties must ensure that they execute this Agreement validly and in accordance with any rules of association, constitution and any applicable legislation including the Local Government Act 2009 (Qld), the Aboriginal Land Regulations 1991 (Qld) and the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth). The Trustee should have a lawyer amend the execution clause below to meet those requirements]

State of Queensland  [Note: execution by officer with delegated authority to sign on behalf of the State]

SIGNED SEALED and DELIVERED for and ) )
on behalf of the STATE OF QUEENSLAND ) )
by ) ) (Signature)
this ) day of )
2011 )
in the presence of: )

(Signature of Witness)

(Name of Witness)

Registered Native Title Body Corporate

THE COMMON SEAL of [Insert Registered Native Title Body Corporate]
was duly affixed in accordance with its Rules
this _____ day of ______________

by ____________________________ (Print name)
a Chairperson/Vice Chairperson/Secretary/Treasurer

and by ____________________________ (Print name)
a Chairperson/Vice Chairperson/Secretary/Treasurer
Registered Native Title Claimants

Signed by [Insert Name] on his/her own behalf and on behalf of the Native Title Claim Group
this _______ day of __________________
in the presence of: _______________________
Witness: ________________________________
                     (Print name)

(Signature)

Witness: ________________________________
                     (Witness' signature)

Signed by [Insert Name] on his/her own behalf and on behalf of the Native Title Claim Group
this _______ day of __________________
in the presence of: _______________________
Witness: ________________________________
                     (Print name)

(Signature)

Witness: ________________________________
                     (Witness' signature)

Signed by [Insert Name] on his/her own behalf and on behalf of the Native Title Claim Group
this _______ day of __________________
in the presence of: _______________________
Witness: ________________________________
                     (Print name)

(Signature)

Witness: ________________________________
                     (Witness' signature)
Trustee

THE COMMON SEAL of [Insert Trustee Name and ABN / ACN]

was duly affixed in accordance with its Rules

this ________ day of __________________

by_________________________________  ______ ______________

(Print name)     (Signature)
a Chairperson/Vice Chairperson/Secretary/
Treasurer

and by______________________________  _____________________

(Print name)      (Signature)
a Chairperson/Vice Chairperson/Secretary/
Treasurer
PART B: GENERAL TERMS

1. Definitions and Interpretations

   The definitions and rules for interpretation of this Agreement are contained in Schedule 1.

2. Government Infrastructure

   The State will carry out the Government Infrastructure Acts on the Agreement Area in accordance with this Agreement.

3. Agreed Issues and Protocols

   The State will carry out the Government Infrastructure Acts on the Agreement Area in accordance with the Agreed Issues and Protocols.

4. Community Benefits

   Unless otherwise indicated in Part A, clause 4, the State will deliver the Community Benefits described in Schedule 4.

5. Employment, Training and Business Development

   The State will use best endeavours to comply with the Indigenous Employment Policy for Queensland Government, Building and Civil Construction Projects.

6. Cultural Heritage

   6.1 The registered Native Title Body Corporate and/or the Registered Native Title Claimant warrant that the party identified in Part A, clause 5 as the Aboriginal/Torres Strait Islander Party is, for the purposes of this Agreement, the Aboriginal/Torres Strait Islander Party (as defined by the ACHA/TSICHA) for the Agreement Area.

   6.2 The [Insert either: Aboriginal Party or Torres Strait Islander Party] and the State agree that upon execution, this agreement is ‘another agreement’ for the purposes of the [Insert either: ACHA/TSICHA].

   6.3 The [Insert either: Aboriginal Party or Torres Strait Islander Party] and the State agree that the State’s duty of care under the [Insert either: ACHA/TSICHA] will be satisfied by the State complying with the requirements of clauses 7 and 8.

7. Monitoring

   7.1 This clause 7 only applies to the doing of Significant Ground Disturbance Acts in connection with this Agreement.

   7.2 The State will employ a Monitor or procure the Construction Contractor to employ a Monitor nominated by the [Insert either: Aboriginal Party or Torres Strait Islander Party] for the purposes of this clause 7.
7.3 Subject to clauses 7.5 and 7.6, the [Insert either: Aboriginal Party or Torres Strait Islander Party] and the State agree that the Monitor must be present during Significant Ground Disturbance Acts.

7.4 The [Insert either: Aboriginal party or Torres Strait Islander Party] and the State agree that prior to the doing of any Significant Ground Disturbance Acts, the State or the Construction Contractor must give the [Insert either: Aboriginal Party or Torres Strait Islander Party] at least five days notice of the date and times at which a Monitor is required to attend the Agreement Area to undertake Monitoring.

7.5 If the Monitor does not attend the Agreement Area on the dates or the times referred to in the notice given by the State or the Construction Contractor under clause 7.4 then the parties agree that Significant Ground Disturbance Acts can commence in the absence of a Monitor.

7.6 If the State deems in its absolute discretion that a Monitor who attends the Agreement Area is unfit to safely undertake Monitoring then the State:

(a) is entitled to refuse the Monitor entry onto the Agreement Area; and

(b) will make all reasonable efforts to contact the [Insert either: Aboriginal Party or Torres Strait Islander Party] to request that a replacement Monitor attend at the Agreement Area before Significant Ground Disturbance Acts commence on that day.

7.7 If a Monitor undertakes Monitoring in compliance with this clause, the [Insert either: Aboriginal Party or Torres Strait Islander Party] and the State agree that the fee payable is $350.00 (exclusive of GST) for each day the Monitor attends at the Agreement Area and undertakes Monitoring with a pro-rata adjustment for any period relating to part of an 8 hour day.

8. Discovery of a Find

8.1 If a Find is discovered on the Agreement Area during the construction of the Government Infrastructure, the State must cease construction of the Government Infrastructure within the Find Preservation Zone and may only recommence construction within the Find Preservation Zone after the expiration of 72 hours, measured from the time that the notice in clause 8.2 is given, or such other time as agreed between the Cultural Heritage Contact Officer and the State Cultural Heritage Contact Officer.

8.2 On the discovery of a Find, the State and/or a Monitor must promptly notify the Cultural Heritage Contact Officer of the Find and its location.

8.3 Within 24 hours of being notified of the Find under clause 8.2, the Cultural Heritage Contact Officer must:

(a) attend the Find Preservation Zone and evaluate whether the Find is a [Insert either: Significant Aboriginal Object/Significant Torres Strait Islander Object];
(b) if the Find is a [Insert either: Significant Aboriginal Object/ Significant Torres Strait Islander Object], determine whether or not it may be removed from the Find Preservation Zone;

(c) if the Find may be removed from the Find Preservation Zone, remove the Find;

(d) if the Find may not be removed from the Find Preservation Zone, provide a recommendation to the State for ensuring that harm to the Find is minimised by further construction of the Government Infrastructure in the Find Preservation Zone and if relevant the Agreement Area generally; and

(e) provide a written evaluation to the State providing details of the Find, including its location within the Agreement Area, and its cultural heritage significance.

8.4 If the Cultural Heritage Contact Officer fails to:

(a) remove the Find from the Find Preservation Zone under clause 8.3(c); or

(b) provide a recommendation under clause 8.3(d);

after the expiration of 72 hours measured from the time that the notice in clause 8.2 is given, the State may remove the Find and store it safely before recommencing the construction of the Government Infrastructure in the Find Preservation Zone.

8.5 The process for Finds as set out in this clause 8 is shown in the flow-chart in Schedule 6.

8.6 If any human remains are uncovered, or a Find is suspected to contain any human remains, the procedure in Schedule 7 must be followed and the process in clauses 8.3 and 8.4 ceases to apply.

9. **GST**

The Recipient of a Taxable Supply made under this Agreement must pay the GST on the Taxable Supply to the Supplier within 14 days of receiving a Tax Invoice for the Taxable Supply from the Supplier in addition to consideration for the Taxable Supply.

10. **Costs**

10.1 The State will pay the reasonable costs of the [Insert as necessary: Registered Native Title Claimants/Registered Native Title Body Corporate] for the negotiation, preparation and execution of this Agreement, including reasonable requests for resourcing for their participation, including such costs as travel or meeting costs and obtaining professional advice.

10.2 The State will pay any stamp duty payable on this Agreement in accordance with the provisions of the **Duties Act 2001** (Qld).
11. **No Termination for Breach**

The parties agree that no breach of this Agreement by any party will give to any other party a right to elect to terminate the Agreement, but that any party may exercise any other remedy available to it in respect of such breach.

12. **Dispute Resolution**

12.1 A party claiming that a Dispute has arisen must give a Dispute Notice to the other parties within five Business Days after a Dispute arises.

12.2 Within five Business Days after the Receipt Date a representative of each party involved in the Dispute must discuss the Dispute and negotiate to resolve the Dispute.

12.3 If the Dispute is not resolved within ten Business Days after the date on which the authorised representatives have begun discussions and negotiations as required under clause 12.2, then either party may take any action to resolve the Dispute including commencing court proceedings.

12.4 This clause 12 does not prevent any party from obtaining any urgent injunctive, declaratory or other relief from a court.

13. **Notices**

13.1 All notices given under this Agreement must be:

(a) in writing; and

(b) delivered or sent by prepaid post to the recipient’s address set out in Part A, clause 1; or

(c) sent by facsimile to the recipient’s facsimile number set out in Part A, clause 1.

13.2 Subject to clause 13.3, notice given in accordance with clause 13.1 will be deemed to be given:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, ten Business Days after the date of posting; and

(c) if sent by facsimile, when the sender’s facsimile system generates a message confirming that the notice was transmitted in its entirety to the facsimile number of the recipient.

13.3 If the facsimile transmission referred to in clause 13.2(c) is on a day which is not a Business Day or the message referred to in clause 13.2(c) confirms that the notice was transmitted after 5.00pm on a Business Day it will be deemed to have been given on the next Business Day.
13.4 If any party changes its contact details from those set out in Part A, clause 1 it must notify the other party of that change as soon as possible and in accordance with clause 13.1.

14. **General**

14.1 Each party must do all things reasonably necessary to give full effect to this Agreement.

14.2 A party must not assign its rights under this Agreement without the prior written consent of the other party.

14.3 A right under this Agreement may only be waived in writing, executed by the party giving the waiver.

14.4 This Agreement can only be varied by written agreement executed by each party.

14.5 This Agreement may be executed in counterparts.

14.6 Part or all of any clause or Schedule of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining part of this Agreement will continue in force.

14.7 This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes any prior discussions, negotiations, arrangements and agreements in connection with it.

14.8 This Agreement is governed 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.
Schedule 1

Definitions

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

“Aboriginal Party” has the meaning given in the ACHA;

“ACHA” means the Aboriginal Cultural Heritage Act 2003 (Qld);

“Agreed Issues and Protocols” means those actions set out in Schedule 3 to be undertaken by the State in relation to the doing of the Government Infrastructure Acts to address the obligations set out in section 24JAA(14) of the NTA;

“Agreement” means this document including all schedules;

“Agreement Area” means the area shown on the maps and described in the Notice in Schedule 2;

[Insert if required: “ALA” means the Aboriginal Land Act 1991 (Qld);

“Business Day” means a day that is not a Saturday, Sunday or Public Holiday;

“Community Benefits” means the community benefits identified in Schedule 4;

“Construction Contractor” means the contractor engaged by the State to construct the Government Infrastructure;

“Consultation Meeting” means a consultation meeting held pursuant to sections 24JAA(13)-(15) of the NTA;

“Cultural Heritage” has the meaning given to Aboriginal cultural heritage in the ACHA or Torres Strait Islander cultural heritage in the TSICHA as relevant;

“Cultural Heritage Contact Officer” means the [Insert either: Aboriginal/Torres Strait Islander] Parties’ cultural heritage contact officer for the purposes of clause 8 being the person listed in Schedule 5, or their nominated representation;

“Dispute” means a dispute between any parties to this Agreement with respect to this Agreement, or any of its provisions;

“Dispute Notice” means written notice containing full particulars of the Dispute;

“Find” means a suspected Significant [Insert either: Aboriginal/Torres Strait Islander] Object;
“Find Preservation Zone” means an area within a three metre radius of a Find;

“Future Acts” has the meaning given in the NTA;

“Ground Disturbance” means:

(a) disturbance by machinery of the topsoil or surface rock layer of the ground such as by ploughing, drilling or dredging; and/or

(b) the removal of native vegetation by disturbing root systems and exposing the underlying soil;

“GST” has the meaning given in the GST Act;

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

“Government Infrastructure” means the facilities and/or infrastructure referred to in Part A, clause 3 and described in the Notice;

“Government Infrastructure Acts” means any act done as part of, or in relation to:

(a) [Insert if required: the grant of the Lease; and/or]

(b) the construction, operation, use, maintenance or repair of the Government Infrastructure;

[Insert if required: “Lease” means a lease to be granted by the Trustee to the State under the [Insert: ALA/TSILA/LG(AL)A] over the Lease Area for the Government Infrastructure];

[Insert if required: “Lease Area” means the area described in and shown on the map attached to the Notice in Schedule 2 to be subject to the Lease];

[Insert if required: “LG(AL)A” means the Local Government (Aboriginal Lands) Act 1978 (Qld)];

“Monitor” means a person having knowledge of Cultural Heritage and nominated by the [Insert either: Aboriginal Party or Torres Strait Islander Party] to provide Monitoring in accordance with clause 7;

“Monitoring” means the process whereby a Monitor assesses locations within the Agreement Area for the presence of Cultural Heritage during the doing of Significant Ground Disturbance;

“Native Title” has the meaning given in the NTA;

“Native Title Claim Group” means the group identified at Part A, clause 1 represented by the Registered Native Title Claimants;

“Non-Extinguishment Principle” has the meaning given in the NTA;
“Notice” means the section 24JAA notice issued for the Government Infrastructure Acts attached at Schedule 2;

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

“Public Holiday” has the meaning given in the Acts Interpretation Act 1954 (Qld);

“Receipt Date” means the date by which a Dispute Notice is taken to have been received in accordance with clause 13;

“Recipient” has the meaning given in the GST Act;

“Registered Native Title Claimants” has the meaning given in the NTA, and in this Agreement the Registered Native Title Claimants are the parties listed in Part A, clause 1 as the Registered Native Title Claimants;

“Registered Native Title Body Corporate” has the meaning given in the NTA, and in this Agreement the Registered Native Title Body Corporate is the party identified in Part A, clause 1 as the Registered Native Title Body Corporate;

“Representative Body” means the representative Aboriginal/Torres Strait Islander body or any body funded under section 203FE of the NTA to perform the functions of a representative Aboriginal/Torres Strait Islander body for the Agreement Area;

“Significant [Insert either: Aboriginal/Torres Strait Islander] Object” has the meaning given in the [Insert either: ACHA/TSICHA];

“Significant Ground Disturbance Acts” means activities conducted by or on behalf of the State on the Agreement Area in connection with the Government Infrastructure Acts which involve Ground Disturbance over areas which have not previously been subject to Ground Disturbance;

“State” means the State of Queensland acting through the [Insert the relevant State Department or Agency];

“State Cultural Heritage Contact Officer” means the State’s cultural heritage contact officer for the purposes of clause 8 being the person listed in Schedule 5, or their nominated representative;

“Supplier” has the meaning given in the GST Act;

“Taxable Supply” has the meaning given in the GST Act;

“Tax Invoice” has the meaning given in the GST Act; and

“Torres Strait Islander Party” has the meaning given in the TSICHA;

“Trustee” means the body identified in Part A, clause 1 as the Trustee of the Agreement Area;

“TSICHA” means the Torres Strait Islander Cultural Heritage Act 2003 (Qld);
Interpretation

In this Agreement:

(a) words indicating a gender include each other gender;

(b) words in the singular include the plural and words in the plural include the singular;

(c) the table of contents, the recitals and the headings do not affect the meaning or interpretation of this Agreement;

(d) a reference to a clause or Schedule is a reference to a clause in or Schedule to this Agreement including as altered in accordance with clause 14.4;

(e) a reference to a party includes its administrators, successors and permitted assigns;

(f) in the case of any inconsistency between a clause and a Schedule, the clause will prevail to the extent of any inconsistency;

(g) an agreement, acknowledgement, representation or warranty on the part of two or more persons binds them jointly and severally;

(h) an agreement, acknowledgement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

(i) a reference to a nominated time is a reference to that time in Queensland;

(j) when the day or last day for doing an Act is not a Business Day, the day or last day for doing the Act will be the following Business Day;

(k) where a period of time is to be calculated from after a given day, event or act, the period is to be calculated excluding the given day or the day on which the event or act occurred;

(l) a reference to a Queensland statute or regulation is to be interpreted in accordance with the Acts Interpretation Act 1954 (Qld); and

(m) a reference to a Commonwealth statute or regulation is to be interpreted in accordance with the Acts Interpretation Act 1901 (Cth).
Schedule 2

Section 24JAA Notice
Schedule 3

Agreed Issues and Protocols

[Note: Set out here any issues and protocols agreed with the Native Title Parties regarding:

1. ways of minimising the Government Infrastructure Acts’ impact on registered native title rights and interests in relation to land or waters in the area;

2. access to the land or waters; and

3. the way in which the Government Infrastructure Acts might be done.

This may involve addressing issues of the design, location and nature of the Government Infrastructure Acts. It may also involve observing agreed processes/protocols when accessing the land or constructing the infrastructure.

Consultation must also comply with any requirements determined by the Commonwealth Minister by legislative instrument. At the time of drafting this agreement this instrument had not commenced.]

1. [example – delete if not required] The State must use reasonable endeavours to overcome and minimise any deleterious effects upon the environment arising from its use of the Agreement Area.
Schedule 4

Community Benefits

[Note: Examples of possible community benefits.]

[Note: The following non-exhaustive list of examples is provided as a guide only and does not represent a commitment by the State to provide any of the listed benefits.]

[Note: any benefits listed below not used in the final negotiated agreement should be deleted]

1. [Example] Naming Rights for New Health Facility

Description: The Registered Native Title Claimants Registered Native Title Body Corporate will be given the opportunity to select the official name of the new medical centre to be constructed by the State in [Insert name of Indigenous community] as contemplated under this Agreement.

Implementation and Timing: The Registered Native Title Claimants/Registered Native Title Body Corporate will submit the proposed name of the new medical centre to the State on or prior to [insert date]. An official opening of the new medical centre, including an announcement of the official name of the new medical centre as selected by the Registered Native Title Claimants/Registered Native Title Body Corporate will be carried out by the State in conjunction with the Registered Native Title Claimants/Registered Native Title Body Corporate on or prior to [insert proposed date]. The State reserves the right to reject any proposed names which are contrary to departmental policy.

2. [Example] Provision of Office Resources

Description: The State will provide office resources to the Registered Native Title Claimants/Registered Native Title Body Corporate (such as office furniture, fax machine, telephone) as requested by the Registered Native Title Claimants/Registered Native Title Body Corporate up to the value of up to [$insert value].

Implementation and Timing: The Registered Native Title Claimants/Registered Native Title Body Corporate will provide a list of required office resources to the State in writing by [insert date]. The list must present the list of requested office resources in order of priority for the Registered Native Title Claimants/Registered Native Title Body Corporate. The State will provide the office resources requested by the Registered Native Title Claimants/Registered Native Title Body Corporate within [insert time period] of receipt of the written request up to the value of [$insert value]. If the value of the office resources requested by the Registered Native Title
Claimants/Registered Native Title Body Corporate exceeds [insert value], the State will use it best endeavours to provide the office resources requested by the Registered Native Title Claimants/Registered Native Title Body Corporate up to the value of [insert value] in accordance with the order of priority identified by the Registered Native Title Claimants/Registered Native Title Body Corporate.

3. [Example] Restoration of Cemetery

Description: The State will procure restoration works in relation to the [insert name] Cemetery to the value of [insert value].

Implementation and Timing: The State will consult with the Registered Native Title Claimants/Registered Native Title Body Corporate in relation to the works required by the Registered Native Title Claimants/Registered Native Title Body Corporate to be undertaken in relation to repairs, maintenance and restoration of the [insert name] Cemetery on or prior to [insert date]. The State will procure restoration works to be undertaken in relation to the cemetery up to the value of [insert value] within [insert] days of consultation with the Registered Native Title Claimants/Registered Native Title Body Corporate. The State will, in the procuring of those restoration works, use its best endeavours to take into account any matters or requests addressed by the Native Title Parties during consultation.

4. [Example] Bush Tucker Garden

Description: The State will provide [insert] to the [insert name] Primary School to be used by the school towards the creation of a bush tucker garden.

Implementation and Timing: The State will provide [insert name] Primary School with [insert] for the school to use towards the creation of a bush tucker program or other educational program agreed between the State and the school on or before [insert date].

[Other Examples of Possible Community Benefits]

1. Delivery of community education program (e.g. business skills, Microsoft Office training, health education, political engagement training)

2. Delivery of sporting or cultural workshops (e.g. rugby league workshop, music workshops, painting workshops)

3. Assistance for indigenous artists or performing artists (e.g. singer, dance company, artist, storyteller) to visit the relevant community.

4. Sponsor keynote speakers to visit school groups or other community organisations.

5. Provision of works towards restoration, repair or beautification of memorials, parks, community display boards or other community facilities.
6. Assist the local primary school in development of a cultural enrichment teaching program.

7. Provision of skills and labour to the local primary school for repair of e.g. school play area, gardens, fencing.

8. Assist existing local indigenous community organisations.


11. Contribute to cultural items such as a cultural heritage keeping place, a community Indigenous Knowledge Centre base or library complex, or a festival, dance or sports event.


13. Naming rights for streets, buildings (hospitals/wards) other centres, parks, sports fields.

14. Sponsor a cultural heritage study (as distinct from a cultural heritage survey).

15. Assist in recording of cultural heritage sites and values so as to aid protection and recognition.

16. Construction of other centres (or low cost leasing of parts of government buildings) for use by community representatives, community groups or native title parties for their own business or cultural purposes.

17. Construct without cost or at low cost community purpose areas on behalf of the local council, e.g. public pool, library, ‘drop-in’ centre.

18. Assist in the recognition, promotion and funding of cultural days/events/ceremonies.

19. Provision of resources for existing offices/associations e.g. provision of office equipment/telephones etc.

20. Provision of vehicle for use by offices/associations.

21. Provide cadetships or work experience programs.

22. Provide land use or environmental education programs.

23. Provide surveyors to assist Council or Native Title Parties to survey land to assist in possible commercial lease applications - i.e. the land would need to be surveyed to be registered so that a lease could proceed.
24. Provide land and/or building repair, maintenance or renovation; for example, for PBC offices, public parks, sports areas, family tree site, pathways, rodeo ground, local church, memorial gardens during the period that the action body is in the community.

25. Provision of resource material for community programs, educational material etc

26. Sponsor items to promote community events or associations, e.g. printing shirts for the native title party.

27. Establish scholarship/bursary program.

28. Assist in the provision of a skills audit for the community.

29. Provision of disabled ramps and other disability access items where required.

30. Assistance to undertake White Card construction induction training.
Schedule 5

Cultural Heritage Contact Officers

State Cultural Heritage Contact Officer
[Insert contact name and contact details]

Cultural Heritage Contact Officer
[Insert contact name and contact details]
Schedule 6 - Procedure for dealing with Finds

Suspected Find discovered on the Agreement Area during the construction of the Government Infrastructure

- Construction of the Government Infrastructure must cease within 3 metre radius of the Find (Find Preservation Zone)
  - State and/or Monitor to notify the Cultural Heritage Contact Officer of the Find and its location

- Within 24 hours of notification of the Find, the Cultural Heritage Contact Officer must attend the Agreement Area to evaluate whether the Find is a Significant Aboriginal/Torres Strait Islander Object
  - Find is a Significant Aboriginal/Torres Strait Islander Object
    - Cultural Heritage Contact Officer to determine whether Find can be removed from the Find Preservation Zone
      - Find cannot be removed
        - Cultural Heritage Contact Officer to provide a recommendation to the State Cultural Heritage Contact Officer for ensuring that harm to the Find is minimised by further construction of the Government Infrastructure in the Find Preservation Zone and the Agreement Area
          - Recommendations provided
            - Construction of the Government Infrastructure can recommence in Find Preservation Zone in accordance with the recommendations of the Cultural Heritage Contact Officer
          - Recommendations not provided
            - Construction of the Government Infrastructure can recommence in Find Preservation Zone within 72 hours of the notification of the discovery of the Find.
  - Find is not a Significant Aboriginal/Torres Strait Islander Object
    - Find can be removed
      - Construction of the Government Infrastructure can recommence in Find Preservation Zone
    - Find not removed
      - Recommendations provided
        - Construction of the Government Infrastructure can recommence in Find Preservation Zone in accordance with the recommendations of the Cultural Heritage Contact Officer
      - Recommendations not provided
        - Construction of the Government Infrastructure can recommence in Find Preservation Zone within 72 hours of the notification of the discovery of the Find.
Schedule 7

Procedure for dealing with human remains

Human remains found during Government Infrastructure Acts

Contact police and cease works in vicinity until advised by police that works may recommence

Suspected unregistered burial

Police initiate crime scene response and undertake full inspection

Second opinion obtained from police-nominated expert

Non-Aboriginal or Torres Strait Islander remains, suspected criminality, or doubt

Aboriginal or Torres Strait Islander burial

Police with Cultural Heritage Co-ordination Unit to provide technical assistance to Coroner as requested

Cultural Heritage Coordination Unit contacts Aboriginal or Torres Strait Islander community for immediate involvement

Material removed in controlled method and with appropriate dignity, and laboratory analysis undertaken

Determined to be recent, or criminal

Police action ensues

Determined to be Aboriginal or Torres Strait Islander remains

Determined as Aboriginal or Torres Strait Islander remains

Traditional custodians decide arrangements with Cultural Heritage Coordination Unit