

Latest on the Yamatji Nation Indigenous Land Use Agreement

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On 7 February 2020, the State of Western Australia and the Southern Yamatji, Hutt River, Mullewa Wadjari and Widi Mob claim groups entered into an indigenous land use agreement (**ILUA**), which documents a native title settlement agreed during the Geraldton Alternative Settlement Agreement negotiations. On the same date, the Federal Court made orders combining these native title claims into one claim called “Yamatji Nation” and a consent determination of native title in respect of these claims. The determination and orders combining the claims will not take effect until “conclusive registration” of the ILUA (meaning once all avenues of legal challenge have been exhausted or concluded). Once the ILUA is conclusively registered and the determination is effective, native title will be extinguished over the majority of the land that was the subject of the claims. Despite this, non-exclusive possession native title has been recognised over some small culturally significant pockets of land in those areas.

The ILUA acknowledges the Yamatji Nation’s traditional connection to the land and waters over nearly 48,000 square kilometres of land in Western Australia’s mid-west region (**Agreement Area**). Further, it delivers a range of benefits to the people of the Yamatji Nation to compensate them for acts that have impaired or extinguished their native title. Relevantly, the ILUA provides for the creation of the Yamatji Land Estate, the Yamatji Conservation Estate and a new heritage condition which will be imposed on future mining and petroleum tenure granted in the Agreement Area.

Under the Yamatji Land Estate, reserves under the *Land Administration Act 1997* (WA) will be created for the purpose of “Yamatji Social, Cultural and/or Economic Benefit”. Certain mining and petroleum tenements that overlap land proposed to form part of a reserve, have been given “Affected Tenement” or “Potential Conversion Tenement” status as listed in Schedule 12 of the ILUA. Holders of an “Affected Tenement” status can continue to access the Affected Tenement(s) and carry on with mining or petroleum activities. “Potential Conversion Tenements” are the subject of a three year grace period in which the holder may make an application for a mining lease, a petroleum production licence or a petroleum retention lease before a reserve is created.

The ILUA also provides for the creation of a Conservation Estate pursuant to which the Department of Biodiversity and Conservation and the Yamatji Southern Regional Corporation (**Regional Entity**) will jointly manage new and existing conservation park and national park areas. This will restrict the ability of mining and petroleum proponents with tenure within the area of proposed new conservation or national parks to conduct activities following the creation of the parks.

The ILUA provides for the protection of Aboriginal culture and heritage through the introduction of a condition which will be imposed on all new mining and petroleum tenure granted in the Agreement Area. This condition requires proponents to enter into either a standard form Yamatji Proponent Standard Heritage Agreement with the Regional Entity or another form of Aboriginal heritage agreement with the Regional Entity. Critically, the new condition provides that a heritage agreement must be entered into prior to proponents exercising any of the rights, powers or duties pursuant to that part of the tenure which overlaps the Agreement Area.

Progress of registration of the ILUA

On 29 April 2020, the National Native Title Tribunal (**NNTT**) published notice of an application for registration of the ILUA, initiating the three month notification period after which the NNTT can make a decision to register the ILUA, unless there are any bars to registration.

Following registration of the ILUA by the NNTT, “conclusive registration” of the ILUA, which is the effective date of the ILUA and will be the date of consent determination of the Yamatji Nation native title claim, will occur once the ILUA remains registered 60 business days after the decision to register the ILUA (meaning no legal proceedings to review the registration decision have been made) or otherwise 40 business days following the exhaustion and determination of any legal proceedings brought in respect of the registration decision.

Once conclusively registered, the ILUA will be binding on all parties and all Yamatji Nation native title holders and the Yamatji Nation native title claims will be determined by consent.

Further developments

We will continue to follow the progress of registration of the ILUA and provide updates when available.

For further information or discussion in relation to the ILUA and how it may impact your tenure or operations, please contact our [Resources and Energy](#) team.

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