V4

Williams Morgen

From: Prior Katrina
Sent: Friday, 21 October 2011 1:55 PM
To: 'gsherlock@capealumina.com.au'; 'nconway@capealumina.com.au'
Cc: Williams Allan; Bennett David
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge
Attachments: 111021_SIWR_CapeAlumina.pdf

Dear Mr Sherlock and Mr Conway

Please find attached a response from Mr Allan Williams, Director Nature Refuges Branch, to Cape Alumina's correspondence of 8 August regarding the proposed Steve Irwin Wildlife Reserve Nature Refuge.

Kind regards

Katrina

Katrina Prior
A/Manager Gazettals
Nature Refuges Branch
Queensland| Parks and Wildlife Service
Department of Environment and Resource Management
☎| 07 3330 5373 🖷| 07 3330 5398 | katrina.prior@derm.qld.gov.au
http://www.derm.qld.gov.au
Floor 5, 400 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

Nature refuges help landholders protect Queensland's significant natural and cultural landscapes, wildlife values and biodiversity while allowing sustainable production to continue.
To find out more call 1300 130 372 or visit http://www.derm.qld.gov.au/naturerefuges
Please consider the environment before printing this email.

RTI DL RELEASE - EHP

From: Neville Conway [mailto:nconway@capealumina.com.au]
Sent: Tuesday, 18 October 2011 11:00 AM
To: Williams Allan
Cc: Bennett David; Prior Katrina
Subject: RE: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge

Dear Allan,

I have as yet not received a response on this letter.

Are you able to provide some advice as to if a response will be forthcoming, please.

I look forward to hearing from you soon.

Kind regards,
Nev Conway

From: Neville Conway
Sent: Monday, 8 August 2011 2:08 PM
To: 'allan.williams@derm.qld.gov.au'
Cc: 'david.bennett@derm.qld.gov.au'; 'katrina.prior@derm.qld.gov.au'; Graeme Sherlock
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge

Release

Dear Mr Williams,

Please see attached a letter from Cape Alumina in response to your letter dated 5 August.

I look forward to your response.

Yours sincerely

Neville Conway

CapeAlumina

Office Suite 6/56 Peel Street, South Brisbane Qld 4101
Postal PO Box 3732, Brisbane, 4101, Qld Australia
Phone + 61 7 3844 9911 Facsimile + 61 7 3844 9919
Email info@capealumina.com .au Web www.capealumina.com.au

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RTI DL RELEASE - EHP

Queensland Government

Enquiries Katrina Prior
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

20 October 2011

Mr Graeme Sherlock
Managing Director
Cape Alumina Limited (CBX)
PO Box 3732
South Brisbane QLD 4101

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML20572
LANDHOLDERS: SILVERBACK PROPERTIES
LAND: LOT 4 on SP222990

RTI DL RELEASE - EHP

Dear Mr Sherlock

Thank you for your letter dated 8 August 2011 regarding the proposed conservation agreement to establish Steve Irwin Wildlife Reserve Nature Refuge.

As previously advised, the Department has assessed that the interests of Cape Alumina Limited (CBX) will not be materially affected by the proposed Steve Irwin Wildlife Reserve Nature Refuge as a nature refuge declaration provides no legislative impediment to mining.

Neither the mining lease application MLA20572 nor the explorations permits EPM14547 and EPM15278 held by CBX create an interest in land under either the *Nature Conservation Act 1992* or the *Mineral Resources Act 1989*.

The Department has included within the conservation agreement the additional clause 9.3 acknowledging that CBX are not bound by the agreement in relation to MLA20572 as a gesture of good faith and in recognition that this mining lease application is at an advanced stage for an identified resource.

Should you have any further enquiries, please do not hesitate to contact me on (07) 3330 5366 or at allan.williams@derm.qld.gov.au.

Yours sincerely

sch4p3(3) Prejudice the protection of an individuals right to privacy

Allan Williams
Director
Nature Refuges Branch

Level 6
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5373
Facsimile + 61 7 3330 6306
Website www.derm.qld.gov.au
ABN 46 640 294 485

Williams Morgen

From: Bennett David
Sent: Thursday, 1 September 2011 10:32 AM
To: sch4p3(3) Prejudice the protection of an individuals right to privacy
Cc: Williams Allan; Prior Katrina
Subject: RE: Declaration of The Steve Irwin Wildlife Reserve

Thanks Sally, the email you have provided is fine.

Ken, I will post 2 bound copies of the conservation agreement today for signing.

Regards, David

David Bennett I Nature Refuges I Department of Environment and Resource Management
ph: (07) 3330 5376 I email: david.bennett@derm.qld.gov.au or visit us at www.derm.qld.gov.au P Please consider the environment before printing.

-----Original Message-----
From: [redacted]
Sent: Thursday, 1 September 2011 10:09 AM
To: Bennett David
Subject: Re: Declaration of The Steve Irwin Wildlife Reserve

[redacted]
david.bennett@derm.qld.gov.au
Dear David,
Thank you for your email re the changes in documentation re The Steve Irwin Wildlife Reserve declaration.
I would like to let you know that we have no objections or issues with same and look forward to the declaration.
Do you need me to write a signed letter to this effect?
Regards,
Sally Witherspoon

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v4

Williams Morgen

From: Bennett David
Sent: Wednesday, 31 August 2011 7:29 PM
To: sch4p3(3) Prejudice the protection of an individuals right to privacy
Cc: [redacted] Williams Allan; Prior Katrina
Subject: RE: The Steve Irwin Wildlife Reserve
Attachments: Steve_Irwin_WR_NR_FINAL.pdf; 1-KEEPER-1156867-Proposed_SIWR_Conservation_Agreement_31_August_2011.doc

Dear Sally, Thank you for providing your consent to my colleague Katrina last week. Since then, there has been some final to-ing and fro-ing between my Director Allan Williams and Ken Hicks. Today they have reached agreement on a final version of the conservation agreement, with most of the requested changes incorporated. Can you please review the 2 attachments and confirm whether you consent to these final versions of this conservation agreement?
My phone number is below, feel free to call me should you have any questions.
Regards,
David

David Bennett I Nature Refuges I Department of Environment and Resource Management
ph: (07) 3330 5376 I email: david.bennett@derm.qld.gov.au or visit us at www.derm.qld.gov.au
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RTI DL RELEASE - EHP

-----Original Message-----
From: [redacted]
Sent: Monday, 22 August 2011 8:40 AM
To: katrina.prior@derm.qld.gov.au
Cc [redacted]
Subject: Re: The Steve Irwin Wildlife Reserve

[redacted]

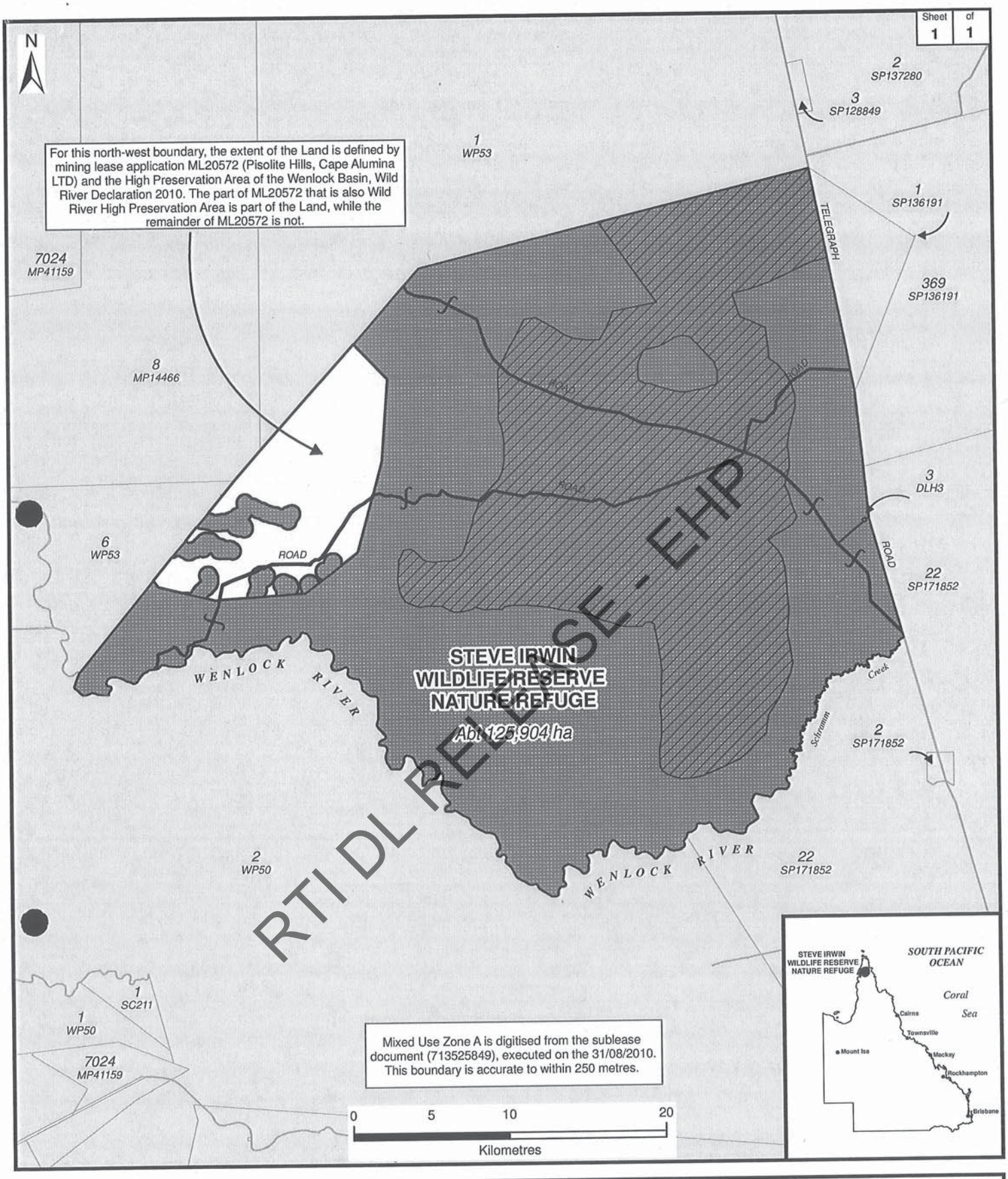
Dear Katrina

Thank you for your letter and the attachments re the declaration of the Steve Irwin Wildlife Reserve. We are pleased that this has come to fruition.

We have been liaising with Ken Hicks from Australia Zoo who has proposed a few minors changes to the Declaration. We are supportive of these changes, as per his email to us of 16th August, and would like to let you know that we will be happy to give our approval or consent for the declaration when these changes have been effected.

Regards,

Sally Witherspoon for
John Clive Witherspoon and Sally-Anne Witherspoon



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PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

Queensland Government

GDA

DATUM: GDA94

ZONE: MGA 54

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Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.

Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Resource Management makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Resource Management disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which might incurred as a result of the product being inaccurate or incomplete in any way and for any reason.

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Based upon an extraction from the Digital Cadastral Data Base on: 05/04/2011

PARISH: BEEVOR

LOCAL AUTH: COOK SHIRE

COUNTY: DULHUNTY

REGION: CAPE YORK / SAVANNA

LOCALITY: WENLOCK

ELECTORATE: COOK

Scale: 1:220000

Note A4 copy is reduced.

SYSINT Code: 8329SIW001

PA Number: PA429

Drawn By: CH

Schedule 4 F:\Nature Refuges\Gazettals\Nature Refuges\Steve Irwin Wildlife Reserve\PA\GIS data\Workspaces\Steve_Irwin_WR_NR_working.mxd

File Ref: BNE33142 Vol.1

Map Ref: 7373-24122

Date: 08/04/2011

AP18994

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CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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Release

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BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Wenlock and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Steve Irwin Wildlife Reserve (also known as Bertiehaugh Station).

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Steve Irwin Wildlife Reserve have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Steve Irwin Wildlife Reserve and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992.*
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*, and, the Lessee's successors in title.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth).*
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.

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"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant Geological Features and Landforms"	Typically rocky outcrops, boulders, cliff faces, gorges, caves, sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (e.g. unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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Release

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge, pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

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(d) the Management Plan (if any).

3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

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

5.5 In containing the Emergency Event, the Lessee will take such containment action as is necessary provided that it shall use reasonable endeavours to minimise effect on Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

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9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement, Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the Lessee, the successors in title to the Lessee that entered into this Agreement and on all persons who have an interest in the Land.

(a) The Lessee will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

(b) The Lessee will use their best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

9.3 The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

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13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or their servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

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14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

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indulgence granted by any party to the others will not be construed as a waiver of rights under this Agreement.

19. Governing law

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

20. Costs

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

21. Execution

21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437
Item 2	Land:	The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 125904ha, shown on plan PA429.
Item 3	Lease:	The term lease for the Land.
Item 4	Date for satisfaction of condition in clause 2:	No later than 12 months after the Date of this Agreement.
Item 6	Place of mediation:	Brisbane
Item 7	Address for notices:	

Lessee

Address:	c/o Australia Zoo Steve Irwin Way Beerwah Qld 4519
Postal address:	As above
Attention:	Frank Muscillo, General Manager
Telephone:	(07) 5436 2000
Facsimile:	(07) 5494 8604
Email:	N/A

State

Address:	Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000
Postal address:	GPO Box 2454, Brisbane Qld 4001
Attention:	Nature Refuges Branch
Telephone:	(07) 3330 5502
Facsimile:	(07) 3330 5398

Item 8	Assistance:	Technical advice on the management of Natural Resources of the Land.

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk (*Erythrotriorchis radiatus)*.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species, any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

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Appendix A

Significant plants and animals:

- The vulnerable freshwater sawfish (*Pristis microdon)* is known to be present in this stretch of river.
- The rainforest emergent tree *Pterocarpous sp.* is found only along the freshwater sections of the Wenlock and Archer Rivers.
- The near threatened spotted cuscus (*Spilocuscus maculates)* and rufous owl (Cape York subspecies) (*Ninox rufa meesi)* are known to be present in the riparian rainforests.
- Known presence of a population of the endangered northern quoll (Dasyurus hallucatus).
- The near threatened Palm Cockatoo (Probiscer aterrimus) – recorded at 7 locations on the land.
- The critically endangered speartooth shark (Glyphis glyphis) in waterways directly adjoining the Land.

Regional Ecosystems:
3.3.10 Melaleuca argentea and/or M. fluviatilis +/- M. leucadendra open forest fringing streams and creeks
3.3.14 Melaleuca saligna +/- M. viridiflora, Lophostemon suaveolens woodland on drainage swamps
3.3.20 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Melaleuca viridiflora woodland on alluvial plains
3.3.22 Corymbia clarksoniana or C.novoguinensis woodland on alluvial plains
3.3.25 Eucalyptus leptophleba +/- Corymbia tessellaris +/- E.platyphylla woodland on riverine levees and floodplains
3.3.48 Melaleuca saligna +/- M.viridiflora low open woodland on drainage depressions and outwash plains
3.3.49 Melaleuca viridiflora low open woodland on low plains
3.3.5 Evergreen notophyll vine forest on alluvia on major watercourses
3.3.60 Closed tussock grassland of Themeda arguens +/- Fimbristylis spp. and Panicum spp. A Vetiveria sp. dominated variant occurs on parts of the west coast. Occurs on alluvial plains.
3.3.64 Baloskion tetraphyllum subsp. meiostachyum open sedge land in drainage swamps in dune fields
3.3.66 Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands. Biodiversity status: **Of Concern**
3.5.10 Eucalyptus tetrodonta and Corymbia nesophila woodland on sandy gently undulating rises and low hills.
3.5.11 Eucalyptus tetrodonta and Corymbia nesophila woodland on lower slopes of plains and rises Extent reserved in protected area estate: **Low**
3.5.14 Melaleuca viridiflora +/- Acacia spp. +/- Asteromyrtus symphyocarpa low woodland on scattered coastal sand plains
3.5.2 Eucalyptus tetrodonta and Corymbia nesophila tall woodland on deeply weathered plateaus and remnants. Extent reserved in protected area estate: **Low**
3.5.22 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Corymbia spp. woodland on plains.
3.5.4 Semi-deciduous notophyll vine forest in small patches on northern plateaus.
3.5.7 Eucalyptus tetrodonta +/- Corymbia clarksoniana woodland on sand plains.
3.7.3 Eucalyptus cullenii +/- E.tetrodonta woodland on erosional escarpments and plains.
3.7.5 Corymbia stockeri, Eucalyptus cullenii woodland on ironstone knolls and erosional surfaces. Extent reserved in protected area estate: **Low**
3.9.4 Eucalyptus leptophleba +/- Corymbia dallachiana or Eucalyptus platyphylla open woodland on rolling plains.
3.10.1 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

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References

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). *'Characteristics of Important Wetlands in Queensland.'* Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.
b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement, or in writing by the Minister.
d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.
e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.
g) Minimising Land Uses that produce Contaminant run-off.
h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.
i) Minimising disturbance to natural water flows and processes, unless otherwise approved.
j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.
l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

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Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

Release

d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

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SCHEDULE 4

Protected Area Plan

PA429

(attached)

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SCHEDULE 5

Financial Assistance

Nil

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Executed as an agreement on the dates appearing below

SIGNED by

SILVERBACK PROPERTIES PTY LTD A.C.N. 067 400 088 TRUSTEE UNDER INSTRUMENT 710960437

in accordance with section 127(1) of the

Corporations Act 2001 (Cth)

this day of 20132011

by .....
(full name)
a Director/Sole Director

.....
(signature)

and by.....
(full name)
a Director/Secretary

.....
(signature)

RTI DL RELEASE - EHP

SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

VICKY DARLING MP

.....

(signature)

the Minister administering the *Nature Conservation Act 1992*

this day of 20132011

in the presence of:

.....

(print name of witness)

.....

(signature of witness)

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V4

Williams Morgen

From: Prior Katrina
Sent: Monday, 22 August 2011 2:15 PM
To: [redacted]
Cc: sch4p3(3) Prejudice the protection of an individuals right to privacy
Subject: RE: The Steve Irwin Wildlife Reserve

Hi Sally

Thanks for your response. I will be in touch when the Department and Ken have reached consensus on these additional changes to be made to the conservation agreement.

Kind regards

Katrina

Katrina Prior
A/Principal Project Officer
Nature Refuges Branch
Queensland Parks and Wildlife Service
Department of Environment and Resource Management
☎| 07 3330 5373 🖷| 07 3330 5398 | katrina.prior@derm.qld.gov.au
http://www.derm.qld.gov.au
Floor 5, 400 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

Nature refuges help landholders protect Queensland's significant natural and cultural landscapes, wildlife values and biodiversity while allowing sustainable production to continue.
To find out more call 1300 130 372 or visit http://www.derm.qld.gov.au/naturerefuges
Please consider the environment before printing this email.

RTI DL RELEASE - EHP

-----Original Message-----
From: [redacted]
Sent: Monday, 22 August 2011 8:40 AM
To: Prior Katrina
Cc: [redacted]
Subject: Re: The Steve Irwin Wildlife Reserve

[redacted]

Dear Katrina

Thank you for your letter and the attachments re the declaration of the Steve Irwin Wildlife Reserve. We are pleased that this has come to fruition.

We have been liaising with Ken Hicks from Australia Zoo who has proposed a few minors changes to the Declaration. We are supportive of these changes, as per his email to us of 16th August, and would like to let you know that we will be happy to give our approval or consent for the declaration when these changes have been effected.

Regards,

Sally Witherspoon for

RTI DL RELEASE - EHP

Williams Morgen

[redacted]

sch3(7) Information subject to legal professional privilege

From: Neville Conway [mailto:nconway@capealumina.com.au]
Sent: Monday, 8 August 2011 2:08 PM
To: Williams Allan
Cc: Bennett David; Prior Katrina; Graeme Sherlock
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge

Dear Mr Williams,

Please see attached a letter from Cape Alumina in response to your letter dated 5 August.

I look forward to your response.

Yours sincerely

Neville Conway

CapeAlumina

Office Suite 6/56 Peel Street, South Brisbane Qld 4101
Postal PO Box 3732, Brisbane, 4101, Qld Australia
Phone + 61 7 3844 9911 Facsimile + 61 7 3844 9919
Email info@capealumina.com .au Web www.capealumina.com.au

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Cape Alumina

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Phone + 61 7 3844 9911 Facsimile + 61 7 3844 9919
Email info@capealumina.com.au Web www.capealumina.com.au

Monday, 08 August 2011

Mr Allan Williams
Director
Nature Refuges Branch
Department of Environment and Resource Management
GPO Box 2454
BRISBANE QLD 4001

Dear Mr Williams

Proposed Declaration of Steve Irwin Wildlife Reserve

Thank you for your correspondence dated 5 August 2011 in relation to proposed refinements to clause 9.3 of the proposed Conservation Agreement to Establish Steve Irwin Wildlife Reserve Nature Refuge between the State of Queensland and Silverback Properties Pty Ltd (Conservation Agreement).

Cape Alumina Limited (CBX) remains concerned that the proposed Conservation Agreement fails to acknowledge or make provision for CBX's existing rights pursuant to its exploration permits for minerals (EPM14547 and EPM15278). The rights pursuant to these exploration permits for minerals are separate from and additional to those rights under mining lease application MLA20572.

Until CBX's rights and interests pursuant to both its mining lease application MLA20572 and exploration permits for minerals are recognised and preserved through the Conservation Agreement, CBX cannot provide its support to the Conservation Agreement as proposed.

I look forward to your confirmation that the Conservation Agreement will be amended to recognise CBX's exploration permits in addition to its mining lease application.

Please do not hesitate to contact me on 07 3844 9911 should you wish to discuss further.

Yours sincerely

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Mr Graeme Sherlock
Managing Director
Cape Alumina Limited

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ABN 88 107 817 694

V4

Olsen Audrey

From: Prior Katrina
Sent: Friday, 5 August 2011 1:46 PM
To: nconway@capealumina.com.au
Cc: Williams Allan; Bennett David
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge
Attachments: 110805_SIWRNR_CAPEALUMINA.PDF; 1-KEEPER-1156867-Proposed_SIWR_Conservation_Agreement_3_August_2011.doc; Steve_Irwin_WR_110620.pdf

Dear Mr Conway

Please find attached correspondence from Mr Allan Williams, Director Nature Refuges Branch, regarding the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Kind regards

Katrina

Katrina Prior
A/Principal Project Officer
Nature Refuges Branch
Queensland Parks and Wildlife Service
Department of Environment and Resource Management
☎| 07 3330 5373 🖷| 07 3330 5398 | katrina.prior@derm.qld.gov.au
http://www.derm.qld.gov.au
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Nature refuges help landholders protect Queensland's significant natural and cultural landscapes, wildlife values and biodiversity while allowing sustainable production to continue.
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Please consider the environment before printing this email.

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Queensland Government

Enquiries David Bennett
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

5 August 2011

nconway@capealumina.com.au
Cape Alumina

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML20572
LANDHOLDERS: SILVERBACK PROPERTIES
LAND: LOT 4 on SP222990

Dear Mr Conway,

Thank you for your letter dated 19 July 2011. Please note that the interests of traditional owners and the lessee of the land have been considered for this proposal.

The relevant clause for inclusion in the conservation agreement has been further refined to better address your concerns regarding mining lease application ML20572, as follows:

> "The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement."

After careful consideration of your submission and the proposed conservation agreement, the Department has assessed that your interests are not materially affected by the proposal. Please note that a nature refuge declaration provides no legislative impediment to mining. Thank you for your time and input. The draft conservation agreement is attached for your records.

Should you have any further enquiries, please do not hesitate to contact Mr David Bennett, Manager, Nature Refuges Branch on (07) 3330 5376 or [redacted]

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sch4(3)(3) Prejudice the protection of an individuals right to privacy

Yours sincerely

[redacted]

Allan Williams
Director
Nature Refuges Branch

Enc. Conservation Agreement (including protected area plan)

Level 6
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5373
Facsimile + 61 7 33[illegible]
Website www.derm.qld.gov.au
ABN 46 640 294 485

CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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Release

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Release

BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Jardine and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Bertiehaugh Station.

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Bertiehaugh Station have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Bertiehaugh Station and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992*.
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*, and, the Lessee's successors in title.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth)*.
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.

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"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant Geological Features and Landforms"	Typically rocky outcrops, boulders, cliff faces, gorges, caves, sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (e.g. unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge, pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

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(d) the Management Plan (if any).

3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

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

5.5 In containing the Emergency Event, the Lessee will only take action that has a minimal effect on the Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

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9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement, Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the Lessee, the successors in title to the Lessee that entered into this Agreement and on all persons who have an interest in the Land.

(a) The Lessee will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

(b) The Lessee will use their best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

9.3 The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

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13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or their servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

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Release

14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

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indulgence granted by any party to the others will not be construed as a waiver of rights under this Agreement.

19. Governing law

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

20. Costs

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

21. Execution

21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437
Item 2	Land:	The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 125904ha, shown on plan PA429.
Item 3	Lease:	The term lease for the Land.
Item 4	Date for satisfaction of condition in clause 2:	No later than 12 months after the Date of this Agreement.
Item 6	Place of mediation:	Brisbane
Item 7	Address for notices:	

Lessee

Address:	c/o Australia Zoo Steve Irwin Way Beerwah Qld 4519
Postal address:	As above
Attention:	Frank Muscillo, General Manager
Telephone:	(07) 5436 2000
Facsimile:	(07) 5494 8604
Email:	N/A

State

Address:	Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000
Postal address:	GPO Box 2454, Brisbane Qld 4001
Attention:	Nature Refuges Branch
Telephone:	(07) 3330 5502
Facsimile:	(07) 3330 5398

Item 8	Assistance:	Technical advice on the management of Natural Resources of the Land.

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk (*Erythrotriorchis radiatus)*.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species, any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

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Appendix A

Significant plants and animals:

- The vulnerable freshwater sawfish (*Pristis microdon)* is known to be present in this stretch of river.
- The rainforest emergent tree *Pterocarpous sp.* is found only along the freshwater sections of the Wenlock and Archer Rivers.
- The near threatened spotted cuscus (*Spilocuscus maculates)* and rufous owl (Cape York subspecies) (*Ninox rufa meesi)* are known to be present in the riparian rainforests.
- Known presence of a population of the endangered northern quoll (*Dasyurus hallucatus)*.

Regional Ecosystems:

3.3.5 Evergreen notophyll vine forest on alluvia on major watercourses

3.3.10 Melaleuca argentea and/or M. fluviatilis +/- M. leucadendra open forest fringing streams and creeks
3.3.14 Melaleuca saligna +/- M. viridiflora, Lophostemon suaveolens woodland on drainage swamps
3.3.20 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Melaleuca viridiflora woodland on alluvial plains
3.3.22 Corymbia clarksoniana or C.novoguinensis woodland on alluvial plains
3.3.25 Eucalyptus leptophleba +/- Corymbia tessellaris +/- E.platyphylla woodland on riverine levees and floodplains
3.3.48 Melaleuca saligna +/- M.viridiflora low open woodland on drainage depressions and outwash plains
3.3.49 Melaleuca viridiflora low open woodland on low plains
3.3.60 Closed tussock grassland of Themeda arguens +/- Fimbristylis spp. and Panicum spp. A Vetiveria sp. dominated variant occurs on parts of the west coast. Occurs on alluvial plains.
3.3.64 Baloskion tetraphyllum subsp. meiostachyum open sedge land in drainage swamps in dune fields
3.3.66 Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands.
Biodiversity status: **Of Concern**
3.5.2 Eucalyptus tetrodonta and Corymbia nesophila tall woodland on deeply weathered plateaus and remnants. Extent reserved in protected area estate: **Low**
3.5.4 Semi-deciduous notophyll vine forest in small patches on northern plateaus.
3.5.7 Eucalyptus tetrodonta +/- Corymbia clarksoniana woodland on sand plains.
3.5.10 Eucalyptus tetrodonta and Corymbia nesophila woodland on sandy gently undulating rises and low hills.
3.5.11 Eucalyptus tetrodonta and Corymbia nesophila woodland on lower slopes of plains and rises Extent reserved in protected area estate: **Low**
3.5.14 Melaleuca viridiflora +/- Acacia spp. +/- Asteromyrtus symphyocarpa low woodland on scattered coastal sand plains
3.5.22 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Corymbia spp. woodland on plains.
3.7.3 Eucalyptus cullenii +/- E.tetrodonta woodland on erosional escarpments and plains. Extent reserved in protected area estate: **Low**
3.7.5 Corymbia stockeri, Eucalyptus cullenii woodland on ironstone knolls and erosional surfaces.
3.9.4 Eucalyptus leptophleba +/- Corymbia dallachiana or Eucalyptus platyphylla open woodland on rolling plains.
3.10.1 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

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References

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.*' Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.
b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement or in writing by the Minister.
d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.
e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.
g) Minimising Land Uses that produce Contaminant run-off.
h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.
i) Minimising disturbance to natural water flows and processes, unless otherwise approved.
j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.
l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

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d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

   i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

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SCHEDULE 4

Protected Area Plan

PA429

(attached)

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SCHEDULE 5

Financial Assistance

Nil

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Executed as an agreement on the dates appearing below

SIGNED by

SILVERBACK PROPERTIES PTY LTD A.C.N. 067 400 088 TRUSTEE UNDER INSTRUMENT 710960437

in accordance with section 127(1) of the

Corporations Act 2001 (Cth)

this day of 2013~~2011~~

by .....
(full name)
a Director/Sole Director

.....
(signature)

and by.....
(full name)
a Director/Secretary

.....
(signature)

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SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

VICKY DARLING

.....

(signature)

the Minister administering the *Nature Conservation Act 1992*

this day of 20132~~2011~~

in the presence of:

.....

(print name of witness)

.....

(signature of witness)

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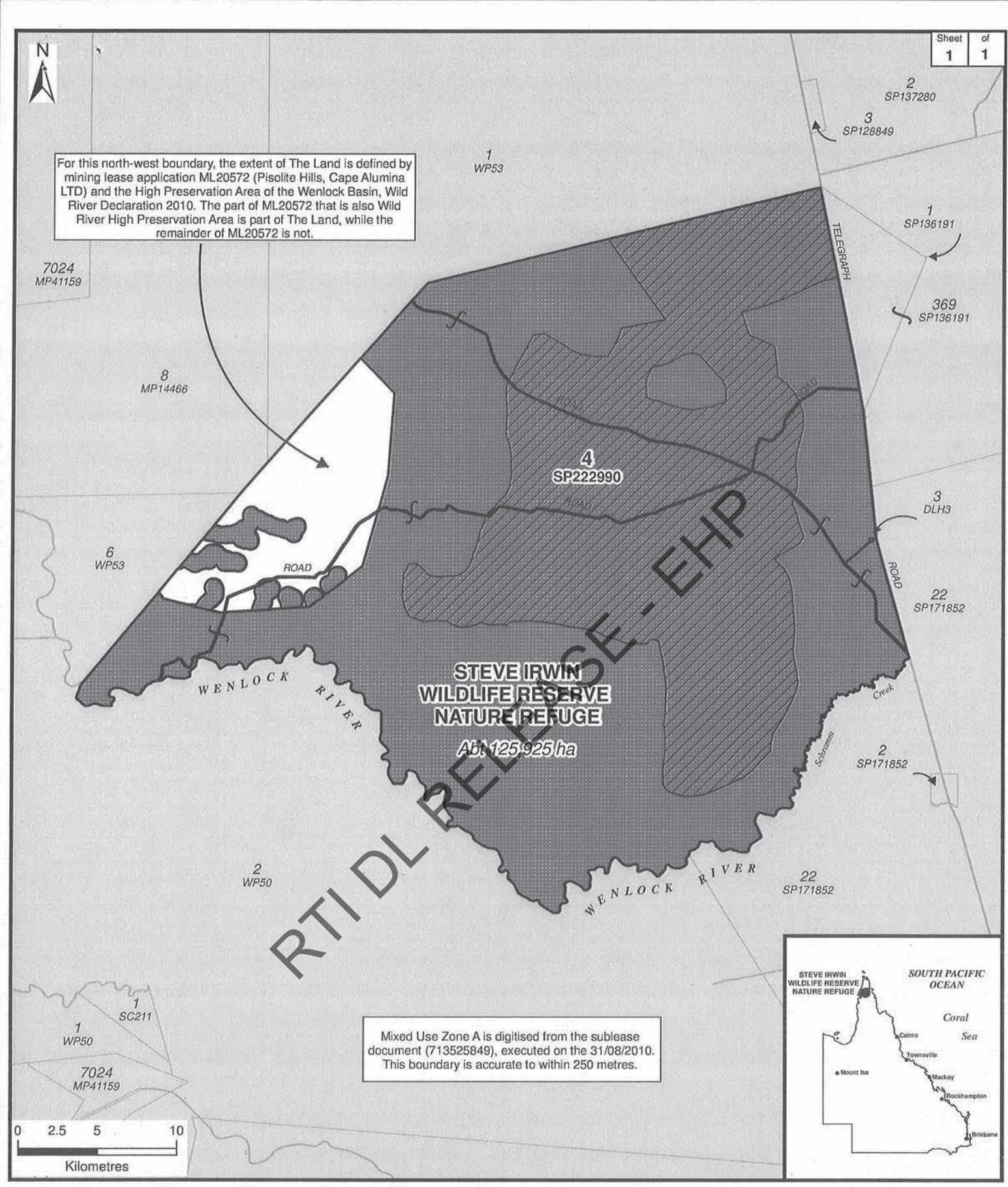

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PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

Draft v1.4

Queensland Government

GDA

DATUM: GDA94

ZONE: MGA 54

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Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.

Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Resource Management makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Resource Management disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might incurred as a result of the product being inaccurate or incomplete in any way and for any reason.

The property boundaries shown on this plan are APPROXIMATE ONLY They are NOT an accurate representation of the legal boundaries.

Based upon an extraction from the Digital Cadastral Database dated 04/2011

PARISH: BEEVOR	**LOCAL AUTH:** COOK SHIRE		Scale: 1:220000
COUNTY: DULHUNTY	**REGION:** CAPE YORK / SAVANNA		Note A4 copy is reduced.
LOCALITY: WENLOCK	**ELECTORATE:** COOK		
SYSINT Code: 8329SIW001	PA Number: PA429	Drawn By: CH	
File Ref: BNE33142 Vol.1	Map Ref: 7373-24122	Date: 08/04/2011	

Schedule 4 F:\Nature Refuges\Gazettals\Nature Refuges\Steve Irwin Wildlife Reserve \PA\GIS data\Workspaces\Steve_Irwin_WR_NR_working.mxd

AP18994

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V4

Olsen Audrey

From: Prior Katrina
Sent: Friday, 5 August 2011 4:31 PM
To: sch4p3(3) Prejudice the protection of an individuals right to privacy
Cc: Williams Allan; Bennett David
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge
Attachments: 110805_SIWRNR_Witherspoons.PDF; 1-KEEPER-1156867-Proposed_SIWR_Conservation_Agreement_3_August_2011.doc; Steve_Irwin_WR_110620.pdf; SIWR pfd.doc

Dear Mr and Ms Witherspoon

Please find attached correspondence from Mr Allan Williams, Director Nature Refuges Branch, regarding the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Kind regards

Katrina

Katrina Prior
A/Principal Project Officer
Nature Refuges Branch
Queensland Parks and Wildlife Service
Department of Environment and Resource Management
☎| 07 3330 5373 🖷| 07 3330 5398 | katrina.prior@derm.qld.gov.au
http://www.derm.qld.gov.au
Floor 5, 400 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

Nature refuges help landholders protect Queensland's significant natural and cultural landscapes, wildlife values and biodiversity while allowing sustainable production to continue.
To find out more call 1300 130 372 or visit http://www.derm.qld.gov.au/naturerefuges
Please consider the environment before printing this email.

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Queensland Government

Enquiries David Bennett
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

5 August 2011

John Clive Witherspoon and Sally-Anne Witherspoon

sch4p3(3) Prejudice the protection of an individuals right to privacy

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
LESSEE: SILVERBACK PROPERTIES PTY LTD
SUB-LEASE: 713525849
LAND: LOT 4 on SP222990

Dear Mr Witherspoon and Ms Witherspoon

I understand that you have previously received notification from this office that the Minister for Environment and the Lessee concerned propose to enter into a conservation agreement to establish the Steve Irwin Wildlife Reserve Nature Refuge.

I wish to advise that this proposed conservation agreement has been amended recently, to the effect that the conservation agreement would be registrable, and would therefore bind, so far as its provisions are relevant, successors in title and all persons with an interest in the subject land other than those specifically exempted in the conservation agreement, or exempted by legislation.

Please find attached for your perusal both the Proposal for Declaration for the Steve Irwin Wildlife Reserve Nature Refuge and the conservation agreement to be signed by the Minister and the Lessee.

If any of your rights will be materially affected, the Minister is required, under section 45(2) of the *Nature Conservation Act 1992* to obtain your written consent before entering into the agreement. Via return email, please advise within 20 business days from the date of this letter whether you provide your consent to the proposed agreement.

Should you have any further enquiries, please do not hesitate to contact me on (07) 3330 5376.

Yours sincerely

Allan Williams
Director, Nature Refuges Branch

Enc. Proposal for Declaration, Conservation agreement (including protected area plan)

Level 5
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5376
Facsimile + 61 7 3330 5306
Website www.derm.qld.gov.au

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Proposal for declaration

Pursuant to section 44 of the *Nature Conservation Act 1992* (the Act), the Minister administering the Act, being satisfied that an area should be declared a protected area, has prepared the following proposal for the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Description of Land

Name:	Bertiehaugh
Land Description	Part of lot 4 on plan SP222990
County:	Dulhunty
Shire:	

Proposed class of protected area

Class or protected area:	Nature Refuge
Name of the proposed nature refuge:	Steve Irwin Wildlife Reserve Nature Refuge

Proposed management intent

a) It is intended that the Steve Irwin Wildlife Reserve Nature Refuge will be managed, in addition to the general management principles and management intent as set out in paragraph (b) below, in a manner that is consistent with a conservation agreement made between the Minister and the holder of the term/pastoral lease pursuant to section 45 of the Act, for conservation of the significant natural resources.

b) The intention of the declaration of the Steve Irwin Wildlife Reserve Nature Refuge is to bind the lessee, their successors in title and all other persons with an interest in the land to conduct their operations in a manner which is consistent with the management principles for nature refuges as set out in section 22 of the Act and in accordance with the management intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994*.

c) It is **not** intended that the declaration of the Steve Irwin Wildlife Reserve Nature Refuge will affect:

i. Native Title Rights and Interests, unless the holder of the Native Title Rights and Interests provides their written consent; and

ii. the rights of any persons mentioned in section 45(2) of the Act, unless the person provides their written consent.

d) Nothing in this proposal, the proposed conservation agreement or the proposed nature refuge declaration can grant the lessee new rights to the land beyond those granted under the term/pastoral lease.

Conservation significance

The proposed nature refuge is considered to be an important addition to the Nature Refuges Program and the protected area estate in Queensland. The following significant natural resources have, to date, been identified on the land:

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open

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forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.
Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.
Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.
The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Item 3: Known presence of a population of the red goshawk (*Erythrotriorchis radiatus)*.
Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species, any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.
Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.
Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.
Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Appendix A

Significant plants and animals:

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- The vulnerable freshwater sawfish (*Pristis microdon)* is known to be present in this stretch of river.
- The rainforest emergent tree *Pterocarpous sp.* is found only along the freshwater sections of the Wenlock and Archer Rivers.
- The near threatened spotted cuscus (*Spilocuscus maculates)* and rufous owl (Cape York subspecies) (*Ninox rufa meesi)* are known to be present in the riparian rainforests.
- Known presence of a population of the endangered northern quoll (*Dasyurus hallucatus)*.

Regional Ecosystems:

3.3.5 Evergreen notophyll vine forest on alluvia on major watercourses

3.3.10 Melaleuca argentea and/or M. fluviatilis +/- M. leucadendra open forest fringing streams and creeks

3.3.14 Melaleuca saligna +/- M. viridiflora, Lophostemon suaveolens woodland on drainage swamps

3.3.20 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Melaleuca viridiflora woodland on alluvial plains

3.3.22 Corymbia clarksoniana or C.novoguinensis woodland on alluvial plains

3.3.25 Eucalyptus leptophleba +/- Corymbia tessellaris +/- E.platyphylla woodland on riverine levees and floodplains

3.3.48 Melaleuca saligna +/- M.viridiflora low open woodland on drainage depressions and outwash plains

3.3.49 Melaleuca viridiflora low open woodland on low plains

3.3.60 Closed tussock grassland of Themeda arguens +/- Fimbristylis spp. and Panicum spp. A Vetiveria sp. dominated variant occurs on parts of the west coast. Occurs on alluvial plains.

3.3.64 Baloskion tetraphyllum subsp. meiostachyum open sedge land in drainage swamps in dune fields

3.3.66 Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands. Biodiversity status: **Of Concern**

3.5.2 Eucalyptus tetrodonta and Corymbia nesophila tall woodland on deeply weathered plateaus and remnants. Extent reserved in protected area estate: **Low**

3.5.4 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

3.5.7 Eucalyptus tetrodonta +/- Corymbia clarksoniana woodland on sand plains.

3.5.10 Eucalyptus tetrodonta and Corymbia nesophila woodland on sandy gently undulating rises and low hills.

3.5.11 Eucalyptus tetrodonta and Corymbia nesophila woodland on lower slopes of plains and rises Extent reserved in protected area estate: **Low**

3.5.14 Melaleuca viridiflora +/- Acacia spp. +/- Asteromyrtus symphyocarpa low woodland on scattered coastal sand plains

3.5.22 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Corymbia spp. woodland on plains.

3.7.3 Eucalyptus cullenii +/- E.tetrodonta woodland on erosional escarpments and plains. Extent reserved in protected area estate: **Low**

3.7.5 Corymbia stockeri, Eucalyptus cullenii woodland on ironstone knolls and erosional surfaces.

3.9.4 Eucalyptus leptophleba +/- Corymbia dallachiana or Eucalyptus platyphylla open woodland on rolling plains.

3.10.1 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

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References

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.'* Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Jardine and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Bertiehaugh Station.

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Bertiehaugh Station have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Bertiehaugh Station and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992*.
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*, and, the Lessee's successors in title.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth).*
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.

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"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant Geological Features and Landforms"	Typically rocky outcrops, boulders, cliff faces, gorges, caves, sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (e.g. unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge, pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

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(d) the Management Plan (if any).

3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

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

5.5 In containing the Emergency Event, the Lessee will only take action that has a minimal effect on the Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

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9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement, Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the Lessee, the successors in title to the Lessee that entered into this Agreement and on all persons who have an interest in the Land.

(a) The Lessee will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

(b) The Lessee will use their best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

9.3 The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

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13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or their servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

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14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

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Release

indulgence granted by any party to the others will not be construed as a waiver of rights under this Agreement.

19. Governing law

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

20. Costs

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

21. Execution

21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437
Item 2	Land:	The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 125904ha, shown on plan PA429.
Item 3	Lease:	The term lease for the Land.
Item 4	Date for satisfaction of condition in clause 2:	No later than 12 months after the Date of this Agreement.
Item 6	Place of mediation:	Brisbane
Item 7	Address for notices:	

Lessee

Address:	c/o Australia Zoo Steve Irwin Way Beerwah Qld 4519
Postal address:	As above
Attention:	Frank Muscillo, General Manager
Telephone:	(07) 5436 2000
Facsimile:	(07) 5494 8604
Email:	N/A

State

Address:	Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000
Postal address:	GPO Box 2454, Brisbane Qld 4001
Attention:	Nature Refuges Branch
Telephone:	(07) 3330 5502
Facsimile:	(07) 3330 5398

Item 8	Assistance:	Technical advice on the management of Natural Resources of the Land.

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk (*Erythrotriorchis radiatus)*.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species, any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

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Appendix A

Significant plants and animals:

- The vulnerable freshwater sawfish (*Pristis microdon)* is known to be present in this stretch of river.
- The rainforest emergent tree *Pterocarpous sp.* is found only along the freshwater sections of the Wenlock and Archer Rivers.
- The near threatened spotted cuscus (*Spilocuscus maculates)* and rufous owl (Cape York subspecies) (*Ninox rufa meesi)* are known to be present in the riparian rainforests.
- Known presence of a population of the endangered northern quoll (*Dasyurus hallucatus)*.

Regional Ecosystems:

3.3.5 Evergreen notophyll vine forest on alluvia on major watercourses

3.3.10 Melaleuca argentea and/or M. fluviatilis +/- M. leucadendra open forest fringing streams and creeks
3.3.14 Melaleuca saligna +/- M. viridiflora, Lophostemon suaveolens woodland on drainage swamps
3.3.20 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Melaleuca viridiflora woodland on alluvial plains
3.3.22 Corymbia clarksoniana or C.novoguinensis woodland on alluvial plains
3.3.25 Eucalyptus leptophleba +/- Corymbia tessellaris +/- E.platyphylla woodland on riverine levees and floodplains
3.3.48 Melaleuca saligna +/- M.viridiflora low open woodland on drainage depressions and outwash plains
3.3.49 Melaleuca viridiflora low open woodland on low plains
3.3.60 Closed tussock grassland of Themeda arguens +/- Fimbristylis spp. and Panicum spp. A Vetiveria sp. dominated variant occurs on parts of the west coast. Occurs on alluvial plains.
3.3.64 Baloskion tetraphyllum subsp. meiostachyum open sedge land in drainage swamps in dune fields
3.3.66 Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands.
Biodiversity status: **Of Concern**
3.5.2 Eucalyptus tetrodonta and Corymbia nesophila tall woodland on deeply weathered plateaus and remnants. Extent reserved in protected area estate: **Low**
3.5.4 Semi-deciduous notophyll vine forest in small patches on northern plateaus.
3.5.7 Eucalyptus tetrodonta +/- Corymbia clarksoniana woodland on sand plains.
3.5.10 Eucalyptus tetrodonta and Corymbia nesophila woodland on sandy gently undulating rises and low hills.
3.5.11 Eucalyptus tetrodonta and Corymbia nesophila woodland on lower slopes of plains and rises Extent reserved in protected area estate: **Low**
3.5.14 Melaleuca viridiflora +/- Acacia spp. +/- Asteromyrtus symphyocarpa low woodland on scattered coastal sand plains
3.5.22 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Corymbia spp. woodland on plains.
3.7.3 Eucalyptus cullenii +/- E.tetrodonta woodland on erosional escarpments and plains. Extent reserved in protected area estate: **Low**
3.7.5 Corymbia stockeri, Eucalyptus cullenii woodland on ironstone knolls and erosional surfaces.
3.9.4 Eucalyptus leptophleba +/- Corymbia dallachiana or Eucalyptus platyphylla open woodland on rolling plains.
3.10.1 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

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References

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.*' Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.

b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement, or in writing by the Minister.

d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.

e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.

g) Minimising Land Uses that produce Contaminant run-off.

h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.

i) Minimising disturbance to natural water flows and processes, unless otherwise approved.

j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.

l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

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Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

   i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

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Release

SCHEDULE 4

Protected Area Plan

PA429

(attached)

agreement on the dates appearing below

(PROPERTIES PTY LTD
)0 088 TRUSTEE UNDER
UMENT 710960437

th section 127(1) of the

2001 (Cth)

day of 20132011

..... (full name)
)irector

..... (signature)

..... (full name)
tary

..... (signature)

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SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

VICKY DARLING

the Minister administering the *Nature Conservation Act 1992*

this day of 20132011

in the presence of:

.....

(print name of witness)

.....

(signature)

.....

(signature of witness)

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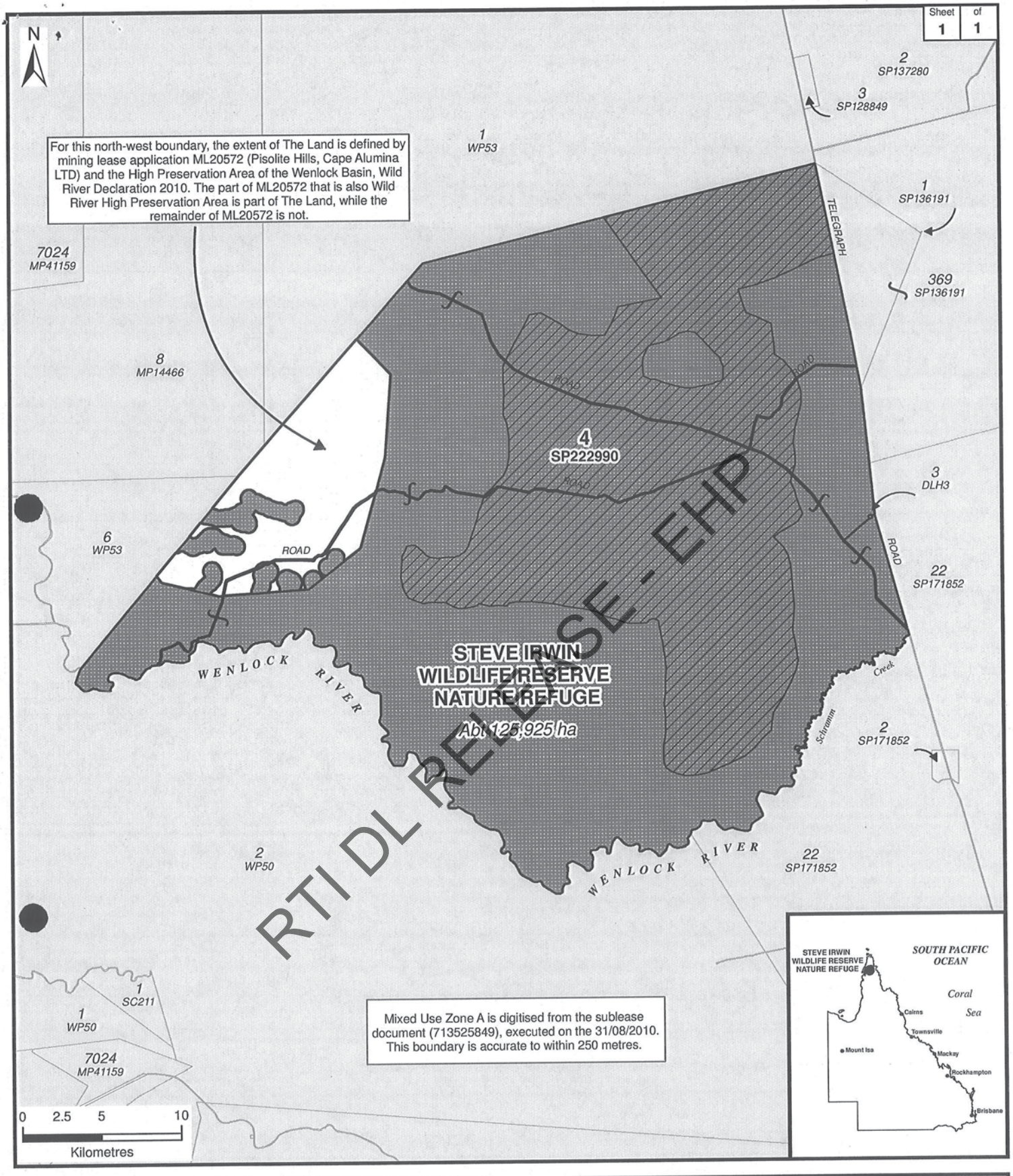

PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Queensland Government

GDA DATUM: GDA94 ZONE: MGA 54

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

Draft v1.4

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Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.
Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Resource Management makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Resource Management disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might incurred as a result of the product being inaccurate or incomplete in any way and for any reason.
The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.
Based upon an extraction from the Digital Cadastral Data Base on: 06/04/2011

PARISH: BEEVOR
LOCAL AUTH: COOK SHIRE
COUNTY: DULHUNTY
REGION: CAPE YORK / SAVANNA
LOCALITY: WENLOCK
ELECTORATE: COOK

Scale: 1:220000
Note A4 copy is reduced.

SYSINT Code: 8329SIW001
PA Number: PA429
Drawn By: CH
File Ref: BNE33142 Vol.1
Map Ref: 7373-24122
Date: 08/04/2011

Schedule 4 F:\Nature Refuges\Gazettals\Nature Refuges\Steve Irwin Wildlife Reserve \PA\GIS data\Workspaces\Steve_Irwin_WR_NR_working.mxd

AP18994

Release

V4

Williams Morgen

From: Prior Katrina
Sent: Friday, 5 August 2011 2:35 PM
To: gsherlock@capealumina.com.au
Cc: Williams Allan; Bennett David
Subject: Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge
Attachments: 110805_SIWRNR_CapeAlumina_Sherlock.PDF; 1-KEEPER-1156867-Proposed_SIWR_Conservation_Agreement_3_August_2011.doc; Steve_Irwin_WR_110620.pdf

Dear Mr Sherlock

Please find attached correspondence from Mr Allan Williams, Director Nature Refuges Branch, regarding the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Kind regards

Katrina

Katrina Prior
A/Principal Project Officer
Nature Refuges Branch
Queensland Parks and Wildlife Service
Department of Environment and Resource Management
☎| 07 3330 5373 🖷| 07 3330 5398 | katrina.prior@derm.qld.gov.au
http://www.derm.qld.gov.au
Floor 5, 400 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

Nature refuges help landholders protect Queensland's significant natural and cultural landscapes, wildlife values and biodiversity while allowing sustainable production to continue.
To find out more call 1300 130 372 or visit http://www.derm.qld.gov.au/naturerefuges
Please consider the environment before printing this email.

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Queensland Government

Enquiries David Bennett
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

5 August 2011

gsherlock@capealumina.com.au
Cape Alumina

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML20572
LANDHOLDERS: SILVERBACK PROPERTIES
LAND: LOT 4 on SP222990

Dear Mr Sherlock

Thank you for your letter dated 19 July 2011. Please note that the interests of traditional owners and the lessee of the land have been considered for this proposal.

The relevant clause for inclusion in the conservation agreement has been further refined to better address your concerns regarding mining lease application ML20572, as follows:

> "The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement."

After careful consideration of your submission and the proposed conservation agreement, the Department has assessed that your interests are not materially affected by the proposal. Please note that a nature refuge declaration provides no legislative impediment to mining. Thank you for your time and input. The draft conservation agreement is attached for your records.

Should you have any further enquiries, please do not hesitate to contact Mr David Bennett, Manager, Nature Refuges Branch on (07) 3330 5376 or respectively on [redacted]

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s.44(3)(b) Prejudice the protection of an individuals right to privacy

Yours sincerely

[redacted]
Allan Williams
Director
Nature Refuges Branch

Enc. Conservation Agreement (including protected area plan)

Level 6
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5373
Facsimile + 61 7 3330 6306
Website www.derm.qld.gov.au
ABN 46 640 294 485

CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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Release

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7. Indemnity 8
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Release

BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Jardine and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Bertiehaugh Station.

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Bertiehaugh Station have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Bertiehaugh Station and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992*.
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*, and, the Lessee's successors in title.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth).*
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.

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"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant Geological Features and Landforms"	Typically rocky outcrops, boulders, cliff faces, gorges, caves, sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (e.g. unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge, pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

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(d) the Management Plan (if any).

3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

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Release

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

5.5 In containing the Emergency Event, the Lessee will only take action that has a minimal effect on the Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

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8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement, Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the Lessee, the successors in title to the Lessee that entered into this Agreement and on all persons who have an interest in the Land.

(a) The Lessee will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

(b) The Lessee will use their best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

9.3 The parties agree that, despite any terms of this Agreement, this Agreement shall not affect rights pertaining to mining lease application ML20572 and the holder of these rights shall not be bound by this Agreement.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

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13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or their servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

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14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

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indulgence granted by any party to the others will not be construed as a waiver of rights under this Agreement.

19. Governing law

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

20. Costs

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

21. Execution

21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437
Item 2	Land:	The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 125904ha, shown on plan PA429.
Item 3	Lease:	The term lease for the Land.
Item 4	Date for satisfaction of condition in clause 2:	No later than 12 months after the Date of this Agreement.
Item 6	Place of mediation:	Brisbane
Item 7	Address for notices:	

Lessee

Address:	c/o Australia Zoo Steve Irwin Way Beerwah Qld 4519
Postal address:	As above
Attention:	Frank Muscillo, General Manager
Telephone:	(07) 5436 2000
Facsimile:	(07) 5494 8604
Email:	N/A

State

Address:	Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000
Postal address:	GPO Box 2454, Brisbane Qld 4001
Attention:	Nature Refuges Branch
Telephone:	(07) 3330 5502
Facsimile:	(07) 3330 5398

Item 8	Assistance:	Technical advice on the management of Natural Resources of the Land.

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk (*Erythrotriorchis radiatus)*.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species, any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Release

Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

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Appendix A

Significant plants and animals:

- The vulnerable freshwater sawfish (*Pristis microdon)* is known to be present in this stretch of river.
- The rainforest emergent tree *Pterocarpous sp.* is found only along the freshwater sections of the Wenlock and Archer Rivers.
- The near threatened spotted cuscus (*Spilocuscus maculates)* and rufous owl (Cape York subspecies) (*Ninox rufa meesi)* are known to be present in the riparian rainforests.
- Known presence of a population of the endangered northern quoll (*Dasyurus hallucatus)*.

Regional Ecosystems:

3.3.5 Evergreen notophyll vine forest on alluvia on major watercourses

Release

3.3.10 Melaleuca argentea and/or M. fluviatilis +/- M. leucadendra open forest fringing streams and creeks
3.3.14 Melaleuca saligna +/- M. viridiflora, Lophostemon suaveolens woodland on drainage swamps
3.3.20 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Melaleuca viridiflora woodland on alluvial plains
3.3.22 Corymbia clarksoniana or C.novoguinensis woodland on alluvial plains
3.3.25 Eucalyptus leptophleba +/- Corymbia tessellaris +/- E.platyphylla woodland on riverine levees and floodplains
3.3.48 Melaleuca saligna +/- M.viridiflora low open woodland on drainage depressions and outwash plains
3.3.49 Melaleuca viridiflora low open woodland on low plains
3.3.60 Closed tussock grassland of Themeda arguens +/- Fimbristylis spp. and Panicum spp. A Vetiveria sp. dominated variant occurs on parts of the west coast. Occurs on alluvial plains.
3.3.64 Baloskion tetraphyllum subsp. meiostachyum open sedge land in drainage swamps in dune fields
3.3.66 Permanent lakes and lagoons, frequently with fringing woodlands or sedgelands.
Biodiversity status: **Of Concern**
3.5.2 Eucalyptus tetrodonta and Corymbia nesophila tall woodland on deeply weathered plateaus and remnants. Extent reserved in protected area estate: **Low**
3.5.4 Semi-deciduous notophyll vine forest in small patches on northern plateaus.
3.5.7 Eucalyptus tetrodonta +/- Corymbia clarksoniana woodland on sand plains.
3.5.10 Eucalyptus tetrodonta and Corymbia nesophila woodland on sandy gently undulating rises and low hills.
3.5.11 Eucalyptus tetrodonta and Corymbia nesophila woodland on lower slopes of plains and rises Extent reserved in protected area estate: **Low**
3.5.14 Melaleuca viridiflora +/- Acacia spp. +/- Asteromyrtus symphyocarpa low woodland on scattered coastal sand plains
3.5.22 Corymbia clarksoniana +/- Erythrophleum chlorostachys +/- Corymbia spp. woodland on plains.
3.7.3 Eucalyptus cullenii +/- E.tetrodonta woodland on erosional escarpments and plains. Extent reserved in protected area estate: **Low**
3.7.5 Corymbia stockeri, Eucalyptus cullenii woodland on ironstone knolls and erosional surfaces.
3.9.4 Eucalyptus leptophleba +/- Corymbia dallachiana or Eucalyptus platyphylla open woodland on rolling plains.
3.10.1 Semi-deciduous notophyll vine forest in small patches on northern plateaus.

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References

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.*' Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.
b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement, or in writing by the Minister.
d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.
e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.
g) Minimising Land Uses that produce Contaminant run-off.
h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.
i) Minimising disturbance to natural water flows and processes, unless otherwise approved.
j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.
l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

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Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

   i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

RTI DL RELEASE EHP

SCHEDULE 4

Protected Area Plan

PA429

(attached)

RTI DL RELEASE - EHP

SCHEDULE 5

Financial Assistance

Nil

RTI DL RELEASE - EHP

Executed as an agreement on the dates appearing below

SIGNED by

SILVERBACK PROPERTIES PTY LTD A.C.N. 067 400 088 TRUSTEE UNDER INSTRUMENT 710960437

in accordance with section 127(1) of the

Corporations Act 2001 (Cth)

this day of 2013~~2011~~

by .....
(full name)
a Director/Sole Director

..... (signature)

and by.....
(full name)
a Director/Secretary

..... (signature)

RTI DL RELEASE - EHP

SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

VICKY DARLING

.....

(signature)

the Minister administering the *Nature Conservation Act 1992*

this day of 20132~~2011~~

in the presence of:

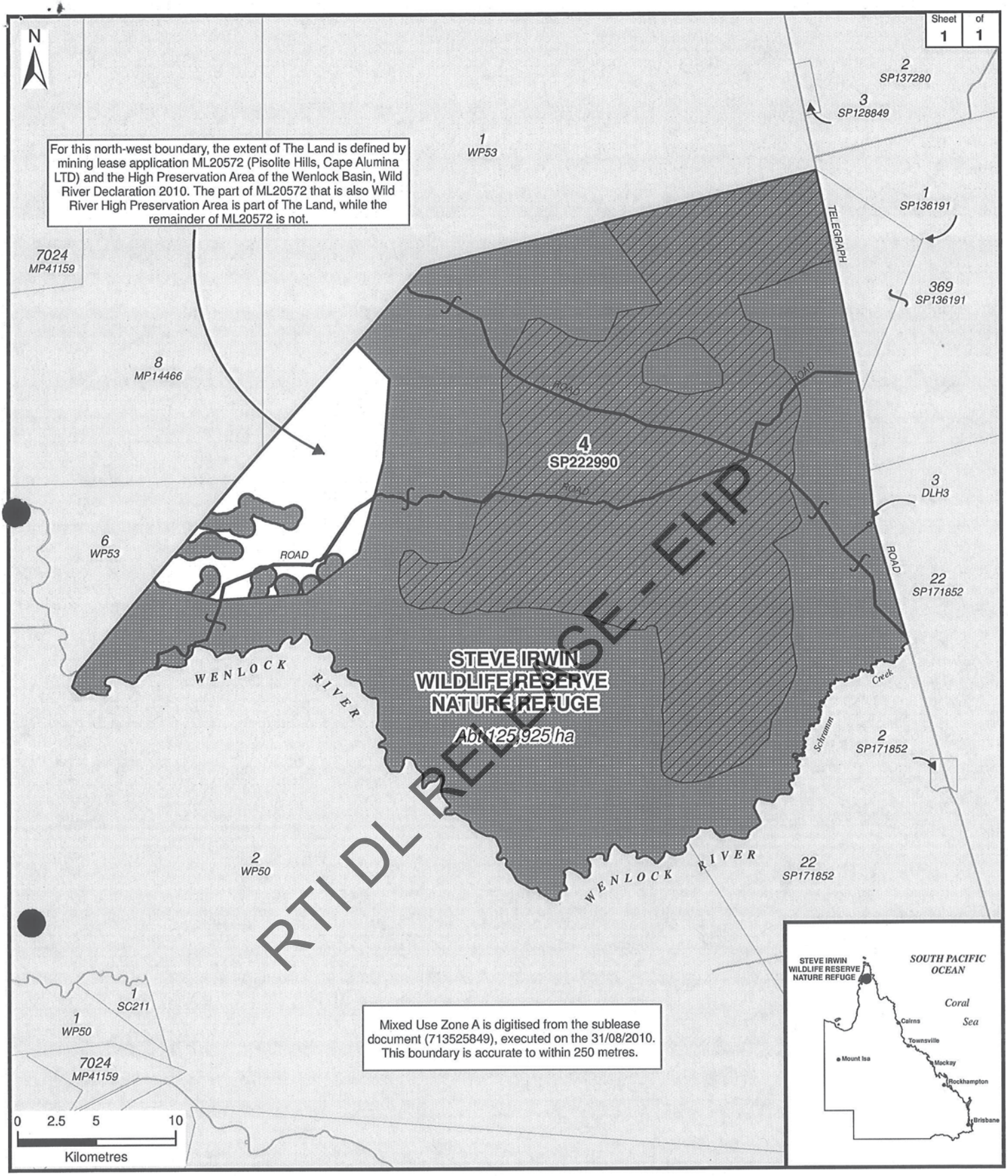
.....

(print name of witness)

.....

(signature of witness)

RTI DL RELEASE - EHP



RTI DL RELEASE - EHP

PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Queensland Government

GDA

DATUM: GDA94

ZONE: MGA 54

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

Draft v1.4

© The State of Queensland (Department of Environment and Resource Management) 2011.

Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.

Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Resource Management makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Resource Management disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might incurred as a result of the product being inaccurate or incomplete in any way and for any reason.

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Based upon an extraction from the Digital Cadastral Data Base on: 06/04/2011

PARISH: BEEVOR	**LOCAL AUTH:** COOK SHIRE	Scale: 1:220000	
COUNTY: DULHUNTY	**REGION:** CAPE YORK / SAVANNA	Note A4 copy is reduced.	
LOCALITY: WENLOCK	**ELECTORATE:** COOK	AP18994	
SYSINT Code: 8329SIW001	PA Number: PA429	Drawn By: CH	
File Ref: BNE33142 Vol.1	Map Ref: 7373-24122	Date: 08/04/2011	

Schedule 4 F:\Nature Refuges\Steve Irwin Wildlife Reserve\PA\GIS data\Workspaces\Steve_Irwin_WR_NR_working.mxd

Release

Cape Alumina

Office Suite 6/56 Peel Street, South Brisbane, Qld 4101
Postal PO Box 3732, South Brisbane, Qld 4101, Australia
Phone + 61 7 3844 9911 Facsimile + 61 7 3844 9919
Email info@capealumina.com.au Web www.capealumina.com.au

v4

Tuesday, 19 July 2011

Mr Allan Williams
Director
Nature Refuges Branch
Department of Environment and Resource Management
GPO Box 2454
BRISBANE QLD 4001

Dear Mr Williams

We refer to your letter dated 1 July 2011, enclosing a revised copy of the proposed Steve Irwin Wildlife Reserve Nature Refuge Conservation Agreement (Conservation Agreement).

Cape Alumina Limited (CBX) has existing exploration permits for minerals (EPM14547 and EPM15278) pertaining to the area proposed to be included within the proposed nature refuge and has made application for a mining lease (MLA20572) over the relevant land.

Although CBX is supportive of the proposed Steve Irwin Wildlife Reserve Nature Refuge and wishes to work cooperatively with its proponents, CBX is unable to provide its consent to the currently proposed Conservation Agreement.

CBX is concerned that the establishment of the proposed nature refuge and the operation of the associated Conservation Agreement will be inconsistent with all intended uses for the land, including those held by CBX and the traditional indigenous owners.

CBX acknowledges the proposed amendment to clause 9.1(d) as per your letter dated 1 July 2011. CBX agrees that a clause to this effect should be included in the Conservation Agreement, however is concerned that the proposed clause as currently drafted does not acknowledge CBX's exploration permits. Further, by including the Wild River high preservation areas, the proposed Conservation Agreement does not recognise CBX's existing rights in relation to its exploration permits and in respect of the mining lease application, given that these pre-date the Wenlock River being declared a "wild river".

CBX has undertaken numerous detailed environmental studies for the Pisolite Hills area and is focused on protecting biodiversity, preserving Indigenous heritage, and improving community knowledge of the environment. The extensive environmental studies undertaken by CBX in relation the Pisolite Hills area may be of benefit to DERM and the Lessee, and should be a guide to any decision to propose the nature refuge and the operation of the associated Conservation Agreement.

Given the extensive and detailed environmental studies that have been undertaken by CBX in this area, CBX would welcome the opportunity to discuss the proposed Conservation Agreement and nature refuge with DERM, in cooperation with the traditional owners and the lessee of Bertiehaugh prior to its completion.

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Release

ABN 88 107 817 694

In conclusion, CBX is fully supportive of the proposed Steve Irwin Wildlife Reserve Nature Refuge provided it does not affect CBX's rights under its mining lease application ML20572 and its exploration permits for minerals EPM14547 and EPM15278. CBX believes that the agreement needs to be amended to ensure our existing and future rights are fully recognised.

I look forward to receiving your response. Should you have any further queries or want to discuss these matters in greater detail please do not hesitate to contact me on telephone 07 3844 9911.

Yours sincerely

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Mr Graeme Sherlock
Managing Director
Cape Alumina Limited

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Williams Morgen

From: Bennett David
Sent: Friday, 1 July 2011 2:59 PM
To: Williams Allan; Prior Katrina
Subject: FW: proposed Steve Irwin Wildlife Reserve Nature Refuge
Attachments: letter_Cape Alumina_1July2011.doc; Proposed_SIWR_Conservation_Agreement_01_July_2011.doc; Steve_Irwin_WR_110620.pdf

In case you field a call etc...

David Bennett I Nature Refuges I Department of Environment and Resource Management
ph: (07) 3330 5376 I email: david.bennett@derm.qld.gov.au or visit us at www.derm.qld.gov.au
Please consider the environment before printing.

From: Bennett David
Sent: Friday, 1 July 2011 2:37 PM
To: nconway@capealumina.com.au
Subject: proposed Steve Irwin Wildlife Reserve Nature Refuge

Hi Nev, please see attached correspondence and proposed conservation agreement.
Regards,
David

David Bennett I Nature Refuges I Department of Environment and Resource Management
ph: (07) 3330 5376 I email: david.bennett@derm.qld.gov.au or visit us at www.derm.qld.gov.au
Please consider the environment before printing.

RTI DL RELEASE - EHP

Queensland Government

Enquiries David Bennett
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

1 July 2011

nconway@capealumina.com.au
Cape Alumina

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML20572
LANDHOLDERS: SILVERBACK PROPERTIES
LAND: LOT 4 on SP222990

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Dear Mr Conway,

I refer to recent discussions between you and Mr David Bennett of this office, and advise that the proposed conservation agreement for the proposed Steve Irwin Wildlife Reserve Nature Refuge is intended to be amended at Clause 9.2 and at Lessee definition. As such, I am willing to extend the period provided for your consideration of the conservation agreement to 19th July.

The conservation agreement to be signed by the Minister and the Landholder is attached for your perusal.

For clarity, the proposed change has the effect that the conservation agreement would be registerable, and would therefore bind, so far as its provisions are relevant, all interests in the land other than those specifically exempted in the conservation agreement, or exempted by legislation.

My understanding of your primary options are, that you may choose to:
a) provide your consent to the agreement, noting that the current proposal does not include the proposed Mining Lease Area other than those parts where the Wild Rivers Act separately affects your interests; or
b) withhold your consent to the agreement, and if so, I am prepared to propose an additional condition be added to clause 9.1(d) to acknowledge that you are not bound by the agreement, as follows:

> "9.1(d) this Agreement is not intended to affect, and is not binding on the holder of, mining lease application ML20572"

Should you wish to consent to the agreement, or provide any comments, please do so by 19th July.

I would welcome the opportunity to meet with Cape Alumina prior to this date as it may assist in clarifying the issues.

Level 6
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5373
Facsimile + 61 7 3330 6306
Website www.derm.qld.gov.au
ABN 46 640 294 485

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Should you have any further enquiries, please do not hesitate to contact Mr David Bennett, Manager, Nature Refuges Branch on (07) 3330 5376 or me directly on [redacted]

sch4p3(3)-Prejudice the protection of an individuals right to privacy

Yours sincerely

Allan Williams
Director
Nature Refuges Branch

Enc. Conservation Agreement (including protected area plan)

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CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Jardine and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment and Resource Management, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Bertiehaugh Station.

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Bertiehaugh Station have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Bertiehaugh Station and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003.*
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992*.
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*, and, the Lessee's successors in title.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth).*
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.

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"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant Geological Features and Landforms"	Typically rocky outcrops, boulders, cliff faces, gorges, caves, sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (eg unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

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(d) the Management Plan (if any).

3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

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

5.5 In containing the Emergency Event, the Lessee will only take action that has a minimal effect on the Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

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9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the Lessee, the successors in title to the Lessee that entered into this Agreement and on all persons who have an interest in the Land.

(a) The Lessee will notify all persons who obtain an interest in the Land after the Date of this Agreement, of the terms of this Agreement.

(b) The Lessee will use their best endeavours to ensure those persons with an interest in the Land comply with the terms of this Agreement.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

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13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or its servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

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15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

19. Governing law

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

20. Costs

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

21. Execution

21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	**The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437**
Item 2	Land:	**The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 111406ha, shown on plan PA429.**
Item 3	Lease:	**The term lease for the Land.**
Item 4	Date for satisfaction of condition in clause 2:	**No later than 12 months after the Date of this Agreement.**
Item 6	Place of mediation:	**Brisbane**
Item 7	Address for notices:	

Lessee

Address:	**C/o Australia Zoo Steve Irwin Way Beerwah Qld 4519**
Postal address:	**As above**
Attention:	**Frank Muscillo, General Manager**
Telephone:	**(07) 5436 2000**
Facsimile:	**(07) 5494 8604**
Email:	**N/A**

State

Address:	**Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000**
Postal address:	**GPO Box 2454, Brisbane Qld 4001**
Attention:	**Nature Refuges Branch**
Telephone:	**(07) 3330 5502**
Facsimile:	**(07) 3330 5398**

Item 8	Assistance:	**Technical advice on the management of Natural Resources of the Land.**

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

References:

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.*' Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

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SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.

b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement, or in writing by the Minister.

d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.

e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.

g) Minimising Land Uses that produce Contaminant run-off.

h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.

i) Minimising disturbance to natural water flows and processes, unless otherwise approved.

j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.

l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

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Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

   i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

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SCHEDULE 4

Protected Area Plan

PA429

(attached)

RTI DL RELEASE - EHP

SCHEDULE 5

Financial Assistance

Nil

RTI DL RELEASE - EHP

Executed as an agreement on the dates appearing below

SIGNED by

SILVERBACK PROPERTIES PTY LTD A.C.N. 067 400 088 TRUSTEE UNDER INSTRUMENT 710960437

in accordance with section 127(1) of the

Corporations Act 2001 (Cth)

this day of 20132011

by .....
(full name)
a Director

.....
(signature)

and by.....
(full name)
a Director/Secretary

.....
(signature)

RTI DL RELEASE - EHP

SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

KATE JONES

.....

(signature)

the Minister administering the *Nature Conservation Act 1992*

this day of 20132~~2011~~

in the presence of:

.....

(print name of witness)

.....

(signature of witness)

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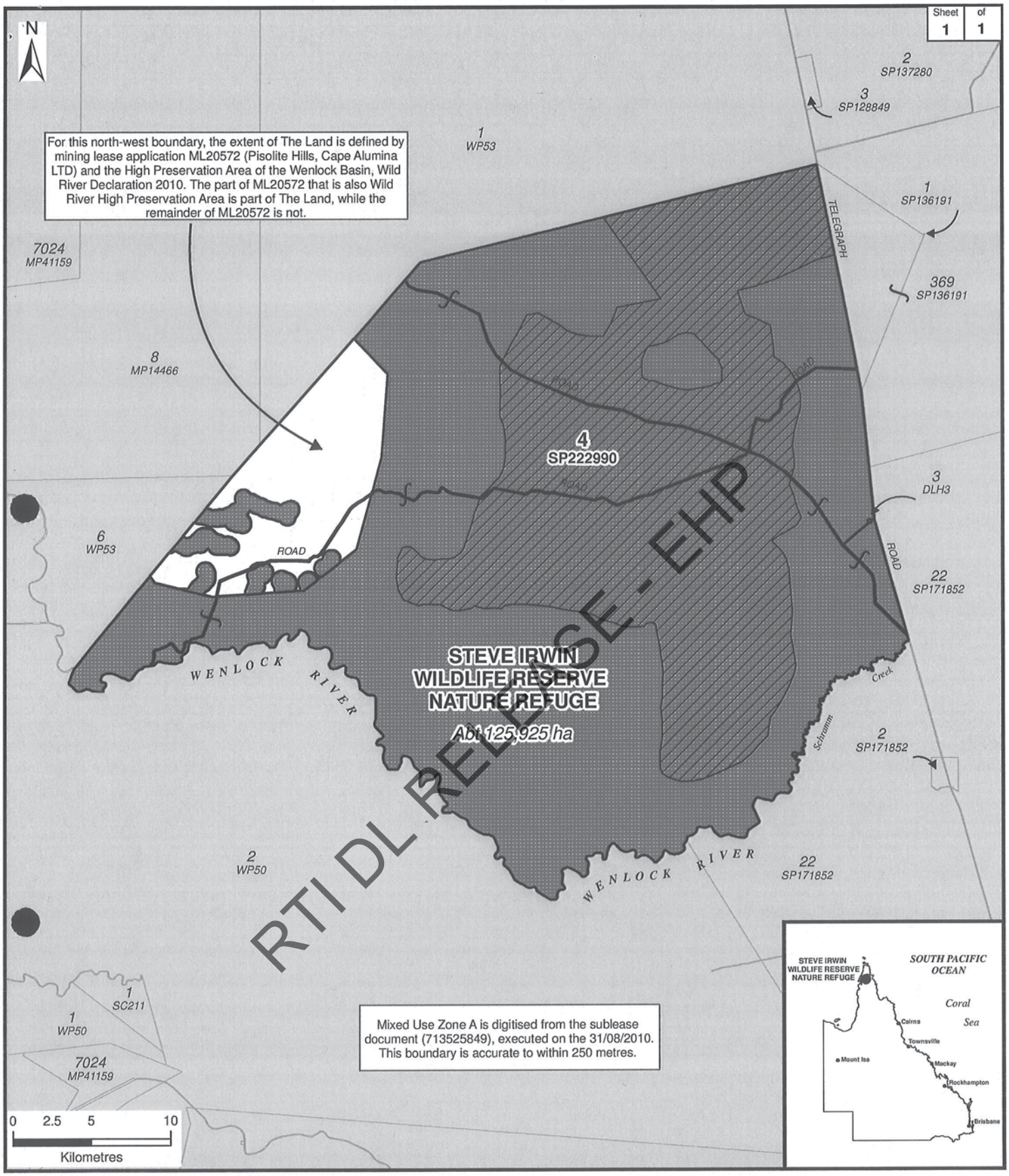

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PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

Draft v1.4

Queensland Government

GDA

DATUM: GDA94

ZONE: MGA 54

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Produced to delineate the boundaries of the Nature Refuge under the provisions of the Nature Conservation Act 1992 and the Survey and Mapping Infrastructure Act 2003.

Whilst every care is taken to ensure the accuracy of this product the Department of Environment and Resource Management makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose. Additionally, the Department of Environment and Resource Management disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might incurred as a result of the product being inaccurate or incomplete in any way and for any reason.

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Based upon an extraction from the Digital Cadastral Data Base on: 08/04/2011

PARISH: BEEVOR	**LOCAL AUTH:** COOK SHIRE	Scale: 1:220000	
COUNTY: DULHUNTY	**REGION:** CAPE YORK / SAVANNA	Note A4 copy is reduced.	
LOCALITY: WENLOCK	**ELECTORATE:** COOK	AP18994	
SYSINT Code: 8329SIW001	PA Number: PA429	Drawn By: CH	
File Ref: BNE33142 Vol.1	Plan Ref: 7373-24122	Date: 08/04/2011	

Schedule 4 F:\Nature Refuges\Nature Refuges\Steve Irwin Wildlife Reserve\PA\GIS data\Work\Declared\SIW_Irwin_WR_NR_working.mxd

Release

V4

Williams Morgen

From: Bennett Effie
Sent: Monday, 20 June 2011 11:29 AM
To: jcameron@capealumina.com.au
Subject: PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
Attachments: letter_Cape Alumina_20June2011.doc; 1-KEEPER-1068138-Proposed_SIWR_Conservation_Agreement_20_June_2011.doc; Steve_Irwin_WR_110620.pdf

Importance: High

Dear Mr Cameron

Attached please find the following documentation with regards to the proposed declaration of Steve Irwin Wildlife Nature Refuge.

- Correspondence
- Copy of Conservation Agreement
- Copy of Protected Area Plan

Thank you

Effie Bennett
A/Project Support Officer
Nature Refuges Branch
Queensland Parks and Wildlife Service
Department of Environment and Resource Management
Telephone: 07 3330 5315 Fax: 07 3330 5398
Email: naturerefuges.gazettals@derm.qld.gov.au
http://www.derm.qld.gov.au
Floor 5, 400 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001
Nature refuges help landholders protect Queensland's significant natural and cultural landscapes,
wildlife values and biodiversity while allowing sustainable production to continue.
To find out more call 1300 130 372 or visit
http://www.epa.qld.gov.au/naturerefugeshttp://www.derm.qld.gov.au/naturerefugeshttp://www.epa.qld.gov.au/naturerefuges
Please consider the environment before printing this email.

RTI DE-RELEASE - EHP

Queensland Government

Enquiries David Bennett
Telephone 07 3330 5376
Your reference
Our reference BNE33142

Department of
Environment and Resource Management

20 June 2011

jcameron@capealumina.com.au
Cape Alumina

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML20572
LANDHOLDERS: SILVERBACK PROPERTIES
LAND: LOT 4 on SP222990

Dear Mr Cameron

I advise of the intention to include part of the area covered by mining lease application ML20572 in the conservation agreement for the proposed Steve Irwin Wildlife Reserve Nature Refuge. The area included is that which is covered by the High Preservation Area of the Wenlock Basin, Wild River Declaration 2010. The remainder of ML20572 is not included in the conservation agreement.

The conservation agreement to be signed by the Minister and the Landholder is attached for your perusal. Should you wish to provide any comments, please outline any right of yours that you believe will be materially affected by this conservation agreement, and how this right might be affected. Should you wish to provide any comments, please do so within 14 days from the date of this letter.

Should you have any further enquiries, please do not hesitate to contact Mr David Bennett, Manager, Nature Refuges Branch on (07) 3330 5376.

Yours sincerely

[redacted]
sch4p3(3) Prejudice the protection of an individuals right to privacy

Effie Bennett
Project Support Officer
Nature Refuges Branch

Enc. Conservation Agreement (including protected area plan)

RTI DL RELEASE - EHP

Level 6
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 5373
Facsimile + 61 7 3330 6306
Website www.derm.qld.gov.au
ABN 46 640 294 485

CONSERVATION AGREEMENT

TO ESTABLISH

STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

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Release

BETWEEN: **State of Queensland** represented by the Minister administering the *Nature Conservation Act 1992.*

("State")

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

("Lessee")

BACKGROUND

The Steve Irwin Wildlife Reserve Nature Refuge is in the Cape York Peninsula bioregion, being located to the north-east of the town of Weipa. A small area in the north-east of the property features low hills and eroding plains supporting woodlands. It is bounded by the perennial Jardine and Ducie Rivers and features a variety of seasonal wetlands, woodlands and open forests on alluvium and elevated plateau surfaces characterised by red, gravelly soils.

RECITALS

A. The Minister for Environment and Resource Management, being the Minister responsible for administering the *Nature Conservation Act 1992* (the Act) has prepared, under section 44 of the Act, a proposal for the declaration of a nature refuge at Bertiehaugh Station.

B. Written notice of the proposal for declaration for the Steve Irwin Wildlife Reserve Nature Refuge has been given to all landholders (as that term is defined in the Act).

C. The Minister and the Lessee of Bertiehaugh Station have agreed to enter into a conservation agreement in accordance with section 45 of the Act to facilitate the declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

D. The Lessee has a management plan (non-statutory) for Bertiehaugh Station and the State agrees that the management plan aligns with the intent of this Agreement.

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NOW THE PARTIES AGREE AS FOLLOWS –

1. Interpretation

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

"Act"	The *Nature Conservation Act 1992*.
"Agreement"	This document and all schedules and appendices to this document.
"Business Day"	A day (other than a Saturday, Sunday or a public holiday) on which banks are open for business in Queensland.
"Contaminant"	Includes sediment, nutrients, pesticides, fungicides, fuel etc from Land Uses.
"Control Program"	Typically baiting, shooting, trapping, poisoning, mechanical and biocontrol.
"Date of this Agreement"	The date referred to in clause 21.
"Declared Management Intent"	The management intent specified at the time of declaration of the Land as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*.
"Declared Pest Animals"	An animal declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003*.
"Declared Pest Plants"	A plant declared as a pest under the *Land Protection (Pest and Stock Route Management) Regulation 2003*.
"Decommissioning"	The permanent closure and removal (where appropriate) of unwanted Infrastructure, and the stabilisation and rehabilitation of the site.
"DERM"	Means the Department of Environment and Resource Management, or another Department of the State of Queensland that is administering the *Nature Conservation Act 1992*.
"Disease"	Disease impacting on native wildlife and/or soil, such as phytophthora, citrus canker, eucalyptus rust, chlamydia, and chytrid frog fungus.
"Emergency Event"	Any event or circumstance that is not within the control of a party and which could not have been overcome, prevented or remedied by the exercise of reasonable care on its part and includes – (a) Act of God; (b) fire, flood, storm, landslide, wash away; (c) cyclone;

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(d) outbreak of disease;

(e) pest plagues; and

(f) riot or civil commotion.

"Hazardous Substances"	Substances or materials that pose a pollution and/or health risk to natural resources, animals, plants or people, typically chemicals and fuel or substances containing heavy metals.
"Infrastructure"	Buildings, roads, formed tracks, airstrips and dams that require a foundation and/or permanent clearing of remnant vegetation.
"Instability"	Evidence of Instability may be present in the form of exposed slip or slump faces, erosion gullies, exposed sub-soil, acid sulphate soil, ground cracks and hummocky geology.
"Land"	The Land described in Item 2 in Schedule 1.
"Land Uses"	Land uses and land management activities which may be undertaken on the Land include those specified in the Lease.
"Landholder"	Means a person having an interest in the Land.
"Lease"	The Lease described in Item 3 in Schedule 1.
"Lessee"	The Lessee under the *Land Act 1994*.
"Management Plan"	A Management Plan that may be prepared by the Minister for the nature refuge over the Land, in accordance with the Act and approved by the Governor in Council.
"Management Principles"	Those principles specified in section 22 of the Act.
"Minister"	The Minister administering the Act.
"Mixed Use Zone A"	The area/s mapped as Mixed Use Zone A on the Protected Area Plan in Schedule 4.
"Native Title Rights and Interests"	Has the same meaning as in the *Native Title Act 1993 (Cth).*
"Natural Resources"	Has the same meaning as in the Act.
"Pest Animals"	Typically an animal that is a Declared Pest Animal, declared under a local law, an invasive species, or a non-endemic species. For example: pigs, goats, camels, rabbits, horses, foxes, cats.
"Pest Plants"	Typically a plant that is a Declared Pest Plant, declared under a local law, an invasive species, or a non-endemic species. For example: lantana, groundsel, buffel grass.
"Protected Area Plan"	The plan in Schedule 4.
"Reconfiguring a Lot"	Has the same meaning as in the *Sustainable Planning Act 2009.*
"Significant	Typically rocky outcrops, boulders, cliff faces, gorges, caves,

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Geological Features and Landforms"	sand dunes, volcanic plugs, crevices and fossils.
"Significant Natural Resources"	Those resources specified in Schedule 2.
"State"	The State of Queensland acting through the Minister administering the Act.
"Threatening Process"	Any process that is capable of – (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; and (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.
"Unnatural Encouragement"	Direct or indirect (eg unsecured Waste containers) feeding of native animals.
"Waste"	Anything that is left over, an unwanted by-product or surplus to the activity generating the Waste. Waste can be gas, liquid, solid, or energy, or a combination of any of these.
"Water Values"	Typically water quality, water availability, aquatic habitat values, riparian environments and ground water.
"Watercourse"	Typically streams, rivers, creeks, gullies, waterways and drainage lines.
"Wetland"	Wetlands are areas of permanent or periodic/intermittent inundation with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres. To be classified as a wetland, the area must have one or more of the following attributes: i. at least periodically, the land supports plants or animals that are adapted to and dependent on living in wet conditions for at least part of their life cycle; or ii. the substratum is predominantly undrained soils that are saturated, flooded or ponded long enough to develop anaerobic conditions in the upper layers; or iii. the substratum is not soil and is saturated with water, or covered by water at some time.

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

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

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

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

1.6 The singular includes the plural and vice versa.

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

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

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

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

1.11 Terms used in the Agreement and which are defined in the Act, have the same meaning as those terms in the Act.

1.12 Any reference to a dollar amount is inclusive of GST.

2. Commencement

2.1 This Agreement is made pursuant to section 45 of the Act as a precondition to declaring the Land, as a nature refuge pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*.

2.2 If the declaration in clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1, then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.

3. Management of the Land

3.1 Subject to clause 2.2, the Lessee will conduct its operations in a manner which is consistent with–

(a) the Management Principles for nature refuges as set out in section 22 of the Act;

(b) the Declared Management Intent as set out in section 8 of the *Nature Conservation (Protected Areas) Regulation 1994;*

(c) this Agreement; and

(d) the Management Plan (if any).

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3.2 It is not intended that this Agreement or the subsequent declaration of the Steve Irwin Wildlife Reserve Nature Refuge will be binding on, or affect, the interests of native title holders.

3.3 The parties hereto acknowledge that nothing in this Agreement can authorise or require the Lessee to do anything which is beyond the scope of its rights and powers under the terms and condition of the Lease.

3.4 The parties agree that if there is any inconsistency between a statutory Management Plan (if any) and the terms of this Agreement, then the Management Plan will prevail to the extent of any inconsistency.

3.5 The DERM will use its best endeavours to notify the Lessee that the Land has been declared a nature refuge as soon as practicable after the regulation is made under section 46 of the Act.

3.6 If a Management Plan is prepared by the Minister, the DERM will provide the Lessee with a copy of that Management Plan as soon as practicable after it is approved by the Governor in Council.

3.7 The Lessee will manage the Land in accordance with Schedule 3 to protect and enhance the Significant Natural Resources specified in Schedule 2.

4. Threatening Process

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

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

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

5. Emergency Event

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

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

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

5.4 Non-performance by any party of any obligation or condition of this Agreement, resulting from an Emergency Event, will not give rise to any liability to the other

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parties for any direct, indirect, consequential or special losses or damages of any kind arising out of, or in any way connected with, that non-performance.

5.5 In containing the Emergency Event, the Lessee will only take action that has a minimal effect on the Significant Natural Resources.

6. Entry by the DERM

6.1 The Lessee will permit the DERM and its employees, servants, agents and contractors to enter the Land, at all reasonable times, after the DERM gives the Lessee at least 5 Business Days' notice, for the following purposes –

(a) to determine if the Land is being managed in accordance with the terms of this Agreement; and

(b) to carry out the DERM's rights and obligations under this Agreement and the Act.

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

7. Indemnity

7.1 The State –

(a) indemnifies; and

(b) releases and discharges,

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

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8. Assistance to the Lessee

8.1 From time to time, the State may provide financial, technical and/or other assistance to the Lessee as specified in Item 8 in Schedule 1, or as agreed by the parties from time to time.

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

9. Agreement binding

9.1 The parties agree that –

(a) there may be other entities, groups or individuals, including native title holders, who have an interest in the Land and who are not parties to this Agreement;

(b) this Agreement is not intended to affect Native Title Rights and Interests;

(c) despite the terms of this Agreement Native Title Rights and Interests are unimpaired and may be enjoyed to their fullest extent.

9.2 This Agreement is binding on the parties to this agreement only.

10. Change of Lessee

10.1 The Lessee will notify the DERM of the name and contact details of the person with whom the Lessee has entered into a contract of sale or other agreement for the sale or transfer of the whole or part of the Lease. Notification will be no later than 10 Business Days after entering into the relevant agreement, for the purposes of the DERM contacting the new Lessee.

11. Liability of the State and Lessee

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

11.2 If applicable, the Lessee shall be liable for all acts of a sublessee performed on the Land in accordance with this Agreement.

12. Compliance with laws

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

12.2 Any approval under this Agreement to undertake activities does not constitute an approval under any other Act of Parliament, local laws, regulations or rules referred to in clause 12.1.

13. Mediation

13.1 If a dispute arises in connection with this Agreement, a party to the dispute must give a notice to the other parties, providing details of the dispute and requiring its resolution under this clause 13 (Notice of Dispute).

13.2 Each party must confer within 5 Business Days after the Notice of Dispute is given to them to try to resolve the dispute.

13.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other parties (First Period), the dispute is by this clause submitted to mediation. The mediation must be conducted at the place specified in Item 6 in Schedule 1, or such other place as the parties agree. The Institute of Arbitrators and

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Mediators Australia - Mediation Rules 2007 – and updated by later Editions from time to time, as amended by this clause 13 apply to the mediation, except where they conflict with this clause 13.

13.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 10 Business Days after the First Period –

(a) the mediator is the person appointed by; and

(b) the remuneration of the mediator is the amount or rate determined by,

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

13.5 The parties must pay the mediator's remuneration as determined by the mediator. Each party must pay its own costs of the mediation.

14. Default

14.1 If the Lessee is in default in the performance of any obligation under this Agreement, the DERM may give written notice to the Lessee specifying –

a) the default;

b) what action is required to remedy the default; and

c) the time by which the default is to be rectified.

14.2 In determining what action is required by the Lessee to remedy the default, the DERM may have regard to the financial resources of the Lessee and any Financial Assistance provided to the Lessee under this Agreement.

14.3 The time specified in the notice by which the Lessee is to remedy the default, must be a reasonable time, having regard to the nature of the default.

14.4 However, if the default was as a result of intentional or reckless action on the part of the Lessee or its servants or agents, the DERM is not obliged to take into consideration the financial resources of the Lessee or any amount of Financial Assistance received by the Lessee under this Agreement.

14.5 If the Lessee fails to rectify the default in accordance with the notice, then the DERM may rectify the default, or engage others to rectify the default, at the cost of the Lessee. The cost of such rectification will be a debt owing to the DERM.

15. Termination

15.1 This Agreement will terminate on –

(a) the date that the declaration of the nature refuge over the Land is revoked in accordance with the Act; or

(b) the date that the term lease is resumed, surrendered or forfeited under the *Land Act 1994*,

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Release

whichever is the first to occur.

15.2 However, Clause 14.5 survives any termination of this Agreement.

16. Notices

16.1 Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in Item 7 in Schedule 1, or any substitute address as may have been notified in writing by the relevant addressee from time to time.

16.2 Notice will be deemed to be given –

(a) 8 Business Days after deposit in the mail with postage prepaid;

(b) when delivered by hand; or

(c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5.00pm. Facsimile transmissions received after 5.00pm will be deemed to be received at the start of the next working day,

as the case may be.

16.3 Any notice to a party may be given to its solicitor by any of the means specified in clause 16.1 to the solicitor's business address or facsimile number.

17. Severability

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

18. Waiver

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

19. Governing law

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

20. Costs

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

21. Execution

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21.1 The parties agree that if this Agreement is not executed by all parties on the same date, this Agreement will commence on and from the later of the dates of execution.

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

22. Registration of Agreement on title

22.1 The DERM will notify the Registrar of Titles that this Agreement has been entered into for recording on the appropriate register.

23. Entire Agreement

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

23.2 If an earlier conservation Agreement applies to the Land, this Agreement terminates and replaces the earlier Agreement, in accordance with section 48(1) of the Act.

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SCHEDULE 1

Item 1	Lessee:	**The Lessee under the *Land Act 1994*: Silverback Properties Pty Ltd A.C.N. 067 400 088 Trustee under instrument 710960437**
Item 2	Land:	**The part of lot 4 on plan SP222990, situated in the County of Dulhunty, containing an area of about 111406ha, shown on plan PA429.**
Item 3	Lease:	**The term lease for the Land.**
Item 4	Date for satisfaction of condition in clause 2:	**No later than 12 months after the Date of this Agreement.**
Item 6	Place of mediation:	**Brisbane**
Item 7	Address for notices:	

Lessee

Address:	**C/o Australia Zoo Steve Irwin Way Beerwah Qld 4519**
Postal address:	**As above**
Attention:	**Frank Muscillo, General Manager**
Telephone:	**(07) 5436 2000**
Facsimile:	**(07) 5494 8604**
Email:	**N/A**

State

Address:	**Department of Environment and Resource Management 400 George Street, Brisbane Qld 4000**
Postal address:	**GPO Box 2454, Brisbane Qld 4001**
Attention:	**Nature Refuges Branch**
Telephone:	**(07) 3330 5502**
Facsimile:	**(07) 3330 5398**

Item 8	Assistance:	**Technical advice on the management of Natural Resources of the Land.**

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SCHEDULE 2

Significant Natural Resources of the Land

The following items have been identified as the Significant Natural Resources of the Land. Items have cross-references to specific management conditions in Schedule 3 that are of highest importance for that item. However all management conditions in Schedule 3 must be complied with to ensure the viability of the nature refuge now and into the future.

Item 1: A largely intact and natural landscape which has not been subject to extensive clearing and is comprised of a highly diverse mosaic of tropical savannah woodland, open forest, rainforest and wetlands which are regionally representative of at least 26 Cape York Regional Ecosystems and associated vegetation communities. These ecosystems are associated with a significant diversity of flora and fauna, including species that are listed as threatened under state and federal legislation. Refer Appendix A for a list of confirmed ecosystem types and significant plant and animal species.

Significance: Large areas of intact and diverse native vegetation communities allow natural ecological processes to occur at a scale necessary to support viable populations of a large diversity of fauna and flora.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1h and 3a.

Item 2: Numerous seepage springs associated with, and fed by, the perched water-table of the bauxite plateau, described as the Of Concern regional ecosystem 3.10.1d and supporting a diverse flora including an as-yet undescribed rainforest type characterised by the dominant canopy tree *Calophyllum bicolor*.

Significance: The springs provide perennial freshwater in an otherwise dry landscape. They serve as crucial wildlife refugia for a range of threatened and disjunct taxa, provide an important ecological function in terms of hydrology and connectivity with the Wenlock River and enable flora and fauna species to survive during extreme events such as drought and fire. Springs and their associated ecosystems, flora and fauna are often highly susceptible to disturbance either through human-induced changes in hydrology or over-extraction of water from them.

The springs meet all six of the criteria that are used to identify 'Important Wetlands of Queensland' (Blackman *et al* 1999).

Management Condition(s) of highest importance: Schedule 3 Items 1f, 1g and 1i.

Item 3: Known presence of a population of the red goshawk.

Significance: The red goshawk is both an endangered species (under the Act) and an indicator species of overall ecosystem health. The species requires, and the Land provides, tall trees for nesting sites in amongst open or semi-open vegetation for hunting and resting, nearby permanent Watercourses and a substantial population of prey species. As an indicator species any changes in red goshawk abundance on the Land may provide an early warning that management strategies for the Land may need to be revised.

Management Condition(s) of highest importance: Schedule 3 Items 1c, 1d, 1e, 1f, 1g, 1i and 3a.

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Item 4: A 65 km frontage to the Wenlock River comprised of extensive and healthy riparian vegetation, with associated nesting, hunting and resting sites for riparian fauna species.

Significance: The riparian vegetation serves as significant habitat and a corridor for the dispersal and movement of rainforest obligate wildlife and plant species. Riparian areas are highly susceptible to human-induced degradation of banks and vegetation which can have serious consequences for associated ecosystems, flora and fauna. For example, the Wenlock River has one of the highest diversities of freshwater fish in Australia and is a declared Wild River.

Management Condition(s) of highest importance: Schedule 3 Items 1d, 1e, 1f, 1g, 1h, 1i and 3f.

Item 5: Presence of four significant clusters of rainforest type 66 (Stanton and Fell 2005), known as Regional Ecosystem 3.5.4, or 'Bertiehaugh Dry Vine Forests'.

Significance: The Bertiehaugh Dry Vine Forests constitute an uncommon and relic element of Australian vegetation. These are amongst the largest and least disturbed patches of dry vine forests in the north west Cape York region, and as relic patches, they can add to scientific understanding of the evolution of present day vegetation.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 3a.

Item 6: Known presence of at least 12 fossil sites and Gondwanic relic flora and fauna.

Significance: The fossil sites and relic flora and fauna on the Land have assisted in demonstrating the intermittent linking of New Guinea and Australia and have the continued potential to yield information of global scientific significance regarding on-going continental processes, geoevolution under the influence of global climate change and sea-level change, and ecological and biological processes in the evolution of ecosystems and communities of plants and animals.

Management Condition(s) of highest importance: Schedule 3 Items 1a, 1c and 1m.

Item 7: All other Natural Resources of the Land.

References:

Blackman, J.G., Perry, T.W., Ford, G.I., Craven, S.A., Gardiner, S.J. and De Lai, R.J. (1999). '*Characteristics of Important Wetlands in Queensland.*' Environmental Protection Agency, Queensland.

Stanton, P. J. and Fell, D. G. (2005), 'The Rainforests of Cape York. Cape York Peninsula Land Use Study,' republished by the 'Rainforest CRC', James Cook University, Cairns.

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SCHEDULE 3

Management Conditions

Item 1 Natural resource protection

Ecosystems

Protection of the Significant Natural Resources and ecosystems on the Land by:

a) Conducting Land Uses in such a way that ecological integrity and diversity of ecosystems are protected.

b) Not permitting or applying for Reconfiguring a Lot except where consent is given in this Agreement or in writing by the Minister.

Wildlife and habitat

Protection of populations of native plants and animals, including their habitat, from Threatening Processes by:

c) Not killing, damaging, marking, moving or removing any native plant or animal, except where consent is given in this Agreement, or in writing by the Minister.

d) Not damaging, destroying, marking, moving, digging up or otherwise interfering with native animal habitat including nests, burrows, roosts, caves, hollows or other natural objects used by native animals.

e) Avoiding interruption to breeding cycles, food sources, roosting, migration, spawning and flowering patterns, and avoiding Unnatural Encouragement.

Water, Watercourses and Wetlands

Protection of Wetlands, Watercourses and Water Values on the Land by:

f) Not wilfully allowing Contaminants to enter Wetlands and Watercourses.

g) Minimising Land Uses that produce Contaminant run-off.

h) Minimising disturbance to Wetland and riparian vegetation, with the exception of Pest Plants.

i) Minimising disturbance to natural water flows and processes, unless otherwise approved.

j) Minimising disturbance to the bed or banks of Wetlands and Watercourses by restricting machinery and vehicle use in such areas, except at established crossings.

Soil

Protection of soil productivity and integrity on the Land by:

k) Minimising mechanical disturbance, soil erosion, compaction or any wilful deterioration of the soil's physical, biological or chemical properties.

l) Minimising Land Uses in areas of Instability, with the exception of site rehabilitation activities.

Significant Geological Features and Landforms

Protection of Significant Geological Features and Landforms on the Land by:

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m) Conducting Land Uses and land management activities on the Land in such a way to prevent loss, minimise damage to, or deterioration of, Significant Geological Features and Landforms on the Land.

Item 2 Land protection and threat abatement

Pest Animals

Protection of Significant Natural Resources on the Land by:

a) Minimising the introduction of Pest Animals and controlling existing populations of Pest Animals on the Land.
b) Ensuring Control Programs for Pest Animals are timed and managed to prevent the capture, injury or death of non-target native animals.
c) Informing the DERM about any new occurrences of Declared Pest Animals.

Pest Plants

Protection of Significant Natural Resources on the Land by:

d) Minimising the introduction, establishment and spread of Pest Plants and controlling existing infestations of Pest Plants on the Land. Typically, cleaning equipment and vehicles so they are free of Pest Plant seeds, other vegetative material and deposits of mud or other debris on leaving an infected area.
e) Ensuring Control Programs for Pest Plants are timed and managed to prevent the illness, injury or death of non-target native wildlife.
f) Informing the DERM about any new occurrences of Declared Pest Plants.

Disease

Protection of Significant Natural Resources on the Land by:

g) Minimising the introduction, establishment and spread of Disease.
h) Reporting to the DERM any unusual plant and animal death, damage or Disease activity.

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Item 3 Land use and management

Fire

Protection of the Significant Natural Resources on the Land by:

a) Developing and implementing fire management strategies that are appropriate to the ecosystems on the Land.

Infrastructure

Protection of the Significant Natural Resources on the Land by:

b) Not constructing Infrastructure except where approved in this Agreement, in writing by the Minister or where required under the Lease.
c) Ensuring new Infrastructure, where approved in this Agreement, in writing by the Minister or where required under the Lease, is constructed and maintained in such a way as to minimise impacts.

d) Ensuring that repairs, alterations or maintenance of Infrastructure is undertaken in such a way as to minimise impacts.

Waste and Hazardous Substances

Protection of the Significant Natural Resources on the Land by:

e) Conducting Land Uses in such a way as to minimise the risk of land and water pollution, or other degradation from Wastes, Hazardous Substances or Contaminants.

f) Not burying, or disposing of any Hazardous Substances on the Land, unless otherwise approved in this Agreement or in writing by the Minister.

Item 4 Zoning

Mixed Use Zones

Within Mixed Use Zone A:

a) All conditions of this Agreement continue to apply.

b) Nothing in this Schedule 3 prohibits the following activities within Mixed Use Zone A:

   i. Ensuring that any stock grazing on the Land is conducted on a rotational basis and/or at a variable rate to minimise adverse impacts on Watercourses, soil and native vegetation.

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SCHEDULE 5

Financial Assistance

Nil

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Executed as an agreement on the dates appearing below

SIGNED by

SILVERBACK PROPERTIES PTY LTD A.C.N. 067 400 088 TRUSTEE UNDER INSTRUMENT 710960437

in accordance with section 127(1) of the

Corporations Act 2001 (Cth)

this day of 2013

by .....
(full name)
a Director

.....
(signature)

and by.....
(full name)
a Director/Secretary

.....
(signature)

RTI DL RELEASE - EHP

SIGNED for and on behalf of the **STATE OF QUEENSLAND** by **the HONOURABLE**

KATE JONES

.....

(signature)

the Minister administering the *Nature Conservation Act 1992*

this day of 2013

in the presence of:

.....

(print name of witness)

.....

(signature of witness)

RTI DL RELEASE - EHP

 V4

From: Williams Allan
Sent: Friday, 15 April 2011 10:23 AM
To: Williams Morgen
Subject: FW: Our discussion on Friday

Follow Up Flag: Follow up
Flag Status: Completed

From: John Cameron [mailto:jcameron@capealumina.com.au]
Sent: Monday, 11 April 2011 1:01 PM
To: Williams Allan
Cc: Bennett David
Subject: RE: Our discussion on Friday

Allan
Thank you for your time and your clarification on our question regarding the inclusion of the Mining Lease application areas within the nature refuge on Bertiehaugh. We agree in principle with your email that the area of the Mining Lease applications not be included.

Could you please provide us with your anticipated schedule for the referred to discussions with Cape Alumina regarding the area of our exploration permits relative to the proposed nature refuge.

Regards
John

From: Williams Allan [mailto:allan.williams@derm.qld.gov.au]
Sent: Tuesday, 5 April 2011 10:21 AM
To: John Cameron
Cc: Bennett David
Subject: Our discussion on Friday
Importance: High

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Dear John

Thanks for initiating the meeting on Friday. I can now confirm that the area of about 12,300ha relative to Cape Alumina's mining lease application on the Bertiehaugh lease is **not** now, nor am I aware of any intention for it to become, part of discussions relative to the proposed nature refuge – ie it is not envisaged that this area would form part of any nature refuge on Bertiehaugh at this time.

The area covered by exploration permits is to be part of discussions relative to the proposed nature refuge.

From our discussion, I would understand that these arrangements would be acceptable in principle to Cape Alumina, but would appreciate your confirmation.

Should I become aware of any change to these intentions, I would advise you as soon as possible. I confirm that until our meeting, I had understood that the information above was known to Cape Alumina. Please feel free to contact either me of David Bennett (3330 5376) if you want to clarify anything.

Allan W.

Director Nature Refuges

Sustainable Communities and Landscapes Division

Department of Environment and Resources Management
Telephone: 07 3330 5392 **Facsimile:** 07 3330 5998 **Mobile:** sch4p3(3) Prejudice the protection of an individuals right to privacy
www.derm.qld.gov.au

Level 5, 400 George Street Brisbane Queensland

PO Box 15155 City East QLD 4002

+----------+

Think B4U Print

1 ream of paper = 6% of a tree and 5.4kg CO2 in the atmosphere

3 sheets of A4 paper = 1 litre of water

+----------+

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2010

Release

V3

MacDonnells Law
BRISBANE CAIRNS TOWNSVILLE

Our Ref: Jenny Humphris
Your Ref: Tim Ellis

16 March 2010

FACSIMILE

Fax: 3330 5398
Pages: 9 (including this page)

To: Mr Tim Ellis
Director Tenure Actions Branch
Sustainable Communities and
Landscapes Division
Department of Environment and
Resource Management

Writer: Jenny Humphris | Partner
Email: jhumphris@macdonnells.com.au
Direct: 07 3031 9720
Fax: 07 3031 9799

Matter: SIWR/Bertiehaugh

Message:

Dear Tim

Please find letter attached.

Yours faithfully
MacDONNELLS

sch4p3(3) Prejudice the protection of an individuals right to privacy

Enclosure

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NOTICE: If you receive this facsimile transmission by mistake, please contact us immediately. We reserve all rights in relation to information contained in this document that is privileged, confidential or exempt from disclosure by law.

MacDonnells Law
BRISBANE | CAIRNS | TOWNSVILLE

Our Ref: Jenny Humphris:76718
Your Ref:

16 March 2010

Mr Tim Ellis
Director Tenure Actions Branch
Sustainable Communities and Landscapes Division
Department of Environment and Resource Management
PO Box 15155
CITY EAST QLD 4002

Fax: 3330 5398
Pages: 6

RTI DL RELEASE - EHP

Dear Mr Ellis

Bertiehaugh Pastoral Holding – Declaration of Nature Refuge

I confirm that I act on behalf of Silverback Properties Pty Ltd, the lessee of the Bertiehaugh Pastoral Holding 23308 (the lease) over land described as Lot 4 on Plan SP222990 (the land).

I refer to our meeting on 11 February 2010 when I advised that Silverback Properties Pty Ltd (which I refer to as "Australia Zoo" throughout this letter) is currently negotiating an indigenous land use agreement with the native title holders for the land. I also refer to your email to me on 12 February, to which I have separately responded.

You asked that I write to you to formally advise the State of the status of the current negotiations.

Background

To commence, it is useful to recap, chronologically, on the background to the current negotiations:

1. In 2007, the Commonwealth funded the purchase, by Australia Zoo, of the lease to honour Steve Irwin's contribution by including the land in the National Reserve System. At that time, the lease was due to expire at the end of 2009. Subsequently, the State renewed the lease for a further 30 year term.

2. Underpinning the purchase, the Commonwealth and Australia Zoo entered into an agreement (the "Funding Agreement") pursuant to which:

   - Australia Zoo agrees to establish the land as a private protected area for nature conservation purposes. The land is to be declared a private protected area with a nature refuge (conservation covenant) on title.

   - The Commonwealth Government requires that where State legislation does not allow for the registration of a conservation covenant on title, the existence of a

Level 14 BOQ Centre 259 Queen Street Brisbane QLD 4000 | GPO Box 79 Brisbane QLD 4001 | DX 121
P 07 3031 9700 | F 07 3031 9799 | E email@bne.macdonnells.com.au | www.macdonnells.com.au

conservation covenant in respect of the land must be noted on the register of leasehold land title.

- The declaration as a nature refuge is to be consistent with agreed objectives of management, namely:
  - to protect and maintain the biological diversity and other natural values of the area in the long term;
  - to promote sound management practices for sustainable production purposes;
  - to protect the natural resource base from being alienated for other land-use purposes that would be detrimental to the area's biological diversity; and
  - to contribute to regional and national development.
- Upon declaration of the land as a nature refuge, the Commonwealth will formally name the land the "Steve Irwin Wildlife Reserve" and enter it on the National Reserve System.
- Australia Zoo is responsible for complying with the requirements of the *Native Title Act 1993* (NTA) in implementing the Funding Agreement.
- Australia Zoo agrees to conserve the land consistent with a Management Plan to be developed between Australia Zoo, the Commonwealth and the State.

3. To oversee the development and implementation of the Management Plan, the Funding Agreement provided for a committee of representatives of Australia Zoo, the Commonwealth and the State, an indigenous representative and the sub-lessee (or other nominated cattle industry representative) to be established (the steering committee). Despite Australia Zoo's invitations to do so, since the first meeting of the steering committee , to date an indigenous representative has not participated in steering committee meetings. The steering committee first met over a period of 4 days from 5 to 8 November 2007 and has met on three subsequent occasions. At the first meeting it was agreed that it was appropriate to protect the conservation values of the land by the dedication of a nature refuge.[1]

4. Since the land was purchased, Australia Zoo understands that the Cape York Land Council (CYLC) has made various approaches to the State and Commonwealth regarding the land.

sch3(8)(1) Information disclosure of which would found action for breach of confidence

1. [1] At subsequent meetings, Australia Zoo has briefed the participants upon the status of Australia Zoo's consultation with Traditional Owners.

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5. [redacted]

6. [redacted]

sch3(8)(1) Information disclosure of which would found action for breach of confidence

7. [redacted]

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8. On 27 June 2008, the State provided Australia Zoo with a first draft of a Conservation Agreement under the *Nature Conservation Act 1992* for its consideration and execution.

9. At the same time, Australia Zoo was advised that the State wrote to the CYLC (on behalf of those persons who assert to hold native title), to the holder of a mining EPM on the land (Cape Alumina) and to the sub-lessees of the land, the Witherspoons, advising of the State's intention to declare a nature refuge and to enter into a Conservation Agreement with Australia Zoo.

10. [redacted] Australia Zoo advised the CYLC, the Commonwealth and the State that it agreed to voluntarily commence ILUA discussions with the native title holders, whilst maintaining the legal position that the native title holder's consent to the declaration of a nature refuge was not required.

11. On 29 July 2008, Australia Zoo representatives met with the then Minister for Sustainability, Climate Change and Innovation, the Honourable Andrew McNamara MP to discuss Australia Zoo's response to the draft Terms of Reference for the EIS to be undertaken by Cape Alumina. During the meeting the Minister mentioned favourably the proposal to declare the nature refuge. On that day, Australia Zoo also provided its response to the draft Conservation Plan and Management Plan for inclusion, respectively, in Schedules 5 and 8 of the Conservation Agreement .

12. A final draft of the Conservation Agreement was forwarded by Stephen Potts to Ken Hicks on behalf of Australia Zoo on 28 August 2008. The email attaching the Agreement confirmed that the Agreement may be executed by the Minister once:

- Written consent from DME is received; and
- Mining interest holders are provided 28 days to comment on the proposal; and
- Written consent from the Witherspoons is received.

13. The Witherspoons confirmed their acceptance of the Conservation Agreement. Final comments upon the Conservation Agreement were also made by Australia Zoo. To Australia Zoo's knowledge the State has never received a response from the CYLC to the Conservation Agreement.

14. On 22 September 2008, the State provided Australia Zoo with a final version of the Conservation Agreement for signing. The State advised that the Conservation Agreement would be executed by the Minister once Sections 44-45 of the *Nature Conservation Act* 1992 had been satisfied. A copy of the Conservation Agreement signed by Australia Zoo was sent by the State to the Cape York Land Council, on behalf of the native title holders of the land on 9 October 2008.

15. By email dated 7 October 2008, Mr Potts advised Ken Hicks that "*Cape Alumina had been granted a further 28 days to make a submission to the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge*", being 3 November 2008. Australia Zoo signed the Agreement on 9 October 2008.

16. On 1 December 2008, Australia Zoo received a letter from the Honourable Minister McNamara, dated 1 December 2008 which included the following advice:

- That submissions had been received by the State in relation to the land which had raised issues which the Minister would *"like to resolve in a cooperative and participatory manner. These issues are likely to require negotiation of the terms of the proposed Conservation Agreement with interested parties including the traditional owners of Bertiehaugh and the Cape York Land Council ("CYLC"). I would encourage you to meet and discuss the proposed Conservation Agreement with the CYLC so that it is able to satisfy itself and its clients concerning the intended sustainable management of the land's significant natural and cultural resources."*
- "*... the Statutory requirements set out in Section 45 of the NCA have not as yet been satisfied. Therefore, I intended to defer any further consideration in relation to the proposed nature refuge until you advise me of your position on this matter.*"; and
- *"Thank you for your willingness to negotiate an Conservation Agreement over Bertiehaugh".*

17. On 27 January 2009, representatives of Australia Zoo met (separately) with the Honourable Andrew McNamara MP and the Premier the Honourable Anna Bligh MP to discuss the proposal to declare the land a nature refuge. At the meeting Minister

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McNamara indicated that he intended to defer his consideration of the declaration of the nature refuge pending the outcome of the, then, proposed meeting between Australia Zoo and the native title holders for the land on 13 February 2009.

Engagement with Traditional Owners

18. Australia Zoo representatives first met formally with those persons who assert to hold native title in the land on 18 December 2007 in Cairns. Representatives of the CYLC and Queensland Parks and Wildlife Service were also present at that meeting. A copy of the (then) draft Management Plan was tabled at that meeting and an invitation was extended to the traditional owners to be represented on the Steering Committee.

19. Subsequent meetings were held between Australia Zoo representatives and representatives of those persons who assert to hold native title in respect of the land on:

    (a) 15 - 17 August 2008 - on the land;

    (b) 13 February 2009 - at NNTT offices in Cairns with member John Sosso of the National Native Title Tribunal presiding;

    (c) 30 April 2009 - at NNTT offices in Cairns with member John Sosso of the National Native Title Tribunal presiding; and

    (d) 27 October 2009 - at Australia Zoo in Beerwah, again with the NNTT presiding.

20. A meeting was also scheduled for August 2009, but was cancelled, at the instigation of the native title holders, the day before it was scheduled to commence.

21. Australia Zoo was unable to disclose to the Commonwealth or the State the detail of the issues discussed at those meetings as it was agreed between the parties that the meetings would be held on a 'without prejudice' and confidential basis. However, at various meetings of the Steering Committee Australia Zoo representatives reported on the status of negotiations of an ILUA.

22. The Conservation Agreement was an Agenda item at the mediation meetings held between the Australia Zoo and the native title holders on 13 February 2009 and 30 April 2009. At those meetings the native title holder's raised separate issues regarding land ownership. To date, neither the CYLC nor those persons who assert to hold native title in relation to the land, have provided any comment to Australia Zoo in relation to the Conservation Agreement.

23. At the Steering Committee meeting of 3 June 2009, it was recorded as an action item that "SIWR will continue its efforts to obtain positive feedback from CYLC... in relation to the Conservation Agreement. In the event this is not possible within a reasonable time, SIWR will request the government to make a decision on the matter".

24. In October 2009, the CYLC advised Australia Zoo that anthropological research is being undertaken in the Cape and that it is likely that a native title claim will be lodged over the land, by the end of this year. Australia Zoo has been told that a regional claim is intended to be made over a broad claim area, including the land. The native title

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party is likely to constitute a broader group of persons than those persons who are the native title holders for the land.

Current Negotiations

The land has not yet been declared a nature refuge nor entered in the National Reserve System.

[redacted] sch3(8)(1) Information disclosure of which would found action for breach of confidence

The State has advised Australia Zoo that the State does not require the consent of the native title holders to declare the nature refuge on the basis that the native title holders are not a proposed party to the Conservation Agreement and that native title will not be affected by the declaration.

[redacted] Australia Zoo has advised the native title holders of the land that it is prepared to attempt to negotiate an indigenous land use agreement and has willingly participated in the mediation meetings to date. A draft indigenous land use agreement (ILUA) was sent to the legal representatives for the native title holders on 14 February 2010.

The draft ILUA records, amongst other things, the native title holder's consent to:

- The declaration of the nature refuge;
- The Conservation Agreement;
- All future acts that Australia Zoo undertakes on the land for "conservation" or "pastoral" purposes as those terms are defined in the ILUA.

The ILUA also contemplates that the Parties will include provisions to address the recognition and exercise of native title rights and interests over the land, given the conservation values as recognised by the proposed nature refuge status, at three stages:

- Before any native title claim is made and registered;
- After any claim is registered; and
- After any determination is made.

As the State is responsible for the declaration of the nature refuge and the administration of the *Nature Conservation Act 1992* it is important that Australia Zoo has a clear understanding of the State's position in relation to the above issues.

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Mr Tim Ellis
Director Tenure Actions Branch
Sustainable Communities and Landscapes Division
Department of Environment and Resource Management

Clarifying the State's Position

The version of the Conservation Agreement signed by Australia Zoo provides that neither the Agreement nor the declaration of the nature refuge is intended to affect the exercise of any native title rights and interests in the land.

As we understand it, the State intends to validate the declaration of the nature refuge and the signing of a Conservation Agreement under s24LA of the *Native Title Act 1993* on the basis of the State's view that both will have a low impact on native title. In that case, the declaration of the nature refuge and the Conservation Agreement underpinning the declaration will expire upon a determination of native title.

Whilst Australia Zoo, as the lessee of the land, may lawfully restrict the use of and access to the land by native title holders, at least prior to a registered native title claim being lodged and to some extent after a claim is lodged, whether and to what extent native title rights and interests can be exercised after a determination is made is an issue that requires further consideration.

As a precondition to Australia Zoo's consent to a determination of native title, Australia Zoo's position is that it would seek to restrict the exercise of any recognised native title rights and interests over the land which are inconsistent with the declaration of a nature refuge. As has been the practice of the State in relation to other determinations, Australia Zoo would likewise expect that the State would adopt a similar position as a condition of the State's consent to any determination. However, this is an issue upon which Australia Zoo seeks the State's clarification.

Australia Zoo seeks the State's position in relation to the following:

1. Could you please confirm, in writing, how does the State intend to validate the:

   (a) declaration of a nature refuge over the land and;

   (b) entering into a Conservation Agreement,

   under the *Native Title Act 1993*?

   In particular, does the State regard the declaration and signing of the Conservation Agreement as a low impact future act?

2. How does the State intend to ensure that the exercise of any native title rights and interests over the land are restricted to preserve the integrity of the conservation values of the land as recognised by the proposed declaration as a nature refuge, both:

   i) before any native title claim is registered and determined; and

   ii) after any determination of native title?

3. In relation to the current proposal to declare the nature refuge, could you please clarify any outstanding steps required to be undertaken by the State pursuant to s.44-45 of the *Nature Conservation Act 1992* to enable a conservation agreement to be signed by the Minister, and the anticipated timeframe for undertaking those steps.

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Mr Tim Ellis
Director Tenure Actions Branch
Sustainable Communities and Landscapes Division
Department of Environment and Resource Management

4. After a conservation agreement is signed, what is the timeframe for the Minister's declaration of a nature refuge over the land?

As I advised at our meeting and in my email to you on 3 March 2010, Australia Zoo is seeking to finalise an indigenous land use agreement with the native title holders before 1 April 2010 to coincide with the 40th anniversary of Australia Zoo.

We look forward to your early response.

Yours faithfully
MacDONNELLS

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Writer: Jenny Humphris | Partner
Direct: 3031 9720
Email: jhumphris@macdonnells.com.au

Original by Post

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Enquiries Stephen Potts
Telephone (07) 3330 5339
Your reference
Our reference BNE33142-3

12 February 2010

Gulf Alumina Pty Ltd
C/- Geos Mining
301/68 Alfred Street
MILSONS POINT NSW 1565

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
EPM No. 18457
LANDHOLDERS: SILVERBACK P/L AS TRUSTEE
LAND: LOT 4 ON SP222990

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In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Climate Change and Sustainability (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

If the Minister is satisfied that an area should be declared a protected area, the Minister, under section 44 of the NCA, is required to prepare a Proposal For Declaration and to give written notice to all landholders affected by the proposal. A copy of the Proposal for Declaration is enclosed. If you wish to make a submission about the proposal the closing date for receiving submissions is 28 days from the date of this letter.

When all the necessary consents have been obtained, the Minister may then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

Note that existing and future rights relating to mineral and petroleum extraction have been accommodated in the conservation agreement through the inclusion of the following standard clause:

"The parties acknowledge that:

- existing and future rights related to mineral and petroleum exploration and extraction are not altered by this agreement; and

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- any lawfully approved mining or petroleum-related activity on a nature refuge will be planned and conducted in accordance with relevant statutory requirements, including environmental, conservation and cultural heritage requirements relevant to the nature refuge."

If you have any enquiries please don't hesitate to contact me on (07) 3330 5339.

Yours sincerely

Stephen Potts
Manager

Encl. Proposal for Declaration

RTI DL RELEASE - EHP

2009

RTI DL RELEASE - EHP

GTSB21-391

Release

V3

Enquiries Stephen Potts
Telephone (07) 3405 6955
Your reference
Our reference BNE33142-3

9 February 2009

MKY Corporation Limited
6 Powlett Street
EAST MELBOURNE VIC 3002

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
EPM No. 17842 and 17834
LANDHOLDERS: SILVERBACK P/L AS TRUSTEE
LAND: LOT 4 ON DLH4

In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Sustainability, Climate Change and Innovation (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

If the Minister is satisfied that an area should be declared a protected area, the Minister, under section 44 of the NCA, is required to prepare a Proposal For Declaration and to give written notice to all landholders affected by the proposal. A copy of the Proposal for Declaration is enclosed. If you wish to make a submission about the proposal the closing date for receiving submissions is 28 business days from the date of this letter.

When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

Note that existing and future rights relating to mineral and petroleum extraction have been accommodated in the conservation agreement through the inclusion of the following standard clause:

"The parties acknowledge that:

- existing and future rights related to mineral and petroleum exploration and extraction are not altered by this agreement; and
- any lawfully approved mining or petroleum-related activity on a nature refuge will be planned and conducted in accordance with relevant statutory requirements, including environmental, conservation and cultural heritage requirements relevant to the nature refuge."

RTI DL RELEASE - EHP

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ABN 87 221 158 786

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For further information about nature refuges and case studies, visit:
http://www.epa.qld.gov.au/nature_conservation/nature_refuges/what_is_a_nature_refuge/
If you have any enquiries please don't hesitate to contact me on (07) 3405 6955.

Yours sincerely

Stephen Potts
A/Business Manager

Encl. Proposal for Declaration

RTI DL RELEASE - EHP

SCANNED

Date Prepared:	6 January 2009	Prepared by:	Stephen Potts
		Title:	Project Manager
Approved by:	Geoff Clare	Division:	Sustainable Communities
Position:	Executive Director Sustainable Communities	Telephone:	3405 6955
Date Approved:	8 January 2009	Other Refs:	BNE2008/12214

Ref: BNE33142-2
BNE2008/15770
SU/08/6264

B/C Senior Policy Advisor to the
Honourable Craig Wallace MP
Minister for Natural Resources and Water
PO Box 15456
CITY EAST QLD 4002

- 3 FEB 2009

Referred by direction of the Honourable Andrew McNamara MP, for reply direct in relation to matters concerning the Land Act 1994. Copy of the inwards correspondence is attached.

Mr Peter Callaghan
Chief Executive Officer
Cape York Land Council
Aboriginal Corporation
PO Box 2496
CAIRNS QLD 4870

CAIRNS MODIFIED

David Shankey
Senior Policy Advisor

RTI DL RELEASE - EHP

Dear Mr Callaghan

Thank you for your letter of 12 December 2008 regarding the proposed nature refuge over the Bertiehaugh pastoral holding and the concerns of Traditional Owners.

I would like to reaffirm the commitment made to you in my letter of 28 November 2008 that the Environmental Protection Agency (EPA) will treat the Traditional Owners of Bertiehaugh as registered native title claimants under the *Native Title Act 1993* (C'th). This commitment is extended to include all dealings under the *Nature Conservation Act 1992* (NCA), including the proposed declaration of the land as a nature refuge.

I note your request to include any future grant, re-grant, renewal, extension or variation of a lease under the *Land Act 1994* in this commitment. However, as this matter falls within the jurisdiction of the Minister for Natural Resources and Water, I have forwarded a copy of your letter to him for his consideration and reply direct to you.

In relation to your request for confirmation that the EPA considers the Traditional Owners of Bertiehaugh as a 'land-holder' under the NCA, I can confirm that the EPA does consider that the term 'land-holder' for the purposes of section 44 of the NCA may include Traditional Owners. Accordingly, in considering the proposal for the declaration of the nature refuge, the EPA must consider the effect of the proposal on native title. In this case the intention is to only bind the pastoral lessee to the conservation agreement, and not to bind any other land-holder, including the Traditional Owners. This intention has been included in the draft conservation agreement provided to you on 9 October 2008.

Thank you for bringing this matter to my attention. If any further information is required, please do not hesitate to contact Tim Ellis of the Environmental Protection Agency on telephone 3227 6198.

Yours sincerely

SIGNED

sch4p3(3) Prejudice the protection of an individuals right to priva

12.1.09.

Andrew McNamara MP
Minister for Sustainability, Climate Change and Innovation

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Released

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VOL 2
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ENVIRONMENTAL PROTECTION AGENCY
17 DEC 2008
BNE 200 8, 15462

CAPE YORK LAND COUNCIL
ABORIGINAL CORPORATION

ICN 1163
ABN 22 965 382 705

32 Florence Street
PO Box 2496
CAIRNS QLD 4870
Phone (07) 4053 9222
Fax (07) 4051 0097

Your ref:
Our ref: PC

Contact: Peter Callaghan
Email: pcallaghan@cylc.org.au

12 December 2008

The Honourable Andrew McNamara MP
Minister for Sustainability Climate change and Innovation
Level 17, 160 Ann Street
BRISBANE 4000

Mr Tim Ellis
Director, Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000

RTI DL RELEASE - EHP

Dear Minister

TRADITIONAL OWNERS OF BERTIEHAUGH

Thank you for your letter of 28 November 2008. The Traditional Owners of Bertiehaugh welcome the Government's commitment in relation to those matters outlined in your letter.

However, the Traditional Owners are concerned that the commitment does not go far enough to afford Traditional Owners the procedural rights needed to protect their native title interests in relation to the proposed declaration of a nature refuge over Bertiehaugh.

The most significant impending decisions that are expected to affect Traditional Owners in the next 12 months relate to processes associated with the proposed declaration of the nature refuge over Bertiehaugh. The commitment given in your letter does not adequately cover those processes from the Traditional Owners' perspective.

The Traditional Owners are also concerned about the potential for any future grant, re-grant, renewal, extension of the term, or variations of a lease over Bertiehaugh.

We respectfully request that the current commitment be extended so that the Traditional Owners of Bertiehaugh are treated as registered native title claimants

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under the *Native Title Act 1993* for the purposes of Division 4 of Part 4 of the *Nature Conservation Act 1992 (Qld)*, the *Native Title Act 1993* and the *Land Act 1994 (Qld)*.

Absent such agreement, the Traditional Owners will have few options but to lodge a native title claim or to seek other remedy under the *Nature Conservation Act 1992 (Qld)*. With respect to notification of the draft Conservation Agreement for Bertiehaugh that was provided to Traditional Owners on 27 June 2008, we request confirmation that notification was provided to Traditional Owners on the basis that the Queensland Government considers Traditional Owners to be 'land holders' for Bertiehaugh, within the meaning defined under the *Nature Conservation Act 1992* (Qld), and consequently, whether their consent will be required to be provided prior to the dedication of the Nature Refuge. Traditional Owners intend to provide the Minister with a submission on the draft Conservation Agreement early next year.

We also note the Minister's agreement to defer consideration of the proposed nature refuge until he is advised of the outcome of discussions with the current lessee of Bertiehaugh. The Traditional Owners are currently in the process of negotiating an Indigenous Land Use Agreement over Bertiehaugh with Silverback Properties Pty Limited. Accordingly Traditional Owners will be in a position to advise the Queensland Government of the outcome of the discussions with the current lessee of Bertiehaugh with respect to the proposed Nature Refuge dedication once those negotiations are complete. Traditional Owners expect that negotiations will be completed by 31 July 2009.

In the event that the Government intends to enter into the conservation agreement without the Traditional Owners consent the Traditional Owners would ask the government to undertake to give 21 days' notice to the Traditional Owners to the Traditional Owners prior to the Minister entering into any conservation agreement.

Yours faithfully,
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

RTI DL RELEASE - EHP

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V2

Date Prepared:	14 October 2008	Prepared by:	Stephen Potts
		Title:	Project Manager, Tenure Actions
Approved by:	Geoff Clare	Division:	Sustainable Communities
Position:	Executive Director Sustainable Communities	Telephone:	3227 6825
Date Approved:	21 November 2008.	Other Refs:	BNE2008/8987; 12736

Our Ref: BNE33142-2
BNE2008/12214
SU/08/4587
Your Ref: FD005

CARMS MODIFIED

28 NOV 2008

Mr Peter Callaghan
Chief Executive Officer
Cape York Land Council
PO Box 2496
CAIRNS QLD 4870

RTI DL RELEASE - EHP

Dear Mr Callaghan

Thank you for your letter of 24 September and subsequent letter from Michael Ross on 3 October 2008 in relation to the Bertiehaugh pastoral holding and the proposed nature refuge.

I am pleased to advise that your request for the Environmental Protection Agency (EPA) to treat the Traditional Owners of Bertiehaugh as registered native title claimants under the *Native Title Act 1993* (NTA) for a period of 12 months from the date of this letter, for all dealings under the *Nature Conservation Act 1992* (NCA), is agreed in relation to the following matters:

- any proposal by the EPA to issue a grant, lease or licence over Bertiehaugh will be notified in accordance with the requirements of the *Native Title Act 1993*; and
- notification of the proposal for the nature refuge has been given via the letter to your organisation of 27 June 2008.

In relation to your request that agreement of the Traditional Owners be required before the Conservation Agreement is executed, I have written to the lessee of Bertiehaugh encouraging them to discuss the proposed Conservation Agreement with your organisation, and advised them that I am deferring further consideration of the proposed nature refuge until I am advised of the outcome of such discussions.

I understand that EPA officers have sent you a copy of the proposed Conservation Agreement. I trust the copy clarifies matters raised in previous correspondence.

Thank you for bringing this matter to my attention. If any further information is required, please do not hesitate to contact Tim Ellis of the Environmental Protection Agency on telephone 3227 6198.

Yours sincerely

SIGNED

Andrew McNamara MP
Minister for Sustainability,
Climate Change and Innovation

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BNE 331422 Vol 1 V2

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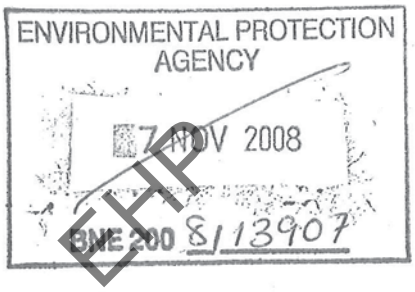
CapeAlumina

The Hon Andrew McNamara, MP
Minister for Sustainability, Climate Change
and Innovation
160 Ann Street
BRISBANE QLD 4000

Attention: Mr Tim Ellis
Director
Tenure Actions Branch
Environmental Protection Agency
PO Box 15155
City East, Qld, 4002



4 Nov 2008

RTI DL RELEASE - EHP

Dear Sir

SUBMISSION OF CAPE ALUMINA PTY LTD
Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge on Lot 4 on DLH4 (Bertiehaugh Pastoral Holding)

We refer to the letter dated 8 September 2008 from your Tim Ellis to Cape Alumina Pty Ltd (**CAPL**) inviting submissions in relation to the Minister's proposal to enter into a conservation management agreement for a nature refuge on Lot 4 on DLH4.

A draft conservation agreement between the State of Queensland and Silverback Properties Pty Ltd (as trustees of the Terri Irwin Family Trust) upon which the nature refuge declaration will be made was included in the 8 September 2008 letter.

CAPL has existing exploration permits for minerals (EPM14547 and EPM15278) pertaining to the area proposed to be included within the proposed nature refuge and has made application for mining leases over the relevant land. It is concerned to ensure that the establishment of the proposed nature refuge and the operation of the associated conservation agreement will be consistent with all intended uses for the land, including those held by CAPL.

For reasons elaborated below, CAPL does not consider that land pertaining to its exploration permits should be included in the land dedicated for nature refuge status as:

- CAPL does not consider that the ecological status of this land meets the criteria for a nature refuge;
- Declaration of a nature refuge over land pertaining to its exploration permits is not justified given CAPL's existing and intended use of the land;
- There is no reference in the proposed conservation agreement to CAPL and its interests in the land; and

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- The proposed zones identified in the conservation agreement are unacceptably vague as the preservation of natural resources and are in conflict with CAPL's right to conduct existing exploration and future mining interests.

CAPL's overarching submission is that the boundary of the proposed nature refuge area should be amended so as to exclude the region in relation to which CAPL has applied to be declared a mining lease. That area encompasses 12,312 ha and is described by the **attached** map marked "Map A". The location of the start datum point of the land is ML 7031 monumented corner AL3 - MP14465 (Longitude 142°13'57.8896" E; Latitude 12°16'42.1643" S) and is marked "1A".

CAPL also seeks the exclusion from the nature refuge of the access routes required to reach the above land. Also **attached** and marked "Map B" is a map which displays the start point of the access route required. That start point is marked point "A" on the Peninsula Development Road 15.93 km from the Moreton Telegraph Station and the end point is marked "H" on the eastern boundary.

In relation to the draft conservation agreement, CAPL provides the following comments on the specific terms proposed:

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	Draft Conservation Agreement Reference	Comment
1.	Recital A	CAPL believes that the ecological status of the land would not meet the criteria for a nature refuge. This is because: • the predominant vegetation type on the land is Darwin Stringybark Woodland (*Eucalyptus tetradonta*), which is the most common vegetation type on the Cape York Peninsula and is not considered to be of conservation value under either Queensland or Commonwealth environmental legislation; • Queensland Government vegetation mapping for the Bertiehaugh Station land shows no endangered regional ecosystems occurring on the property; • the Queensland Heritage Register shows that there are no areas considered worthy of protection on the Bertiehaugh Station land pursuant to the *Queensland Heritage Act* 1992 (Qld); • the land has been run and operated as a cattle station for many years. This past and intended future land use, together with the attendant pest infestations (eg feral pigs) is demonstrative that the land is not pristine wilderness. Furthermore, the vegetation type known as "Bertiehaugh Dry Vine Forest", as listed on the Commonwealth Register of the National Estate, has been nominated by the landholder as one of its main targets for conservation. Importantly, CAPL's environmental studies on the land have concluded that there are no examples of this particular vegetation type on the land over which it seeks to be declared as a part of a mining lease. CAPL considers this lends support to its submission that the area sought to be included by CAPL in a mining lease should be excised from the nature refuge. We refer to our further comments at Tab 13 in relation to Schedule 2 of the NCA.

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	Draft Conservation Agreement Reference	Comment
2.	Recital C	This recital notes that the EPA has obtained the written consent from all persons who, at the date of the agreement, have the benefit of a lease, mining interest or other encumbrance over the land and whose rights under that lease, mining interest or encumbrance will be materially affected by the land holder entering into this agreement. It should be noted that CAPL has not received a complete copy of the draft agreement, including complete schedules as referred to below. In order to provide its written consent to the agreement, CAPL will need to be informed of any amendments to the agreement which are negotiated between the parties to the agreement and interest holders. CAPL will also require a complete copy of the final agreement.
3.	Clause 1.1 definition "natural resources"	The natural resources of the land are purportedly specified in Schedule 2 of the agreement. It seems inconsistent to provide an additional broad definition of "natural resource" here which encompasses all minerals on the land. In conjunction with the operation of clause 3.2, the implication appears to be that the land holder will be obliged to manage the minerals in the land. In CAPL's submission, this is not legally correct. The *Mineral Resources Act* 1989 confirms that the management of the State's mineral resources rests with the Crown and is managed pursuant to that piece of legislation. CAPL therefore submits that the definition of "natural resources" should be amended so that the word "minerals" is deleted and reference be made to the natural resources listed in Schedule 2 of the agreement.
4.	Clause 1.1 definition "works"	The definition of "works" refers to Item 3 in Schedule 6. Schedule 6 is currently empty. Is the schedule intended to be populated? If so, could a copy of the intended schedule please be provided to CAPL?
5.	Clause 3.2	CAPL is concerned that this clause should more accurately reflect the legislative provision. Clause 3.2 should restate the Management Principles of Nature Refuges specified at section 22 of the NCA.
6.	Clause 3.3	As the lease conditions are incorporated into the agreement to the extent of any inconsistency, it is important that CAPL be provided with a complete copy of the lease referred to at clause 3.3(c).
7.	Clauses 3.4 and 3.5	CAPL submits that it should also receive the benefit of notice regarding the nature refuge declaration, a Declared Management Intent and a Management Plan.

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	Draft Conservation Agreement Reference	Comment
8.	Clause 3.6	This clause obliges the land holder to manage the cultural resources and natural resources in accordance with this agreement. Consistent with our submission above, CAPL submits that the definition of "natural resources" refer to Schedule 2 of the agreement and that the word "minerals" be deleted from it.
9.	Clause 4	As this clause is presently drafted, it appears to operate in concert with the definition of "Threatening Process" to require the reporting of activities which are: • already contemplated and approved by the conservation agreement at the time it is entered into, and/or • duly authorised by the terms of the conservation agreement, regulation, statute or relevant governmental authorities. CAPL submits that this clause should be redrafted so as to not require the reporting of activities which are authorised by the conservation agreement, a mining tenement, relevant government authorities or other applicable permits and licenses. Reference should also be included in this clause to Threatening Processes identified by parties other than the land holder and require the land holder to similarly notify the EPA. For example, if a party that is not a party to the conservation agreement becomes aware of what it considers to be a Threatening Process and notifies the land holder, the land holder should be obliged, in turn, to pass such notification to the EPA for discussion.

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	Draft Conservation Agreement Reference	Comment
10.	Clause 8	This clause refers to: • financial assistance specified at Item 8 of Schedule 1, which is nil; • works which are defined by reference to Item 3 of Schedule 6, which is empty; • the location of works on the map attached at Schedule 7, which is empty; and • a requirement that works be completed by a completion date, which is not defined. It is unclear whether this clause is intended to be inoperative or whether the agreement is simply incomplete. If the former, CAPL submits that this clause be deleted. If the latter, CAPL requests a copy of the complete agreement without these omissions.

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	Draft Conservation Agreement Reference	Comment
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	Draft Conservation Agreement Reference	Comment
		(b) neither party will use this Agreement or the declaration of the Land as a Nature Refuge (or any related thing) as a ground of objection to any Mineral or Petroleum Approvals or Operations; (c) this Agreement and the declaration of the Land as a Nature Refuge (or any related thing) does not and will not operate to derogate from the rights conferred by any Mineral or Petroleum Approvals or Operations; and (d) the Landholder will not utilise the terms of this Agreement or the declaration of the Land as a Nature Refuge (or any related thing) in relation to any determination of compensation payable in relation to the grant or operation of any Mineral or Petroleum Approvals or Operations.
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	Draft Conservation Agreement Reference	Comment
16.	Schedule 8	Again, CAPL is concerned that the data referred to in this schedule is technically inaccurate and requests that the information and scientific data upon which Schedule 8 is based should be provided to it. It is also important that the schedule refer only to those species found within the land area, rather than those which have simply been observed in adjacent areas which do not exist under the land holder's lease. At 2(c) of the subsection titled "Summary of Significant/Of Concern Ecosystems and rare, threatened, or other plant and wildlife species of concern" at p 41 of 65, the statement "*None of the ecologically significant Wenlock River is currently covered by any protected area status"* is inaccurate. A new Indigenous Protected Area covers 197,000 ha on the lands of the Kaanju people (held by the Chululangun Aboriginal Corporation) which incorporates a significant proportion of the catchment area of the upper Wenlock river. As to p 54 of 65, it is stated that the Witherspoon sublease is attached to the Management Plan. CAPL does not have a copy of the sublease referred to and seeks a copy of it as well as the "comprehensive property management plan prepared by Sally Witherspoon". At p 55 of 65, the statement "the balance of the property" seems to indicate that the Management Plan put forward by the land holder will actively exclude the area on which cattle grazing will occur from a requirement to comply with the objectives of the Management Plan. In the first instance, CAPL submits that this area of the land should be subject to cattle industry standard property management planning practices and duly be approved by the relevant government agencies. Secondly, if the intention is for the the cattle grazing area to be excluded from the conservation objectives outlined in the Management Plan, CAPL submits that the area over which it holds exploration permits, should likewise be excluded from the Management Plan. As to the Stage One Implementation Strategy - CAPL is concerned that the Witherspoons are being disproportionately relied upon for information and data regarding the area when properly qualified experts should be relied upon for such advice. In respect to p 61 of 65 at (g) "Liaison with Stakeholders", CAPL requests that it be listed as a stakeholder in this process. As regards to p 62 of 65, the role of the designated "Links" should be identified and the accuracy of the details listed checked.

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	Draft Conservation Agreement Reference	Comment
17.	Schedule 9	CAPL is seeking a copy of the entire agreement between the Commonwealth and Silverback Properties Pty Ltd in relation to "financial assistance for the grant or acquisition of a leasehold interest in land to establish a private protected area which will be part of the National Reserve System". An extract of the agreement is included in the draft conservation management agreement at schedule 9. Because the conservation agreement defines the term "Agreement" as including all the schedules, it is important that CAPL is provided with a copy of the complete agreement between the Commonwealth and SPPL rather than simply an extract of the agreement.
18.	-	**Landholder's obligation to consult with affected parties** The NCA acknowledges the importance of, and requires, consultation by the Minister with other interested parties before entering into the conservation agreement with the land holder. However, it appears from the proposed agreement that once the agreement is entered into the requirement to consult with other affected parties effectively stops. In the interest of transparency, CAPL submits that there should be an ongoing obligation placed on the land holder to consult with other parties affected by the implementation of the conservation agreement. At the least, a procedure should be put in place which requires the land holder to notify interested parties of actions taken pursuant to the agreement which will bear upon the use of the land by others. CAPL also submits that the land holder should include with the conservation agreement its consultation program for the life of the agreement.

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	Draft Conservation Agreement Reference	Comment
19.	-	**Acknowledgement of CAPL** There is no reference throughout the proposed conservation agreement of CAPL, despite its interest in the land through its exploration and environmental assessment activities. There is presently a highly visible and transparent process being undertaken by CAPL - its Environmental Impact Statement - which is being performed by professional environmental scientists and traditional owners, and comprises the most comprehensive assessment of environmental values in that area ever undertaken, yet the conservation agreement makes no reference to this. The agreement should acknowledge the use of the land by CAPL for mineral exploration activities and environmental studies, the foreshadowed mining activities, the EIS being undertaken and the current mining lease applications made by CAPL.
20.	-	**Public availability of collected data and research** As public funds have contributed to the activities planned on the land, CAPL submits that the data collected and research undertaken should be made available for public access. The land holder should readily share scientific information on its biodiversity management of the land together with its conservation and land use management to all stakeholders.

Please do not hesitate to contact **Paul Messenger** if you wish to discuss our submission.

Yours faithfully,

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Paul Messenger

CEO

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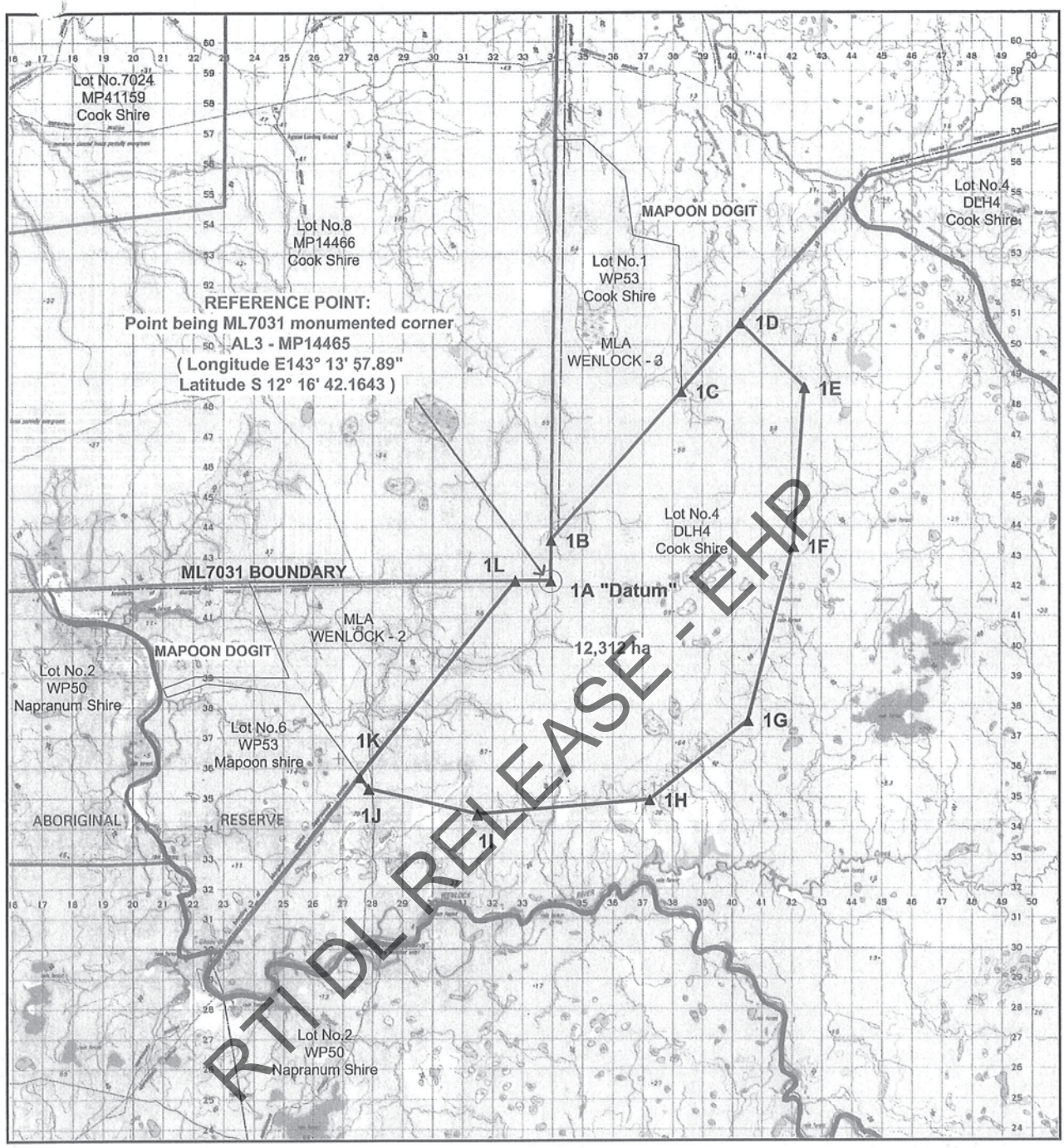


CORNER POINTS FOR APPLICATION AREA
(Degrees, Minutes, Seconds: GDA94)

FINAL_NO_1	GDA_LNG_DM	GDA_LAT_DM
1A	142° 13' 57.89"	-12° 16' 42.1643"
1B	142° 13' 58.09"	-12° 15' 58.1003"
1C	142° 16' 20.748"	-12° 13' 17.724"
1D	142° 17' 26.3296"	-12° 12' 03.9709"
1E	142° 18' 37.3032"	-12° 13' 13.0404"
1F	142° 18' 26.6364"	-12° 16' 04.3248"
1G	142° 17' 37.1940"	-12° 19' 12.774"
1H	142° 15' 47.9808"	-12° 20' 38.3604"
1I	142° 12' 38.2212	-12° 20' 54.6324"
1J	142° 10' 37.9272"	-12° 20' 27.762"
1K	142° 10' 27.8292"	-12° 20' 14.6472"
1L	142° 13' 18.759"	-12° 16' 42.3574"

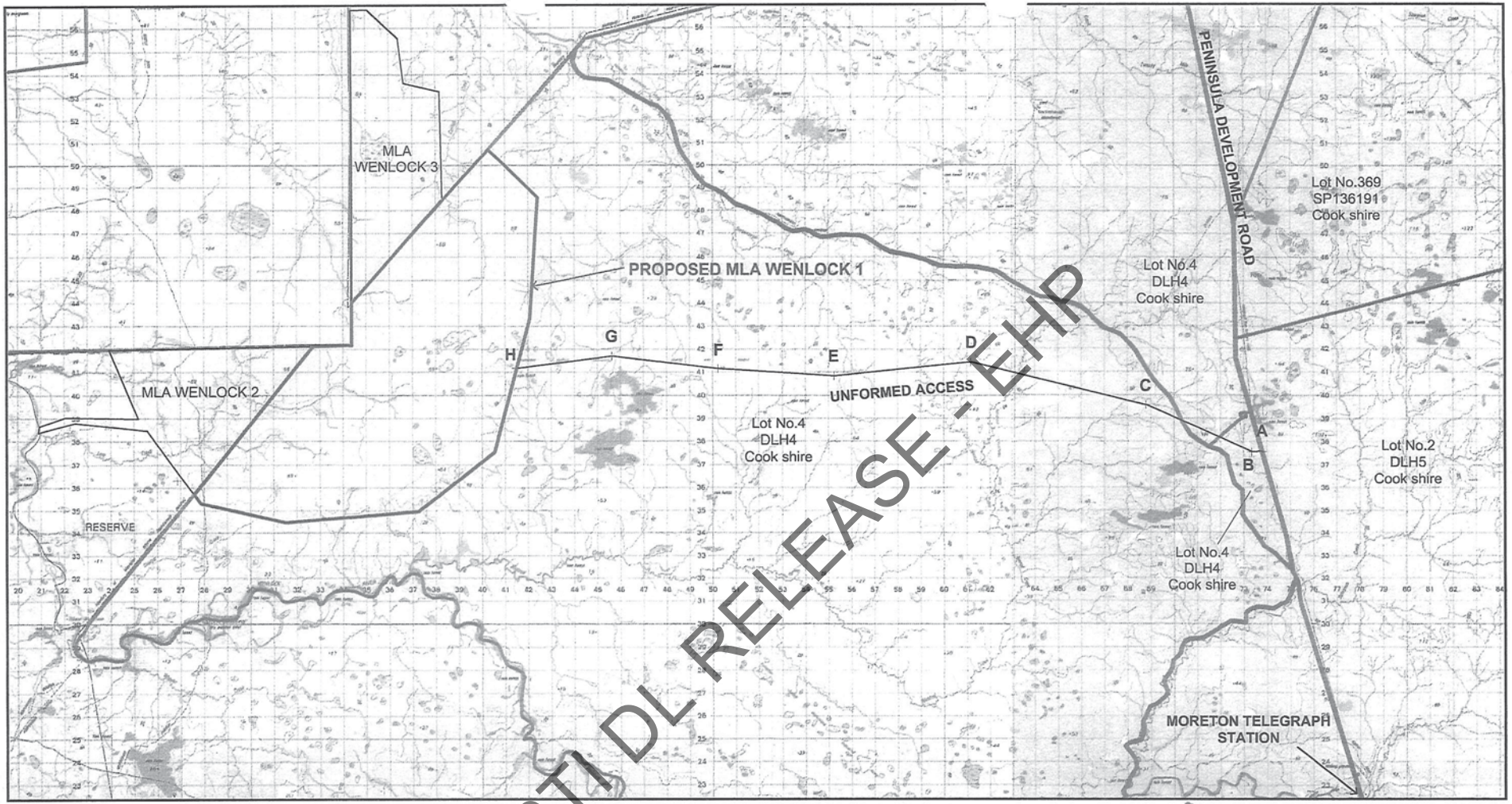
Cape Alumina Pty Ltd

MLA **WENLOCK 1**

PROPOSED MINING LEASE APPLICATION

COMPILED BY	P. MESSENGER	AUG 07	SCALE 1: 200,000	MAP A
DRAFTED BY	K.J.CORRIE	AUG 07	Proj.:MGA94 ZONE54	
REVISED	K.J.CORRIE	OCT 07	DWG No :	

Release



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point	east_mga	north_mga	long_dec	lat_dec	lon_dms	lat_dms
A	673,922	8,637,745	142.599	-12.3182	142,35,57.822	-12,19,5.4336
B	673,463	8,637,731	142.595	-12.3183	142,35,42.6336	-12,19,5.9628
C	668,901	8,639,770	142.553	-12.3001	142,33,11.232	-12,18,0.5004
D	661,341	8,641,592	142.484	-12.2841	142,29,0.7188	-12,17,2.58
E	655,402	8,640,998	142.429	-12.2897	142,25,44.256	-12,17,22.956
F	650,380	8,641,308	142.383	-12.2871	142,22,58.0116	-12,17,13.7076
G	645,777	8,641,848	142.34	-12.2825	142,20,25.5768	-12,16,56.892
H	641,633	8,641,322	142.302	-12.2874	142,18,8.5032	-12,17,14.6868

Cape Alumina Pty Ltd

MLA WENLOCK 1

PROPOSED MINING LEASE ACCESS

0 2 4 6 8 10 Km

1:250,000

COMPILED BY	P. MESSENGER	SEP 07	SCALE 1: 250,000	MAP B
DRAFTED BY	K.J.CORRIE	SEP 07	Proj.:MGA94 ZONE54	
REVISED			DWG No :	

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BNE 33142 V2
VOL 1

CapeAlumina

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| Office: Suite 309, 320 Adelaide St, Brisbane QLD 4000 |

The Hon Andrew McNamara, MP
Minister for Sustainability, Climate Change
and Innovation
160 Ann Street
BRISBANE QLD 4000

ENVIRONMENTAL PROTECTION AGENCY
05 NOV 2008
BNE 280 8/13829

Attention: Mr Tim Ellis
Director
Tenure Actions Branch
Environmental Protection Agency
PO Box 15155
City East, Qld, 4002

23 October 2008

Dear Sir

SUBMISSION OF CAPE ALUMINA PTY LTD
Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge on Lot 4 on DLH4 (Bertiehaugh Pastoral Holding)

We refer to the letter dated 8 September 2008 from your Tim Ellis to Cape Alumina Pty Ltd (**CAPL**) inviting submissions in relation to the Minister's proposal to enter into a conservation management agreement for a nature refuge on Lot 4 on DLH4.

A draft conservation agreement between the State of Queensland and Silverback Properties Pty Ltd (as trustees of the Terri Irwin Family Trust) upon which the nature refuge declaration will be made was included in the 8 September 2008 letter.

CAPL has existing exploration permits for minerals (EPM14547 and EPM15278) pertaining to the area proposed to be included within the proposed nature refuge and has made application for mining leases over the relevant land. It is concerned to ensure that the establishment of the proposed nature refuge and the operation of the associated conservation agreement will be consistent with all intended uses for the land, including those held by CAPL.

For reasons elaborated below, CAPL does not consider that land pertaining to its exploration permits should be included in the land dedicated for nature refuge status as:

- CAPL does not consider that the ecological status of this land meets the criteria for a nature refuge;
- Declaration of a nature refuge over land pertaining to its exploration permits is not justified given CAPL's existing and intended use of the land;
- There is no reference in the proposed conservation agreement to CAPL and its interests in the land; and

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- The proposed zones identified in the conservation agreement are unacceptably vague as the preservation of natural resources and are in conflict with CAPL's right to conduct existing exploration and future mining interests.

CAPL's overarching submission is that the boundary of the proposed nature refuge area should be amended so as to exclude the region in relation to which CAPL has applied to be declared a mining lease. That area encompasses 12,312 ha and is described by the **attached** map marked "Map A". The location of the start datum point of the land is ML 7031 monumented corner AL3 - MP14465 (Longitude 142°13'57.8896" E; Latitude 12°16'42.1643" S) and is marked "1A".

CAPL also seeks the exclusion from the nature refuge of the access routes required to reach the above land. Also **attached** and marked "Map B" is a map which displays the start point of the access route required. That start point is marked point "A" on the Peninsula Development Road 15.93 km from the Moreton Telegraph Station and the end point is marked "H" on the eastern boundary.

In relation to the draft conservation agreement, CAPL provides the following comments on the specific terms proposed:

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	Draft Conservation Agreement Reference	Comment
1.	Recital A	CAPL believes that the ecological status of the land would not meet the criteria for a nature refuge. This is because: • the predominant vegetation type on the land is Darwin Stringybark Woodland (*Eucalyptus tetradonta*), which is the most common vegetation type on the Cape York Peninsula and is not considered to be of conservation value under either Queensland or Commonwealth environmental legislation; • Queensland Government vegetation mapping for the Bertiehaugh Station land shows no endangered regional ecosystems occurring on the property; • the Queensland Heritage Register shows that there are no areas considered worthy of protection on the Bertiehaugh Station land pursuant to the *Queensland Heritage Act* 1992 (Qld); • the land has been run and operated as a cattle station for many years. This past and intended future land use, together with the attendant pest infestations (eg feral pigs) is demonstrative that the land is not pristine wilderness. Furthermore, the vegetation type known as "Bertiehaugh Dry Vine Forest", as listed on the Commonwealth Register of the National Estate, has been nominated by the landholder as one of its main targets for conservation. Importantly, CAPL's environmental studies on the land have concluded that there are no examples of this particular vegetation type on the land over which it seeks to be declared as a part of a mining lease. CAPL considers this lends support to its submission that the area sought to be included by CAPL in a mining lease should be excised from the nature refuge. We refer to our further comments at Tab 13 in relation to Schedule 2 of the NCA.

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	Draft Conservation Agreement Reference	Comment
2.	Recital C	This recital notes that the EPA has obtained the written consent from all persons who, at the date of the agreement, have the benefit of a lease, mining interest or other encumbrance over the land and whose rights under that lease, mining interest or encumbrance will be materially affected by the land holder entering into this agreement. It should be noted that CAPL has not received a complete copy of the draft agreement, including complete schedules as referred to below. In order to provide its written consent to the agreement, CAPL will need to be informed of any amendments to the agreement which are negotiated between the parties to the agreement and interest holders. CAPL will also require a complete copy of the final agreement.
3.	Clause 1.1 definition "natural resources"	The natural resources of the land are purportedly specified in Schedule 2 of the agreement. It seems inconsistent to provide an additional broad definition of "natural resource" here which encompasses all minerals on the land. In conjunction with the operation of clause 3.2, the implication appears to be that the land holder will be obliged to manage the minerals in the land. In CAPL's submission, this is not legally correct. The *Mineral Resources Act* 1989 confirms that the management of the State's mineral resources rests with the Crown and is managed pursuant to that piece of legislation. CAPL therefore submits that the definition of "natural resources" should be amended so that the word "minerals" is deleted and reference be made to the natural resources listed in Schedule 2 of the agreement.
4.	Clause 1.1 definition "works"	The definition of "works" refers to Item 3 in Schedule 6. Schedule 6 is currently empty. Is the schedule intended to be populated? If so, could a copy of the intended schedule please be provided to CAPL?
5.	Clause 3.2	CAPL is concerned that this clause should more accurately reflect the legislative provision. Clause 3.2 should restate the Management Principles of Nature Refuges specified at section 22 of the NCA.
6.	Clause 3.3	As the lease conditions are incorporated into the agreement to the extent of any inconsistency, it is important that CAPL be provided with a complete copy of the lease referred to at clause 3.3(c).
7.	Clauses 3.4 and 3.5	CAPL submits that it should also receive the benefit of notice regarding the nature refuge declaration, a Declared Management Intent and a Management Plan.

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	Draft Conservation Agreement Reference	Comment
8.	Clause 3.6	This clause obliges the land holder to manage the cultural resources and natural resources in accordance with this agreement. Consistent with our submission above, CAPL submits that the definition of "natural resources" refer to Schedule 2 of the agreement and that the word "minerals" be deleted from it.
9.	Clause 4	As this clause is presently drafted, it appears to operate in concert with the definition of "Threatening Process" to require the reporting of activities which are: • already contemplated and approved by the conservation agreement at the time it is entered into; and/or • duly authorised by the terms of the conservation agreement, regulation, statute or relevant governmental authorities. CAPL submits that this clause should be redrafted so as to not require the reporting of activities which are authorised by the conservation agreement, a mining tenement, relevant government authorities or other applicable permits and licenses. Reference should also be included in this clause to Threatening Processes identified by parties other than the land holder and require the land holder to similarly notify the EPA. For example, if a party that is not a party to the conservation agreement becomes aware of what it considers to be a Threatening Process and notifies the land holder, the land holder should be obliged, in turn, to pass such notification to the EPA for discussion.

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	Draft Conservation Agreement Reference	Comment
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	Draft Conservation Agreement Reference	Comment
16.	Schedule 8	Again, CAPL is concerned that the data referred to in this schedule is technically inaccurate and requests that the information and scientific data upon which Schedule 8 is based should be provided to it. It is also important that the schedule refer only to those species found within the land area, rather than those which have simply been observed in adjacent areas which do not exist under the land holder's lease. At 2(c) of the subsection titled "Summary of Significant/Of Concern Ecosystems and rare, threatened, or other plant and wildlife species of concern" at p 41 of 65, the statement *"None of the ecologically significant Wenlock River is currently covered by any protected area status"* is inaccurate. A new Indigenous Protected Area covers 197,000 ha on the lands of the Kaanju people (held by the Chuulangun Aboriginal Corporation) which incorporates a significant proportion of the catchment area of the upper Wenlock river. As to p 54 of 65, it is stated that the Witherspoon sublease is attached to the Management Plan. CAPL does not have a copy of the sublease referred to and seeks a copy of it as well as the "comprehensive property management plan prepared by Sally Witherspoon". At p 55 of 65, the statement "the balance of the property" seems to indicate that the Management Plan put forward by the land holder will actively exclude the area on which cattle grazing will occur from a requirement to comply with the objectives of the Management Plan. In the first instance, CAPL submits that this area of the land should be subject to cattle industry standard property management planning practices and duly be approved by the relevant government agencies. Secondly, if the intention is for the the cattle grazing area to be excluded from the conservation objectives outlined in the Management Plan, CAPL submits that the area over which it holds exploration permits, should likewise be excluded from the Management Plan. As to the Stage One Implementation Strategy - CAPL is concerned that the Witherspoons are being disproportionately relied upon for information and data regarding the area when properly qualified experts should be relied upon for such advice. In respect to p 61 of 65 at (g) "Liaison with Stakeholders", CAPL requests that it be listed as a stakeholder in this process. As regards to p 62 of 65, the role of the designated "Links" should be identified and the accuracy of the details listed checked.

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	Draft Conservation Agreement Reference	Comment
17.	Schedule 9	CAPL is seeking a copy of the entire agreement between the Commonwealth and Silverback Properties Pty Ltd in relation to "financial assistance for the grant or acquisition of a leasehold interest in land to establish a private protected area which will be part of the National Reserve System". An extract of the agreement is included in the draft conservation management agreement at schedule 9. Because the conservation agreement defines the term "Agreement" as including all the schedules, it is important that CAPL is provided with a copy of the complete agreement between the Commonwealth and SPPL rather than simply an extract of the agreement.
18.	-	**Landholder's obligation to consult with affected parties** The NCA acknowledges the importance of, and requires, consultation by the Minister with other interested parties before entering into the conservation agreement with the land holder. However, it appears from the proposed agreement that once the agreement is entered into the requirement to consult with other affected parties effectively stops. In the interest of transparency, CAPL submits that there should be an ongoing obligation placed on the land holder to consult with other parties affected by the implementation of the conservation agreement. At the least, a procedure should be put in place which requires the land holder to notify interested parties of actions taken pursuant to the agreement which will bear upon the use of the land by others. CAPL also submits that the land holder should include with the conservation agreement its consultation program for the life of the agreement.

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	Draft Conservation Agreement Reference	Comment
19.	-	**Acknowledgement of CAPL** There is no reference throughout the proposed conservation agreement of CAPL, despite its interest in the land through its exploration and environmental assessment activities. There is presently a highly visible and transparent process being undertaken by CAPL - its Environmental Impact Statement - which is being performed by professional environmental scientists and traditional owners, and comprises the most comprehensive assessment of environmental values in that area ever undertaken, yet the conservation agreement makes no reference to this. The agreement should acknowledge the use of the land by CAPL for mineral exploration activities and environmental studies, the foreshadowed mining activities, the EIS being undertaken and the current mining lease applications made by CAPL.
20.	-	**Public availability of collected data and research** As public funds have contributed to the activities planned on the land, CAPL submits that the data collected and research undertaken should be made available for public access. The land holder should readily share scientific information on its biodiversity management of the land together with its conservation and land use management to all stakeholders.

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Please do not hesitate to contact **Paul Messenger** if you wish to discuss our submission.

Yours faithfully,

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Paul Messenger

CEO

BNE 55142
VOL 2
V2

Cape York Land Council
ABN 22 965 382 705
Aboriginal Corporation ICN 1163

ENVIRONMENTAL PROTECTION AGENCY
23 OCT 2008
BNE 200 8/13379

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Our Ref: OT316

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

20 October 2008

Mr Tim Ellis
Director
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000

FAXED 20/10/08

BY FACSIMILE: (07) 3227 7237

WITHOUT PREJUDICE EXCEPT AS TO COSTS
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RTI DL RELEASE - EHP

Dear Mr Ellis,

RE PROPOSED DECLARATION OF NATURE REFUGE OVER BERTIEHAUGH PASTORAL HOLDING - LOT 4 ON PLAN DLH4

We acknowledge receipt of your correspondence of 9 October 2008.

Thank you for your advice that the Minister will respond to the details contained within our correspondence dated 31 July 2008 and 24 September 2008 directly to CYLC Chairman Michael Ross and CYLC CEO Peter Callaghan. We thank the Department for now directing its attention to the concerns that have been expressed by CYLC regarding the possible dedication of the Nature Refuge.

CYLC would welcome further engagement with the Department on this matter in the future.

Yours faithfully
CAPE YORK LAND COUNCIL

ANN DANIEL
PRINCIPAL LEGAL OFFICER

V2

Office of the Premier

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Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

For reply please quote: *ERP/NL01 – TF/08/10126 – DOC/08/27934*

15 OCT 2008

RECEIVED
20 OCT 2008
OFFICE OF THE MINISTER
REF:

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Dear [redacted]

Thank you for your email of 4 September 2008 concerning the Steve Irwin Wildlife Reserve on the Cape York Peninsula. I have been requested to reply to you on the Premier's behalf.

Please be assured the Premier has noted your strong support for the establishment of the Reserve, which is proposed on the Bertiehaugh pastoral lease by current owners, Silverback Pty Ltd (Silverback). The Premier also notes your concerns about the potential impacts of proposed bauxite mining (known as the Pisolite Hills Project), on a portion of the Bertiehaugh lease.

The Queensland Government is supportive of Silverback's proposal to establish a nature refuge on the Bertiehaugh pastoral lease and will continue to work closely with Silverback and other stakeholders towards developing a conservation agreement for the site.

B/C **The Honourable the Minister for Sustainability, Climate Change and Innovation.**

By direction. For your information.
Copy of inwards correspondence is attached.

[redacted]

Nick Williams
Senior Policy Advisor

RTI DL RELEASE - EHP

Queensland Government

The Queensland Government is also committed to ensuring that mining in this State occurs in an environmentally responsible manner, and that all potential impacts of the Pisolite Hills Project will be fully considered before any decision is made on issuing mining production tenure. Further details on this project, including opportunities for public input to the environmental impact assessment process, are available online at www.epa.qld.gov.au/environmental_management/impact_assessment/current_eis_processes.

I have also provided a copy of your email to the Honourable Andrew McNamara MP, Minister for Sustainability, Climate Change and Innovation and the Honourable Ian Wilson MP, Minister for Mines and Energy, for their information.

Again, thank you for bringing this matter to the Premier's attention.

Yours sincerely

Phil Reeves MP
Parliamentary Secretary to the Premier of Queensland

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Lorelle Wallis

From: sch4p3(3) Prejudice the protection of an individuals right to privacy
Sent: Thursday, 4 September 2008 3:27 PM
To: The Premier
Subject: Steve Erwin wild life sanctury cape york.

[redacted]

Hon Anna Bligh

As a person that has worked for the past 55 years and I'am an active person. I find it very disappointed to read your party talks with a twisted tong. Our population is growing at a rapid rate and we have to think of our young people and the heritage we leave our children.

My main concern is Steve Erwin wild life sanctuary at Cape York to allow it to be mined than leaving the land after raping it. You are the law and you can change the rules. This may be a small parcel of land if you keep giving our land to the mining companies our children will have nothing to be proud about. We already have to many large hole's in our country for what money no one thinks about our children, future generation's.

Hon. Anna Bligh have a heart for our future Children.

Awaiting you fruitful reply,

[redacted]

RTI DL RELEASE-EHP

Enquiries Tim Ellis
Telephone (07) 3227 6198
Your reference
Our reference BNE33142-2

9 October 2008

Ann Daniel
Principal Legal Officer
Cape York Land Council
PO Box 2496
Cairns QLD 4870

Dear Ms Daniel

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE LAND: LOT 4 on PLAN DLH4

I refer to your letter of 31 July 2008, and subsequent correspondence to the Minister for Climate Change, Sustainability and Innovation on 24 September 2008 and 3 October 2008. The Minister acknowledges receipt of this correspondence and will respond to the specifics contained within the letters in a separate reply to be addressed to Michael Ross and Peter Callaghan.

As requested, enclosed is a copy of the proposed conservation agreement between the State (represented by the EPA) and Silverback Properties Pty Ltd to establish the Steve Irwin Wildlife Reserve Nature Refuge.

Should you have any further enquiries please do not hesitate to call me (07) 3227 6198.

Yours sincerely

Tim Ellis
Director

RTI DL RELEASE - EHP

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Queensland 4000 Australia
Telephone (07) 3227 6198
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Release

V2

REFER BNE 2008/12214

BNE38142-2

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COPY

Facsimile

BNE200 8/12736

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To:	The Honourable Andrew McNamara, MP Minister for Climate Change, Sustainability and Innovation	**Fax:**	(07) 3227 6309
To:	Tim Ellis Environmental Protection Agency	**Fax:**	(07) 3227 7237
To:	The Honourable Craig Wallace, MP Minister for Natural Resources and Water	**Fax:**	(07) 3210 6214
		Date:	3 October 2008
From:	Michelle Cohen		
Re:	PROPOSED DECLARATION OF A NATURE REFUGE OVER THE BERTIEHAUGH PASTORAL PROPERTY - LOT 4 ON PLAN DLH4		
Pages:	Twenty (20) including this page.		

Please find letter attached for your attention.

Yours faithfully
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

Darinka Zivkov
Legal Secretary

RECEIVED
7 OCT 2008
MCU
EPA

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2008 10 03 Fax cover to Minister & EPA

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Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

3 October 2008

The Honourable Andrew McNamara, MP
Minister for Climate Change, Sustainability and Innovation
PO Box 15155
BRISBANE QLD 4002
By facsimile: (07) 3227 6309

RTI DL RELEASE - EHP

WITHOUT PREJUDICE EXCEPT AS TO COSTS
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Dear Minister McNamara

PROPOSED DECLARATION OF A NATURE REFUGE OVER THE BERTIEHAUGH PASTORAL PROPERTY - LOT 4 ON PLAN DLH4

We refer to our letter of 24 September 2008, a copy of which is attached for ease of reference.

We wrote to Tim Ellis, Director, EPA on this same topic on 31 July 2008. We have received no acknowledgement or response to that letter, of which a copy is also attached.

We understand that an Environmental Management Plan for Bertiehaugh has been circulated for comment (but not to CYLC or Traditional Owners). We are, in consequence, concerned that we are perhaps being met with silence whilst the State is proceeding by stealth to dedication of a Nature Refuge.

As you may be aware Cape York Land Council (on behalf of the Traditional Owners) and Silverback Properties Pty Ltd have both committed to an ILUA process. It is our view that there may be value in this issue and any other Future Acts presently under consideration by the State being included in that process.

In these circumstances, we must ask that you please let us have within 14 days, a response to the matters raised in our correspondence or assurance that no further steps will be taken towards such dedication until the lapse of 14 days after either:-

(a) We receive a substantive response to our correspondence; or

(b) You inform us that such a dedication is proposed without us having such a response.

We have sought to make it clear that we wish to address our serious concerns in relation to the matters that we have raised by discussion with the State and your early favourable response to our above request will avoid the need for urgent recourse to litigation to protect the rights and interests of the Traditional Owners.

Please contact Michelle Cohen if you or your staff wish to discuss this letter.

Yours faithfully
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

MICHAEL ROSS
CHAIRPERSON
Enc

CC: Mr Tim Ellis
Director
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000
By facsimile: (07) 3227 7237

The Honourable Craig Wallace, MP
Minister for Natural Resources and Water
PO Box 15456
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CAPE YORK LAND COUNCIL
ABORIGINAL CORPORATION

ICN 1163
ABN 22 965 382 705

32 Florence Street
PO Box 2496
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Phone (07) 4053 9222
Fax (07) 4051 0097

Your ref:
Our ref: FD005

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

24 September 2008

RTI DL RELEASE - EHP

The Honourable Andrew McNamara MP
Minister for Sustainability,
Climate Change and Innovation
PO Box 15155
BRISBANE QLD 4002

By Facsimile: (07) 3227 6309

CONFIDENTIAL & WITHOUT PREJUDICE CORRESPONDENCE

Dear Minister McNamara,

Bertiehaugh Pastoral Property - Commitment to Traditional Owners

We refer to your letter of 4 August 2008.

That correspondence was provided in response to the request of the Traditional Owners of Bertiehaugh Pastoral Holding ("Bertiehaugh") to the Queensland Government, to be treated as registered native title claimants for the next 12 months, so that they are afforded equivalent procedural and other entitlements under the Commonwealth *Native Title Act 1993* (Cth) ("NTA").

Cape York Land Council ("CYLC") appreciates the Queensland Government's commitment to achieving sustainable outcomes for Traditional Owners in Cape York Peninsula, as expressed in the letter, and its preparedness to give consideration to CYLC's request. We hope the matters set out in this letter will assist your assessment.

The request

Firstly, we wish to clarify that our request is a commitment by the Queensland Government (not only the Environmental Protection Agency ("EPA")), to agree to:

> Treat the Traditional Owners of Bertiehaugh as *"registered native title claimants"* under the *Native Title Act 1993 (Cth)* for a period of 12 months from the date of approval of this request (the 'commitment').

Release

Background

Since 1996, CYLC has been working together with the Queensland Government and other parties to bring about tenure outcomes in the Cape York region that recognise native title rights of Traditional Owners whilst protecting other interests, including pastoralists and conservationists.

In particular, we draw your attention to the following progress made:

1. The landmark Cape York Heads of Agreement signed in February 1996 by representatives of Traditional Owners, pastoralists, environmental interests, ratified by the Commonwealth Government and to which the Queensland Government joined as signatory in 2001, laid a common foundation for agreement-making between stakeholders in the region.
   Under the Agreement, a number of pastoral properties were earmarked for eventual purchase for the Traditional Owners, including Bertiehaugh.
2. To date, in the Cape York Peninsula:
   - Approximately 26 Aboriginal Land Trusts have been established holding over 40 properties;
   - 7 native title determinations have been made;
   - 31 native title claims have been lodged;
   - 37 Indigenous Land Use Agreements have been registered;
   - Two National Parks (Aboriginal Cape York Peninsula) have been created under the *Cape York Peninsula Heritage Act 2007*;
   - Three regions are currently contemplated to be the subject of negotiations with the Queensland and Commonwealth Governments as part of discussions regarding broader native title outcomes in Cape York Peninsula.

In CYLC's view, it is now accepted by virtually all stakeholders in the Cape York region that consideration of native title interests is a standard part of any decision as to land tenure and land use in the region. We note that Cape Alumina Pty Limited, which has a mining lease application over Bertiehaugh, is in the process of negotiating an Indigenous Land Use Agreement with the Traditional Owners. Indigenous Land Use Agreements ("ILUAs") are CYLC's preferred method of dealing with acts which affect native title rights and issues. Negotiation of an ILUA creates an agreement that binds native title claimants and achieves certainty for all of ILUA parties, and has the ability to deliver broader outcomes to native title claimants.

Bertiehaugh falls within the North West Cape York Peninsula region which has been the subject of recent discussion between the Commonwealth Attorney-General, the Queensland Minister for Natural Resources and Water and the Chairperson of CYLC, in relation to securing broader native title outcomes in Cape York Peninsula. It is against this background that CYLC makes the present request for Traditional Owners of Bertiehaugh to be treated as *"registered native title claimants"* under the NTA. CYLC hopes that in doing so, the parties will avoid the need to expend considerable resources in lodging a native title claim - to achieve a result which, in all likelihood, would ensue in a few years' time, with the result that certain acts being done now may subsequently be declared as invalid "future acts" at that time.

Information requested

In your letter of 4 August 2008, you request further information in order to assess the benefits and associated costs involved in providing this undertaking to Traditional Owners for the land subject to Bertiehaugh.

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That further information is now set out below:

(a) Details, including names of those persons to whom such a commitment, if given, would apply

The commitment by the Queensland Government, if given, would apply to the Traditional Owners of Bertiehaugh.

CYLC has engaged in notification and community consultation for the purpose of identifying and providing information and advice to Traditional Owners of Bertiehaugh regarding the acquisition of the property and the possible consequential affects upon native title rights and interests that exist over that area for a period of one year. The Traditional Owners that CYLC has consulted with assert that they hold native title rights and interests over the whole of the area subject to the Bertiehaugh Pastoral Holding by virtue of their descent from their predecessors, who had an association with the area and the land adjacent to it. The Traditional Owners assert that they carry on, and their predecessors carried on, over the claim area, activities such as to fully exercise those rights and interests, including all such activities that are necessary or incidental to the sustenance of human life and society. The group also asserts that they observe traditional laws and customs which include the observance of laws relating to tenure and traditional land use and custom.

For the present purpose of the commitment, CYLC believes that the Traditional Owners of Bertiehaugh would include people who identify as:

a) the Atamabya;
b) the Taepadhighi;
c) the Tjungundji;
d) the Mbuckwithi;
e) the An(g)kamuthi Seven Rivers; and
f) any other groups or persons as may be identified by further ongoing notification, community consultation and anthropological study in the 12 months from the date of approval of the commitment.

These persons are represented on a Steering Committee nominated by Traditional Owners who have attended CYLC consultations. The Steering Committee has the authority to deal with all land dealings concerning Bertiehaugh on behalf of the group that has nominated them and consists of the following persons:

Alison Sailor	Priscilla Billy
Bernard Charlie	Cecil Arthur
Richard Woosup	Gina Nona
Walter Moses	Troy Barba
Clara Day	Rhonda Parry
Neville Motton	Mary-Anne Coconut

Any contact that is required by any State entity with the Steering Committee members pursuant to any relevant legislation can be arranged or facilitated by or through CYLC.

For the purposes of section 29 of the NTA, notices should be directed to the Future Acts Officer at CYLC as the Registered Native Title Representative Body, and the named members of the Steering Committee with CYLC being their address for service. This is consistent with position of Registered Native Title Determination Applications where CYLC acts for the Applicants.

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(b) Level of formality and enforceability expected by Traditional Owners to such a commitment

The Traditional Owners of Bertiehaugh would expect to be treated by the Queensland Government as if they have the same procedural rights and other benefits afforded under the NTA, as if an authorised Applicant had lodged, on their behalf, a native title determination application pursuant to section 62 of the NTA, that was also accepted for registration by the Registrar of the National Native Title Tribunal pursuant to section 190B of the NTA, for a period of 12 months starting from the date of the giving of the commitment.

Regarding enforceability, as discussed above, the proposed commitment is in the form of agreement between the Government and the Traditional Owners, and would be binding *inter partes* between the Government and the Traditional Owners. If, and to the extent that commitment affects third parties who are also involved in the same governmental processes, Traditional Owners would be able to communicate that commitment and rely upon it in correspondence with third parties, in all matters relating to Bertiehaugh, including in all negotiations and agreement-making.

In relation to formality, in our view an exchange of letters between the Queensland Government and CYLC confirming that the Queensland Government guarantees to afford these rights to Traditional Owners of Bertiehaugh would be the appropriate manner by which the Queensland Government can express this commitment to Traditional Owners.

(c) Nature of the relevant dealings under the *Nature Conservation Act 1992* (Qld) ("NCA") that Traditional Owners are anticipating in the proposed 12 month period

The only matter we are presently aware of is the proposed declaration by regulation of Bertiehaugh as a Nature Refuge under the *Nature Conservation Act 1992 (Qld)*, and any other dealings that may arise in relation to the declaration.

(d) Based on those relevant dealings under the NCA, the procedural and other entitlements under the NTA and the NCA that are otherwise anticipated to be received by those persons

As noted above, Traditional Owners of Bertiehaugh would expect to be treated as if they have the same procedural rights and other benefits afforded to a *"registered native title claimant"* under the NTA, namely, as if an authorised Applicant had lodged, on their behalf, a native title determination application that was also accepted for registration by the Registrar of the National Native Title Tribunal.

It would be difficult to exemplify all specific procedural rights attaching to the status of *"registered native title claimants"*. As noted above, CYLC and Traditional Owners cannot entirely anticipate what activities are proposed to occur on Bertiehaugh that will affect the native title rights and interests of Traditional Owners. In the least, we would expect that if the commitment is given, the Traditional Owners would be entitled to the following rights in relation to the processes currently known to be taking place:

1. Any act which may constitute a "future act" under the NTA, would require that a Future Act notice under section 29 of the NTA be issued to CYLC and Traditional Owner representatives (or a similar document in substance as may be agreed between the parties). In the event that a grant, lease or licence over Bertiehaugh is proposed, we would expect that the Queensland Government would consider any extinguishing affect of the proposed act on the native title right and interest of

RTI DL RELEASE EHP

Traditional Owners and afford them the proper rights and entitlements under the NTA, as if they had a registered native title claim.

2. Notification of the proposal for the Nature Refuge would be required to be given to Traditional Owners under s44 of the *Nature Conservation Act 1992 (Qld)*, by reason of being a "landholder" under that section;
3. Agreement of the Traditional Owners would be required for any conservation agreement to be entered into under s45 of the *Nature Conservation Act 1992 (Qld)*.

We confirm that the commitment described above is sought in exchange for Traditional Owners not filing, for the period of one year, a native title determination application over Bertiehaugh. We reiterate that this commitment is sought in acknowledgment of the Queensland Government's commitment to securing broader native title outcomes in Cape York Peninsula, the current funding constraints being experienced by CYLC as a Native Title Representative Body and the Native Title Ministers Meeting Communiqué of 18 July 2008.

As discussed above, we believe this request will be an efficient outcome for both representative bodies and government entities, so as to avoid the need to expend considerable resources in lodging and litigating a native title application.

Your urgent response and collaboration with other relevant Government departments required to deliver this commitment is appreciated. CYLC or the Traditional Owners' legal advisers in respect of the proposed dedication of the Nature Refuge, Freehills, would be pleased to convene a meeting to discuss our request in order to expedite delivery of this commitment.

Yours Faithfully,
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

CC:

The Honourable Minister Craig Wallace, MP
Minister for Natural Resources and Water
By facsimile: (07) 3220 2475

The Honourable Peter Garrett, MP
Minister for Environment, Heritage and the Arts
By facsimile: (02) 93498089

The Honourable Robert McClelland, MP
Attorney-General of Australia
By facsimile: (02) 6273 4102

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Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

31 July 2008

Mr Tim Ellis
Director
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000

FAXED 31/07/08 15:27

BY FACSIMILE: (07) 3227 7237

WITHOUT PREJUDICE EXCEPT AS TO COSTS
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RTI DLPR EASE - EHP

Dear Mr Ellis

PROPOSED DECLARATION OF A NATURE REFUGE OVER THE BERTIEHAUGH PASTORAL PROPERTY - LOT 4 ON PLAN DLH4

We refer to your letter of 27 June 2008 which advises that the Environmental Protection Agency ("EPA") is proposing to declare a Nature Refuge over the Bertiehaugh Pastoral Property ("Bertiehaugh") under the provisions of the *Nature Conservation Act 1992* (Qld) ("NCA"). CYLC notes that receipt of this correspondence, which is a reply to our letter of 26 May 2008, has crossed over with our further correspondence to the Minister for Sustainability, Climate Change and Innovation dated 1 July 2008, now attached.

Your letter describes the EPA's belief that declaration of a Nature Refuge over Bertiehaugh will not affect the native title rights and interests that exist over that property. Your letter explains that this opinion is premised upon the intention of the EPA to bind only the pastoral lessee to the proposed conservation agreement. The conservation agreement would therefore not bind any other land-holder, including native title holders. Your letter states that the EPA accepts that the term "land-holder", as set out in s 44 of the NCA, may include native title holders and that accordingly, in considering a proposal for the declaration of a Nature Refuge, the EPA must consider the affect of the proposal on native title holders.

The NCA allows the State to declare a Nature Refuge under s 46. The consequence of any such declaration is that the area specified becomes a protected area under the NCA. Except in the case of a compulsory nature refuge, the State and any land-holders must enter into a conservation agreement under s 45 before a Nature Refuge can be declared. A

conservation agreement may be made where the matters specified in NCA s 45(1) are agreed. It may, but need not, contain terms of the kind set out in NCA s 45(4) and (5). Any conservation agreement must be consistent with the management principles for the protected area to which it relates (NCA s 45(3)).

CYLC's view is that the declaration of land subject to a pastoral lease (or subject to another kind of non-exclusive lease or licence) as a Nature Refuge will constitute a future act under the NTA. Therefore, any such declaration and associated conservation agreement must be made with the consent of the traditional owners of the land, and through agreement under an indigenous land use agreement ("ILUA"). Our opinion has been provided to the EPA through various avenues, including by way of correspondence dated 26 May 2008, and directly to Karen Robinson (Advisor to the Minister for Sustainability, Climate Change and Innovation) at a meeting specifically convened to discuss the affect of the declaration of a nature refuge on native title rights and interests in Cairns on 18 June 2008.

The basis for our position is now set out below.

The Native Title Act

CYLC is of the opinion that the approach proposed by the State in relation to the declaration of the Nature Refuge mistakenly assumes that, if the State affects native title contrary to the future act provisions of the NTA that part 2 division 3 subdivision O of the NTA will apply. CYLC believes that this is incorrect.

Section 240A of the NTA provides as follows:

> **240A Future acts invalid unless otherwise provided**
> Unless a provision of this Act provides otherwise, a future act is invalid to the extent that it affects native title.

In the case of the declaration of a Nature Refuge under the NCA, part 2 division 3 subdivision M of the NTA is applicable, as the declaration of a Nature Refuge is an act that may occur over freehold land. The declaration will therefore be classed as a valid act, as provided by s 24MD(1) of the NTA. The effect of classification of the declaration of a Nature Refuge as a valid act within the meaning of s 24MD of the NTA is that native title holders must be afforded the same procedural rights as if they were the freehold owner of the land over which the valid act has occurred (see NTA, s 24MD(6A)). In the case of the declaration of a Nature Refuge, the relevant procedural right is set out within s 46(1) of the NCA. That is, that a conservation agreement must be entered into prior to the declaration of the Nature Refuge where the declaration is proposed to occur over land that is not State land. The only

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alternative manner to declare a Nature Refuge is by way of compulsory declaration under s 49 of the NCA.

The State Government is therefore required to enter into a conservation agreement with native title holders, given that the procedural rights that are conferred by part 2 division 3 subdivision M of the NTA will prevail over those set out within the NCA.

Dedication of a Nature Refuge as a Future Act

Section 69 of the NCA provides that a land-holder is not affected by the declaration of a Nature Refuge except to the extent of a binding conservation agreement, a conservation covenant, or a regulation giving effect to a management plan. CYLC is of the opinion that the capacity to make a regulation giving effect to a management plan means that the declaration of a nature refuge will "affect" native title rights and interests in the manner described within s 227 of the NTA. It would also be possible for a proposed conservation agreement to require or authorise an act to be done that could not otherwise be done under the terms of a pastoral lease, and consequently "affect" native title.

Section 62 of the NCA makes it an offence for a person, other than an authorised person, to take, use, keep or interfere with a cultural or natural resource of a protected area in certain circumstances. This is a further basis on which to regard the declaration of a nature refuge as a future act as it would clearly affect native title rights and interests in the manner described within s 227 of the NCA. Whilst s 62(1)(b) of the NCA does allow for a person to take, use, keep or interfere with cultural or natural resources under a conservation agreement or covenant applicable to that area, no security is provided to native title holders under that subsection where it is not proposed for the native title holding group to become a party to a conservation agreement or other covenant applicable to that area. In addition it may be that s 62 of the NCA will prevail over s 69 of the NCA *expressio unius*, thereby affording no protection to traditional owners that their native title rights and interests will remain unaffected in the event that a Protected Area is created by virtue of the declaration of a Nature Refuge.

In the unlikely event that the declaration of a nature refuge does not "affect" native title, s 10 of the *Racial Discrimination Act 1975* (Cth) would then operate to require that native title holders be a party to a conservation agreement prior to the declaration of a nature refuge.

In addition, CYLC is of the opinion that the State is incorrect to assert that a conservation agreement, once registered, will not be binding upon native title holders. A conservation agreement, once registered under s 134 of the NCA, is binding not only on the land-holders who entered into the agreement and their successors in title, but also persons with an interest in the land, as set

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out within s 51(1) of the NCA. An interest in land is defined in s 36 of the *Acts Interpretation Act 1954* (Qld) as "a legal or equitable interest in the land or other property" or "a right, power, privilege over, or in relation to the land or other property". The CYLC believes that there is nothing within the meaning of the holding of an 'interest in the land' that would exclude rights that arise out of custom and tradition under continuing native title, including usufructuary rights. It is not clear if the proposed conservation agreement for Bertiehaugh will include a provision making it a 'registrable conservation agreement'.

The exclusion of a "land-holder" from a conservation agreement is not permissible under s 45 of the NCA. Rather, all land-holders must be parties for the State to declare a nature-refuge over the land of those land-holders. The specific reference to leaseholders, the holders of mining interests and grantees of encumbrances in s 45(2) presents an implication that these persons are not otherwise regarded as land-holders. It does not suggest that native title holders are not land-holders.

The objects of the NCA

The objects of the NCA provide for the recognition of Aboriginal and Torres Strait Islander interests and their cooperation in conservation, as well as the cooperative involvement of land-holders in conservation. Section 6 of the NCA probably imposes a requirement that all persons exercising powers under the NCA consult and have regard to the views of Aboriginal people, giving rise to a legitimate expectation that the State will consult with traditional owners regarding the declaration of any Nature Refuge. In addition, s 22 of the NCA states that a Nature Refuge must be managed to provide for the interests of the land-holder to be taken into account. As noted above, CYLC is of the opinion that there is nothing within the definition of a "land-holder" that would exclude native title holders.

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As noted in our letter to the Minister of 1 July 2008, CYLC is now considering what action is required to protect the interests of the traditional owners that assert native title rights and interests over Bertiehaugh. Consistent with instructions from our clients in this matter, this may include preparation of a native title determination application over Bertiehaugh or the initiation of injunctive proceedings. You will note however, for the reasons set out in our correspondence to the Minister of 1 July 2008, that CYLC is seeking the cooperation of the State Government to avoid the need to prepare and lodge a native title determination application over Bertiehaugh.

CYLC now requests that the State provide the native title holders of Bertiehaugh with the proposal for the declaration as required by s 44(3) of the NCA by the substituted service mechanism as set out in s 24MD(7) of the NTA. CYLC is of the opinion that the "proposal for declaration" attached to your letter of 27 June 2008 is not a notice for the purposes of s 44(3) of the NCA

because it does not contain a deadline for submissions on the proposal, as required by s 44(4) of the NCA.

CYLC also requests that the State provide the CYLC with a copy of the draft proposed conservation agreement over Bertiehaugh in order to allow us to assess, on behalf of our client, the affect of that proposed agreement upon the native title rights and interests of the traditional owners of Bertiehaugh.

As requested in our letter of 26 May 2008, CYLC requests written confirmation of the proposed timing for the execution of the conservation agreement and the subsequent declaration of the Nature Refuge of Bertiehaugh. We also request, in accordance with the matters addressed within this correspondence, advice about the process that the EPA now intends to undertake to consult the traditional owners of Bertiehaugh regarding the proposed declaration of the Nature Refuge.

We look forward to your response as a matter of urgency.

Yours faithfully
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

Ann Daniel
PRINCIPAL LEGAL OFFICER

Enc

CC: The Honourable Andrew McNamara, MP
Minister for Climate Change, Sustainability and Innovation
PO Box 15155
BRISBANE QLD 4002

FAXED 31/07/08 15:27 QDL

BY FACSIMILE: (07) 3227 6309

The Honourable Craig Wallace, MP
Minister for Natural Resources and Water
PO Box 15456
CITY EAST QLD 4002

FAXED 31/07/08 15:27 QDL

BY FACSIMILE: (07) 3210 6214

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Our Ref:
Your Ref:

Contact:
Email:

1st July 2008

Our Ref:

Your Ref:

Contact: Michelle Cohen

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Telephone: (07) 4053 9222

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COPY

The Honourable Andrew McNamara MP
Minister for Sustainability, Climate Change & Innovation
PO Box 15155
BRISBANE QLD 4002

By Facsimile: (07) 3227 6309

Dear Andrew

Re: Bertiehaugh Pastoral Property

CYLC is the native title representative body and legal representative for the traditional owners of the Bertiehaugh Pastoral Property ("Bertiehaugh"), located in North West Cape York.

On or around 18 July 2007, a Funding Agreement, under the auspices of the National Reserve System, was executed between Silverback Properties Pty Limited ("Silverback") and the Commonwealth Government for the provision of in excess of $6 million to facilitate the acquisition of Bertiehaugh. Silverback is the corporate trustee of the Terri Irwin Family Trust. The funds were apparently made available by the Commonwealth Government to honour the memory of the late Steve Irwin and to add to the National Reserve System estate.

On 24 July 2007, the Queensland Department of Natural Resources & Water ("DNRW") approved assignment of the Bertiehaugh term lease (pastoral purposes) from the former lessees (the Witherspoons) to Silverback and settlement of the transfer of Bertiehaugh was completed on 31 July 2007.

CYLC and other Cape York Regional Organisations became aware of the acquisition of Bertiehaugh by Silverback on 25 July 2007.

Through examination of documents received in response to applications made under the *Freedom of Information Act 1982* (Cth) and the *Freedom of Information Act 1992* (Qld) ("FOI"), CYLC has become aware that a condition of the Funding Agreement between the Commonwealth and Silverback is that a Conservation Agreement be entered into, and that the property be dedicated as a Nature Refuge under section 46 of the *Nature Conservation Act 1992* (Qld) ("*NCA*"). CYLC has not been able to obtain a copy of the actual Funding Agreement, and is only aware of this condition by reference to other documents obtained under FOI.

CYLC has advised the State through various avenues, and specifically by correspondence to the Regional Managers of the Department of Natural Resources & Water and the Environmental Protection Agency dated 26 May 2008, of CYLC's view that the declaration of a Nature Refuge under the *NCA* is a 'future act' as defined in the *Native Title Act 1993* (Cth) ("*NTA*"). A copy of our letter dated 26 May 2008 is attached. It is CYLC's firm view that in order to be valid any such declaration and attendant Conservation Agreement must be made with the consent of the traditional owners of the land, perhaps through agreement under an Indigenous Land Use Agreement ("ILUA").

CYLC is of the opinion that the native title rights and interests of our clients will be affected by such a future act, even in the absence of a registered native title determination application ("NTDA") over the relevant area. However, to date, CYLC has not received any indication from the Queensland Government that the traditional owners of Bertiehaugh will be afforded any procedural rights under the *NTA* and *NCA* in the absence of a registered NTDA over the area. Specifically, we refer to the contents of the letter from Phil Boult, DNRW dated 20 June 2008, now attached to this correspondence.

CYLC seeks a commitment from the Queensland Government that it is prepared to treat the traditional owners of Bertiehaugh as if they are registered native title claimants for the next 12 month period, in order to ensure that they are afforded their procedural and other entitlements under the *NTA* and *NCA*. CYLC does not seek this commitment lightly and does so under very particular and unique circumstances. Without such a commitment, CYLC will have no choice but to prepare and file a NTDA over Bertiehaugh, in accordance with the clear instructions of our clients. This would be an unfortunate (and in our opinion entirely avoidable) development, given CYLC's commitment to practical, negotiated and expeditious native title outcomes.

The commitment from the Queensland Government is sought in light of the following policy considerations:

1. The Commonwealth, through the Minister for the Environment, Peter Garrett, has indicated its support for an ILUA to be entered into over Bertiehaugh. CYLC understands that the Commonwealth has received legal advice supporting the negotiation of an ILUA in this situation. The Commonwealth has also undertaken to help fund the ILUA process. We understand that the legal advice and the funding arrangements have been communicated to Silverback by the Commonwealth. CYLC is not aware whether this information has been provided to the Queensland Government. CYLC is concerned by the apparent difference in opinion between the Commonwealth and Queensland governments on this issue, and suggests that the best way to ensure certainty for all parties is through commitment to an ILUA.

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2. Bertiehaugh falls within the proposed North West Cape York region currently under discussion with the Commonwealth and Queensland Governments for fast-track native title resolution by end 2010 - the preparation of a NTDA at this point would constitute a diversion of scarce resources away from this important initiative.
3. The Federal Court of Australia and the current Attorney-General have made plain the ongoing concern about the general lack of progress in native title claims and the need to find other ways to reach agreement outside formal lodgement of an NTDA, where possible.
4. CYLC has recently commenced discussions with Cape Alumina Proprietary Limited regarding the negotiation of an ILUA over the area covered by the Mining Lease Applications 20572, 20573 and 20574 (the Pisolite Hills Project), which includes part of Bertiehaugh.

We seek your urgent response to this request. In the event that the State does not agree to this proposal, the CYLC will, as a matter of urgency, prepare a NTDA for Bertiehaugh to ensure that the native title rights and interests of our clients are protected.

Please contact Ann Daniel if you wish to discuss any matters raised within this correspondence.

Regards,
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

Encl.

CC:

The Hon Minister Craig Wallace, MP
Minister for Natural Resources & Water
By facsimile: (07) 3220 2475

The Honourable Peter Garrett MP
Minister for Environment, Heritage and the Arts
By facsimile: (02) 9349 8089

The Honourable Robert McClelland, MP
Attorney-General of Australia
By facsimile: (02) 6273 4102

RTI DL RELEASE - ERP

Release

Author: Phil Boult
Our Ref: 2005/004522
Your Ref:
Unit: Cape York Tenure Resolution Task Force
Phone: 4039 8227

Queensland Government

Department of Natural Resources and Water

20 June 2008

Michelle Cohen
Legal Officer
Cape York Land Council
Po Box 2496.
Cairns Qld 4870

RTI RELEASE - EHP

Dear Ms Cohen

Bertiehaugh Pastoral Holding – Request for Statement of Reasons

I refer to your letter of 26 May 2008 which was received by facsimile transmission on the same day, requesting a Statement of Reasons concerning the status of the Bertiehaugh Pastoral Holding lease and in particular whether the Department of Natural Resources and Water has made a decision to renew the lease pursuant to the *Land Act 1994*, including information relating to the particulars of any offer made by the Department.

I have considered your request in the context of it being a request for a statement of reasons as provided for under section 32 of the *Judicial Review Act 1991 (the Act)*. Section 32(1) states as follows:

> *Request for statement of reasons*
> *(1) If a person makes a decision to which this part applies, a person who is entitled to make an application to the court under section 20 in relation to the decision may request the person to provide a written statement in relation to the decision.*

Section 20(1) makes it clear that a person who is entitled to make a request for a statement of reasons under section 32(1) must be a person who is aggrieved by a decision to which the Act applies. Section 20(1) states as follows:

> *Application for review of decision*
> *(1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision.*

Section 7 of the Act provides the meaning of person aggrieved which is as follows:

> *Meaning of person aggrieved*
> *(1) In this Act, a reference to a person aggrieved by a decision includes a reference—*
> *(a) to a person whose interests are adversely affected by the decision; or*
> *(b) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.*
> *(2) In this Act, a reference—*
> *(a) to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision; or*

Dept of Natural Resources & Mines
Cape York Coordination Unit
LZ William McCormack Place
5b Sheridan St PO Box 937
Cairns Qld 4870
Telephone + 4039 8227
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Website www.dnr.qld.gov.au

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(b) to a person aggrieved by a failure to make a decision; includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure.

The decision which is the subject of your request is the decision by the department to renew the Bertiehaugh Pastoral Holding lease. This is a decision to which the Judicial Review Act would apply, however I can see nothing in the material before me, or provided by yourself, which establishes or indicates that the you (or the Cape York Land Council) are a person aggrieved within the meaning of the Act.

Section 33(2) of the Act provides as follows:

Decision maker must comply with request except in certain circumstances
(2) If the decision maker is of the opinion that the requester was not entitled to make the request, the decision maker may, within 28 days after receiving the request—
(a) give to the requester written notice of the decision maker's opinion; or
(b) apply to the Court under section 39 for an order declaring that the requester was not entitled to make the request.

I have formed the opinion that you are not a person aggrieved by a reviewable decision under the Act because your interests are not adversely affected by my decision to offer the lessees of Bertiehaugh Pastoral Holding a new lease for pastoral purposes in accordance with the provisions of the *Land Act 1994*. Therefore I am not prepared to provide you with a Statement of Reasons under the Act.

I am however prepared to provide the following information in respect of your request but on the clear understanding that this is not a Statement of Reasons under the Act:

- Bertiehaugh Pastoral Holding is a current lease for pastoral purposes under the *Land Act 1994* which is due to expire on 31 December 2009;
- As you are aware, on 24 May 2007 an offer was made to John Clive Witherspoon and Sally-Anne Witherspoon, who were the registered lessees at the time, to renew the lease.
- The offer was subsequently accepted.
- The lease has since transferred to Silverback Properties Pty Ltd.
- The company is continuing with the lease renewal offer.

Yours sincerely

Section 78B(2) RTI Act

Phil Bonit
Manager, Cape York Tenure Resolution Task Force

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Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cylc.org.au
Telephone: 4053 9222

26 May 2008

FAXED 26/5/08 12:19

Attention: Clive Cook
Regional Director
Environment Protection Authority
5B Sheridan Street
CAIRNS QLD 4870

BY FACSIMILE: (07) 4031-4390

FAXED 26/05/08 12:19

Attention: Cyril Cordery
Regional Director (Indigenous Services)
Department of Natural Resources & Water
William McCormack Place
PO Box 937
CAIRNS QLD 4870

BY FACSIMILE: (07) 4039 8298

COPY

RTI DL RELEASE - EHP

Dear Sir/Madam

Bertiehaugh Pastoral Holding No 43/4199 described as Lot 3 on Plan DLH4 - Renewal of Term Lease and dedication of Nature Refuge

On 25 March 2008 the Cape York Land Council Aboriginal Corporation ("CYLC") received advice in writing from the Cape York Tenure Resolution Task Force, Indigenous Services, Department of Natural Resources and Water ("DNRW"), indicating that files in response to our application under the *Freedom of Information Act 1992* (Qld), regarding matters relating to the acquisition of the Bertiehaugh Pastoral Property, were available to be inspected and copied from the Cairns office.

The freedom of information materials contained the following documents:

- Letter dated 24 May 2007 from Mr Ken Hicks, representative of the former leaseholders of the property, seeking Governor in Council approval for the issue of a new Term Lease over the property for Pastoral Purposes. The letter notes that section 159 of the *Land Act 1994* (Qld) requires that the Minister consider certain issues before making a decision to renew a lease;

- Letter dated 10 July 2007 from the Director General of DNRW to the legal representative of the for lessees noting that the lease would be assigned to Silverback Properties Pty Ltd as trustee prior to the offer being finalized and a new lease issuing. The letter indicates that in the event that the offer to assign the lease is finalized, and subject to compliance with the usual lease assignment requirements, including Ministerial approval being sought in

accordance with section 322 of the *Land Act 1994* (Qld), that Silverback Properties Pty Ltd as lessee shall be entitled to the offer to extend that lease for a period of thirty (30) years on the terms and conditions contained in the department's letter of 24 May 2007 to the existing lessees, together with such time extensions that may be granted;

- Ministerial briefing note to the Minister of DNRW dated 10 July 2007 from the Regional Service Director, North Region, regarding the 'Proposed new lease over Bertiehaugh Pastoral Holding 43/4190 on Cape York Peninsula noting that Silverback Properties Pty Ltd would not accept the offer to renew the lease unless the requirement to dedicate a road available for public use was removed.

We now seek confirmation in writing of the current status of the lease. In particular, we seek confirmation of whether DNRW has made a decision to renew the lease over the Bertiehaugh Pastoral Property pursuant to the *Land Act 1994* (Qld) and a Statement of Reasons regarding that decision. CYLC also seeks information relating to the particulars of any offer to renew the lease, including the details of any requirements or conditions attached to the offer.

Furthermore CYLC seeks confirmation of whether a decision has been made by the Environmental Protection Authority to dedicate a Nature Refuge over the Bertiehaugh Pastoral Property pursuant to the *Nature Conservation Act 1992* (Qld), and a Statement of Reasons regarding that decision. CYLC seeks details of the proposed process and timing for the dedication of the Nature Refuge. In particular, we seek details of any proposed consultation with the traditional owners of the Bertiehaugh Pastoral Property in relation to the dedication of the Nature Refuge.

We confirm that CYLC is of the opinion that the declaration of a Nature Refuge or the entering into of a conservation agreement under the *Nature Conservation Act 1992* (Qld) is a future act that would require native title holder consent under an ILUA. Section 22 of the *Nature Conservation Act 1992* (Qld) states that a Nature Refuge must be managed to provide for the interests of the landholders to be taken into account. In Division 8 of the *Nature Conservation Act 1992* (Qld), a landholder is defined to include a person having an interest in land. An 'interest in land' is defined in the *Acts Interpretation Act 1954* (Qld) as a legal or equitable estate in the land or other property; or a right, power or privilege over, or in relation to, the land or other property.

We look forward to your response. Please contact Michelle Cohen, Legal Officer, to discuss any matters that have been raised in this correspondence.

Yours faithfully,
CAPE YORK LAND COUNCIL

COPY

MICHELLE COHEN
LEGAL OFFICER

FOI RELEASE - FTP

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V2

From: Martin O'Malley
Sent: Friday, 3 October 2008 3:42 PM
To: Duong, Phuong
Cc: Tim Ellis
Subject: RE: Submissions of Cape Alumina Pty Ltd on proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge

Attachments: cape alumina 3-10-2008.pdf
Dear Phuong,

Attached, please find a letter granting an extension of time for your client Cape Alumina to prepare a submission in relation to the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Also in relation to your attached enquiry regarding the supply to you of a full copy of the funding agreement between the Commonwealth and Silverback Properties Pty Ltd, please be advised that the EPA does not have a full copy of the Commonwealth agreement between the DEWR and Silverback Pty Ltd, only the extract included in the proposed conservation agreement.

Under the terms of the proposed conservation agreement, there is no specific obligation pursuant to schedule 8 or 9. The conservation agreement is clear – schedule 8 is the landholders' perspective on how the land is to be managed, not the EPAs; and, schedule 9 is included as reference is made to the Commonwealth agreement (specifically the condition of the land becoming a nature refuge on page 6 of the extract) in the definition of 'plan of management' (schedule 8).

I would also refer you to clause 3.7 of the proposed conservation agreement which may assist in clarifying this point.

Should you have any further comments in relation to this point or any other part of the proposed conservation agreement, please include those in your reply submission.

Regards

Martin O'Malley

Acting Director, Tenure Actions Branch
Sustainable Communities Division
Environmental Protection Agency

Ph: (07) 3227 6198
Fax: (07) 3227 7237
Mobile:

RTI DL RELEASE - EHP

sch4p3(3) Prejudice the protection of an individuals right to privacy

---

From: Duong, Phuong [mailto:pduong@claytonutz.com]
Sent: Wednesday, 24 September 2008 4:28 PM
To: Martin O'Malley
Cc: Tim Ellis
Subject: Submissions of Cape Alumina Pty Ltd on proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge
Importance: High

Dear Martin,

As discussed, our client is seeking a copy of the entire agreement between the Commonwealth and

Silverback Properties Pty Ltd (**SPPL**) in relation to "financial assistance for the grant or acquisition of a leasehold interest in land to establish a private protected area which will be part of the National Reserve System".

An extract of the agreement is included in the draft conservation management agreement at schedule 9.

Because the conservation agreement defines the term "Agreement" as including all the schedules, it is important that our client is provided with a copy of the complete agreement between the Commonwealth and SPPL rather than simply an extract of the agreement. The agreement between the Commonwealth and SPPL will have implications on the way in which the conservation management agreement operates and our client cannot assess the impact of the conservation management agreement without being fully aware of the schedules which form a part of it.

Would you please provide us with a copy as a matter of urgency? Thank you for your assistance and I look forward to hearing from you.

Kind regards

Phuong Duong | Solicitor | Litigation & Dispute Resolution
Clayton Utz

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This email is confidential. If received in error, please delete it from your system.

RTI DL RELEASE - EHP

Queensland Government

Enquiries Martin O'Malley
Telephone (07) 3227 6198
Your reference Legal/107654549.2
Our reference BNE33142

Environmental Protection Agency
Incorporating the
Queensland Parks and Wildlife Serv

3 October 2008

Mr Darren Fooks
Clayton Utz Lawyers
GPO Box 55
BRISBANE QLD 4001

RTI DL RELEASE - EHP

Dear Mr Fooks

Request for extension of time for submissions – Proposed Steve Irwin Wildlife Reserve Nature Refuge

I refer to your letter dated 24 September 2008 requesting, on behalf of your client Cape Alumina, an extension of time to make a submission to the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Please advise your client that we will accept submissions up to 3 November 2008. This is an extension of 28 days from the original deadline.

If you have any enquiries please don't hesitate to contact me on (07) 3227 6198.

Yours sincerely

[redacted]
sch4p3(3) Prejudice the protection of an individuals right to privacy

Martin O'Malley
A/Director

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Queensland Government

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Your reference Legal/107654549.2
Our reference BNE33142

Environmental Protection Agency
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Queensland Parks and Wildlife Servic

24 September 2008

Mr Darren Fooks
Clayton Utz Lawyers
GPO Box 55
BRISBANE QLD 4001

Dear Mr Fooks

Request for extension of time for submissions – Proposed Steve Irwin Wildlife Reserve Nature Refuge

I refer to your letter dated 24 September 2008 requesting, on behalf of your client Cape Alumina, an extension of time to make a submission to the proposed declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

Please advise your client that we will accept submissions up to 3 November 2008. This is an extension of 28 days from the original deadline.

If you have any enquiries please don't hesitate to contact me on (07) 3227 6198.

Yours sincerely

[redacted]
sch4p3(3) Prejudice the protection of an individuals right to privacy

Martin O'Malley
A/Director

RTI DL RELEASE - EHP

160 Ann Street Brisbane
Queensland 4000 Australia
PO Box 15155 City East
Queensland 4002 Australia
Telephone (07) 3227 6198
Facsimile (07) 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

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Freehills

Fax

Proposed declaration of a nature refuge over Bertiehaugh

Matter Bertiehaugh - 81414766

From Desmond Sweeney 3 October 2008
Phone +61 2 9225 5895
Fax +61 2 9322 4000

Pages 3

To Mr Tim Ellis
Director
Environmental Protection Agency
Phone
Fax 07 3227 7237

Please see attached.

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Freehills

Mr Tim Ellis
Director
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000

3 October 2008

Dear Mr Ellis

Proposed declaration of a nature refuge over Bertiehaugh

We refer to your letter of 27 June 2008 and the letter from Cape York Land Council (**CYLC**) of 31 July 2008 regarding a proposed declaration of a nature refuge over Bertiehaugh Pastoral Property (**Bertiehaugh**).

We note that CYLC has not yet received a response to its letter of 31 July 2008.

CYLC has also become aware that a draft management plan was recently provided to Cape Alumina Pty Limited, to which Cape Alumina has made a detailed response. However, no such document was provided to CYLC. We also note that the EPA has not provided an indicative timetable for the proposed declaration as requested by CYLC.

We act for the Traditional Owners of Bertiehaugh. The Traditional Owners are concerned that they are being excluded from the process for the proposed declaration, and that the process is being progressed without due regard to their interests as native title holders.

Given that more than two months have elapsed since the date of CYLC's letter, we request that the EPA urgently consider the requests for information set out at the end of this letter and provide a substantive response to this and CYLC's letter of 31 July 2008.

1 Position of Traditional Owners

The position of the Traditional Owners on the proposed declaration has been set out in detail in CYLC's letter of 31 July 2008. It is not necessary to repeat all the matters here.

We reiterate the view that, prior to the declaration of the nature refuge, notification and agreement of native title holders is required under either or both the *Nature Conservation Act 1992 (Qld)* and the *Native Title Act 1993 (Cth)*.

It was acknowledged in your letter of 27 June 2008 that native title holders are "landholders" under s44 of the *Nature Conservation Act*. However, the EPA is not affording native title holders their procedural rights under the Act on the misapprehension that the proposal will not affect native title. On the contrary, a declaration under s46 by itself has the effect of subjecting the land to restrictions and limitations on native title interests that would not otherwise apply. Therefore the declaration will necessarily affect native title. Further detailed reasons are given in CYLC's letter of 31 July 2008.

We also note that s5(f) of the *Nature Conservation Act* states that an objective of the Act is the:

> *"Recognition of interest of Aborigines and Torres Strait Islanders in nature and their cooperative involvement in its conservation*
>
> - *the recognition of the interest of Aborigines and Torres Strait Islanders in protected areas and native wildlife;*

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- *the cooperative involvement of Aborigines and Torres Strait Islanders in the conservation of nature"*

and section 6 states:

> *This Act is to be administered, as far as practicable, in consultation with, and having regard of, landholders and interested groups and persons, including Aborigines and Torres Strait Islanders.*

These stated objects create an overarching obligation for the State to administer the Act in a way that recognises the interest of Aborigines and Torres Strait Islanders in conservation, and involves them in the conservation process as much as possible, apart from the specific obligations under Division 4 of Part 4 of the Act.

The Traditional Owners are disappointed that the State has not provided them with even the most basic information relevant to the proposed declaration (such as the indicative timetable and the management plan), despite repeated requests for information.

2 Requests

In light of the above, we request that the EPA:

(1) provide to CYLC the indicative timetable for the proposed declaration;

(2) give notification of the proposal to CYLC in accordance with the provisions of section 44 of the *Nature Conservation Act;*

(3) provide to CYLC drafts of the management plan, conservation agreement and any other document relating to the proposed declaration of the nature refuge;

(4) provide a substantive response to this and CYLC's letter of 31 July 2008;

We request that you provide this information as a matter of urgency.

CYLC would be pleased to discuss this further with you.

Yours sincerely

sch4p3(3) Prejudice the protection of an individuals right to privacy

Desmond Sweeney
Partner
Freehills
+61 2 9225 5895

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V3

Cape York Land Council

ABN 22 965 382 705
ICN 1163
32 Florence Street
PO Box 2496
CAIRNS QLD 4870

Email: reception@cylc.org.au
Web site: www.cylc.org.au

Ph: (07) 4053 9222
Fax: (07) 4051 0097
Freecall: 1800 623 548

Facsimile

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To:	The Honourable Andrew McNamara MP Minister for Sustainability, Climate Change and Innovation	Fax: (07) 3227 6309
Cc:	The Honourable Craig Wallace MP Minister for Natural Resources and Water	Fax: (07) 3220 2475
	The Honourable Peter Garrett MP Minister for Environment, Heritage and the Arts	Fax: (02) 93498089
	The Honourable Robert McClelland MP Attorney-General of Australia	Fax: (02) 6273 4102
Re:	Bertiehaugh Pastoral Property - Commitment to Traditional Owners	
Pages:	6 (includes cover page)	

Please find attached a letter of correspondence dated 24 September 2008

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CYLC 20080924 letter to McNamara.doc

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CAPE YORK LAND COUNCIL
ABORIGINAL CORPORATION

ICN 1163
ABN 22 965 382 705

32 Florence Street
PO Box 2496
CAIRNS QLD 4870
Phone (07) 4053 9222
Fax (07) 4051 0097

Your ref:
Our ref: FD005

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

24 September 2008

The Honourable Andrew McNamara MP
Minister for Sustainability,
Climate Change and Innovation
PO Box 15155
BRISBANE QLD 4002

By Facsimile: (07) 3227 6309

RTI DL RELEASE - EHP

CONFIDENTIAL & WITHOUT PREJUDICE CORRESPONDENCE

Dear Minister McNamara,

Bertiehaugh Pastoral Property - Commitment to Traditional Owners

We refer to your letter of 4 August 2008.

That correspondence was provided in response to the request of the Traditional Owners of Bertiehaugh Pastoral Holding ("Bertiehaugh") to the Queensland Government, to be treated as registered native title claimants for the next 12 months, so that they are afforded equivalent procedural and other entitlements under the Commonwealth *Native Title Act 1993* (Cth) ("NTA").

Cape York Land Council ("CYLC") appreciates the Queensland Government's commitment to achieving sustainable outcomes for Traditional Owners in Cape York Peninsula, as expressed in the letter, and its preparedness to give consideration to CYLC's request. We hope the matters set out in this letter will assist your assessment.

The request

Firstly, we wish to clarify that our request is a commitment by the Queensland Government (not only the Environmental Protection Agency ("EPA")), to agree to:

> Treat the Traditional Owners of Bertiehaugh as *"registered native title claimants"* under the *Native Title Act 1993 (Cth)* for a period of 12 months from the date of approval of this request (the 'commitment').

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Background

Since 1996, CYLC has been working together with the Queensland Government and other parties to bring about tenure outcomes in the Cape York region that recognise native title rights of Traditional Owners whilst protecting other interests, including pastoralists and conservationists.

In particular, we draw your attention to the following progress made:

1. The landmark Cape York Heads of Agreement signed in February 1996 by representatives of Traditional Owners, pastoralists, environmental interests, ratified by the Commonwealth Government and to which the Queensland Government joined as signatory in 2001, laid a common foundation for agreement-making between stakeholders in the region.
   Under the Agreement, a number of pastoral properties were earmarked for eventual purchase for the Traditional Owners, including Bertiehaugh.
2. To date, in the Cape York Peninsula:
   - Approximately 26 Aboriginal Land Trusts have been established holding over 40 properties;
   - 7 native title determinations have been made;
   - 31 native title claims have been lodged;
   - 37 Indigenous Land Use Agreements have been registered;
   - Two National Parks (Aboriginal Cape York Peninsula) have been created under the *Cape York Peninsula Heritage Act 2007;*
   - Three regions are currently contemplated to be the subject of negotiations with the Queensland and Commonwealth Governments as part of discussions regarding broader native title outcomes in Cape York Peninsula.

In CYLC's view, it is now accepted by virtually all stakeholders in the Cape York region that consideration of native title interests is a standard part of any decision as to land tenure and land use in the region. We note that Cape Alumina Pty Limited, which has a mining lease application over Bertiehaugh, is in the process of negotiating an Indigenous Land Use Agreement with the Traditional Owners. Indigenous Land Use Agreements ("ILUAs") are CYLC's preferred method of dealing with acts which affect native title rights and issues. Negotiation of an ILUA creates an agreement that binds native title claimants and achieves certainty for all of ILUA parties, and has the ability to deliver broader outcomes to native title claimants.

Bertiehaugh falls within the North West Cape York Peninsula region which has been the subject of recent discussion between the Commonwealth Attorney-General, the Queensland Minister for Natural Resources and Water and the Chairperson of CYLC, in relation to securing broader native title outcomes in Cape York Peninsula. It is against this background that CYLC makes the present request for Traditional Owners of Bertiehaugh to be treated as *"registered native title claimants"* under the NTA. CYLC hopes that in doing so, the parties will avoid the need to expend considerable resources in lodging a native title claim - to achieve a result which, in all likelihood, would ensue in a few years' time, with the result that certain acts being done now may subsequently be declared as invalid "future acts" at that time.

Information requested

In your letter of 4 August 2008, you request further information in order to assess the benefits and associated costs involved in providing this undertaking to Traditional Owners for the land subject to Bertiehaugh.

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That further information is now set out below:

(a) Details, including names of those persons to whom such a commitment, if given, would apply

The commitment by the Queensland Government, if given, would apply to the Traditional Owners of Bertiehaugh.

CYLC has engaged in notification and community consultation for the purpose of identifying and providing information and advice to Traditional Owners of Bertiehaugh regarding the acquisition of the property and the possible consequential affects upon native title rights and interests that exist over that area for a period of one year. The Traditional Owners that CYLC has consulted with assert that they hold native title rights and interests over the whole of the area subject to the Bertiehaugh Pastoral Holding by virtue of their descent from their predecessors, who had an association with the area and the land adjacent to it. The Traditional Owners assert that they carry on, and their predecessors carried on, over the claim area, activities such as to fully exercise those rights and interests, including all such activities that are necessary or incidental to the sustenance of human life and society. The group also asserts that they observe traditional laws and customs which include the observance of laws relating to tenure and traditional land use and custom.

For the present purpose of the commitment, CYLC believes that the Traditional Owners of Bertiehaugh would include people who identify as:

a) the Atamabya;
b) the Taepadhighi;
c) the Tjungundji;
d) the Mbuckwithi;
e) the An(g)kamuthi Seven Rivers; and
f) any other groups or persons as may be identified by further ongoing notification, community consultation and anthropological study in the 12 months from the date of approval of the commitment.

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These persons are represented on a Steering Committee nominated by Traditional Owners who have attended CYLC consultations. The Steering Committee has the authority to deal with all land dealings concerning Bertiehaugh on behalf of the group that has nominated them and consists of the following persons:

Alison Sailor	Priscilla Billy
Bernard Charlie	Cecil Arthur
Richard Woosup	Gina Nona
Walter Moses	Troy Barba
Clara Day	Rhonda Parry
Neville Motton	Mary-Anne Coconut

Any contact that is required by any State entity with the Steering Committee members pursuant to any relevant legislation can be arranged or facilitated by or through CYLC.

For the purposes of section 29 of the NTA, notices should be directed to the Future Acts Officer at CYLC as the Registered Native Title Representative Body, and the named members of the Steering Committee with CYLC being their address for service. This is consistent with position of Registered Native Title Determination Applications where CYLC acts for the Applicants.

(b) Level of formality and enforceability expected by Traditional Owners to such a commitment

The Traditional Owners of Bertiehaugh would expect to be treated by the Queensland Government as if they have the same procedural rights and other benefits afforded under the NTA, as if an authorised Applicant had lodged, on their behalf, a native title determination application pursuant to section 62 of the NTA, that was also accepted for registration by the Registrar of the National Native Title Tribunal pursuant to section 190B of the NTA, for a period of 12 months starting from the date of the giving of the commitment.

Regarding enforceability, as discussed above, the proposed commitment is in the form of agreement between the Government and the Traditional Owners, and would be binding *inter partes* between the Government and the Traditional Owners. If, and to the extent that commitment affects third parties who are also involved in the same governmental processes, Traditional Owners would be able to communicate that commitment and rely upon it in correspondence with third parties, in all matters relating to Bertiehaugh, including in all negotiations and agreement-making.

In relation to formality, in our view an exchange of letters between the Queensland Government and CYLC confirming that the Queensland Government guarantees to afford these rights to Traditional Owners of Bertiehaugh would be the appropriate manner by which the Queensland Government can express this commitment to Traditional Owners.

(c) Nature of the relevant dealings under the *Nature Conservation Act 1992* (Qld) ("NCA") that Traditional Owners are anticipating in the proposed 12 month period

The only matter we are presently aware of is the proposed declaration by regulation of Bertiehaugh as a Nature Refuge under the *Nature Conservation Act 1992 (Qld)*, and any other dealings that may arise in relation to the declaration.

(d) Based on those relevant dealings under the NCA, the procedural and other entitlements under the NTA and the NCA that are otherwise anticipated to be received by those persons

As noted above, Traditional Owners of Bertiehaugh would expect to be treated as if they have the same procedural rights and other benefits afforded to a *"registered native title claimant"* under the NTA, namely, as if an authorised Applicant had lodged, on their behalf, a native title determination application that was also accepted for registration by the Registrar of the National Native Title Tribunal.

It would be difficult to exemplify all specific procedural rights attaching to the status of *"registered native title claimants"*. As noted above, CYLC and Traditional Owners cannot entirely anticipate what activities are proposed to occur on Bertiehaugh that will affect the native title rights and interests of Traditional Owners. In the least, we would expect that if the commitment is given, the Traditional Owners would be entitled to the following rights in relation to the processes currently known to be taking place:

1. Any act which may constitute a "future act" under the NTA, would require that a Future Act notice under section 29 of the NTA be issued to CYLC and Traditional Owner representatives (or a similar document in substance as may be agreed between the parties). In the event that a grant, lease or licence over Bertiehaugh is proposed, we would expect that the Queensland Government would consider any extinguishing affect of the proposed act on the native title right and interest of

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Traditional Owners and afford them the proper rights and entitlements under the NTA, as if they had a registered native title claim.

2. Notification of the proposal for the Nature Refuge would be required to be given to Traditional Owners under s44 of the *Nature Conservation Act 1992 (Qld)*, by reason of being a "landholder" under that section;
3. Agreement of the Traditional Owners would be required for any conservation agreement to be entered into under s45 of the *Nature Conservation Act 1992 (Qld)*.

We confirm that the commitment described above is sought in exchange for Traditional Owners not filing, for the period of one year, a native title determination application over Bertiehaugh. We reiterate that this commitment is sought in acknowledgment of the Queensland Government's commitment to securing broader native title outcomes in Cape York Peninsula, the current funding constraints being experienced by CYLC as a Native Title Representative Body and the Native Title Ministers Meeting Communiqué of 18 July 2008.

As discussed above, we believe this request will be an efficient outcome for both representative bodies and government entities, so as to avoid the need to expend considerable resources in lodging and litigating a native title application.

Your urgent response and collaboration with other relevant Government departments required to deliver this commitment is appreciated. CYLC or the Traditional Owners' legal advisers in respect of the proposed dedication of the Nature Refuge, Freehills, would be pleased to convene a meeting to discuss our request in order to expedite delivery of this commitment.

Yours Faithfully,
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

CC:

The Honourable Minister Craig Wallace, MP
Minister for Natural Resources and Water
By facsimile: (07) 3220 2475

The Honourable Peter Garrett, MP
Minister for Environment, Heritage and the Arts
By facsimile: (02) 93498089

The Honourable Robert McClelland, MP
Attorney-General of Australia
By facsimile: (02) 6273 4102

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24 September 2008

By Email - tim.ellis@epa.qld.gov.au; martin.omalley@epa.qld.gov.au

Attn: Mr Tim Ellis
Director
Tenure Actions Branch
Environmental Protection Agency
PO Box 15155
CITY EAST BRISBANE QLD 4002

Your reference: BNE33142
Our reference: 12240/16385/80064716

Dear Mr Ellis

REQUEST FOR EXTENSION OF TIME FOR SUBMISSIONS
Proposed declaration of Steve Irwin Wildlife Reserve Nature Refuge on Lot 4 on Crown Plan DLH4

We refer to the letter dated 8 September 2008 from your Tim Ellis to our client, Cape Alumina Pty Ltd (**Cape Alumina**), and your telephone conversation with Phuong Duong, of our office, on 18 September 2008. That letter invited submissions in relation to the Minister's proposal to enter into a conservation agreement for a nature refuge on Lot 4 on DLH4 ("the CA") and allowed 28 days for submissions to be made.

As discussed, we are instructed that the timeframe of 28 days does not allow our client sufficient time to provide its submission as:

(a) Cape Alumina did not receive Mr Ellis' letter until on or around 16 September 2008 and the remaining time in which it is to finalise its submissions is proving to be impracticable;

(b) Cape Alumina is seeking advice from professional environmental scientists regarding the land use proposals contained in the CA and the manner in which this accords with the land use management intentions of other stakeholders, including Cape Alumina. Our client is yet to receive this advice and does not consider itself to be in a well-informed position which would enable it properly assess and provide submissions to the CA; and

(c) Cape Alumina is undertaking a thorough assessment of the impact of the proposed CA on its exploration activities in the area.

On behalf of our client, we are instructed to seek an extension of time in which our client may present its submission on the proposed CA. We seek an extension of 28 days from the original deadline, that is, that Cape Alumina Pty Ltd provide its submissions by **3 November 2008**.

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24 September 2008
Mr Martin O'Malley, Tenure Actions Branch

We are grateful for your assistance and look forward to confirmation that this extension is acceptable.

Yours faithfully

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Darren Fooks, Partner
+61 7 3292 7113
dfooks@claytonutz.com

Contact: Phuong Duong, Lawyer
+61 7 3292 7152
pduong@claytonutz.com

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13th September, 2008

Mr Stephen Potts
Estate Governance Unit
Environmental Protection Agency
PO Box 15155
City East Q 4002

Dear Stephen,

Re: Steve Irwin Wildlife Reserve Nature Refuge

We are in receipt of your email regarding the Final Draft of the Conservation Agreement re the above Nature Refuge.

sch4p3(3) Prejudice the protection of an individuals right to privacy we hereby state that we are satisfied with the Conservation Agreement as sent to us in your email of 04/09/08 and we would be most obliged if you would accept this email as our formal notice of same.

Yours faithfully,

Sally Witherspoon for
John Clive Witherspoon and
Sally-Anne Witherspoon

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Enquiries Tim Ellis
Telephone (07) 3227 6198
Your reference
Our reference BNE33142

8 September 2008

Paul Messenger
Chief Executive Officer
Cape Alumina
GPO Box 122
BRISBANE QLD 4001

RTI DL RELEASE - EHP

Dear Mr Messenger

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
MINING LEASE APPLICATION: ML 20572
EXPLORATION PERMITS FOR MINERALS: EPM 14547 AND EPM 15278
LANDHOLDERS: SILVERBACK PROPERTIES P/L AS TRUSTEE
LAND: LOT 4 on DLH4

In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Sustainability, Climate Change and Innovation (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

If the Minister is satisfied that an area should be declared a protected area, the Minister, under section 44 of the NCA, is required to prepare a Proposal for Declaration and give written notice to all landholders affected by the proposal. A copy of the Proposal for Declaration is enclosed. If you wish to make a submission about the proposal the closing date for receiving submissions is 28 days from the date of this letter.

In this case, existing and future rights relating to mineral and petroleum exploration and extraction have been accommodated in the conservation agreement through the inclusion of the following standard clauses (clauses 9.2-3 of the proposed conservation agreement enclosed):

"The parties acknowledge that:

- existing and future rights related to mineral and petroleum exploration and extraction are not altered by this agreement; and
- any lawfully approved mining or petroleum-related activity on the Land must be planned and conducted in accordance with relevant statutory requirements, including environmental, conservation and cultural heritage requirements relevant to the Land."

Environmental Protection Agency
PO Box 15155
City East
Queensland 4002 Australia
Telephone (07) 3227 6825
Facsimile (07) 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

Please note that the proposed conservation agreement will not be a registrable conservation agreement under s.134 of the NCA.

The intention is to only bind Silverback Properties P/L as Trustee to the conservation agreement, and not to bind any other person who has an interest in the Land including mining interest holders and successors in title to the pastoral lease. This intention will be included in the conservation agreement and the subsequent declaration of the nature refuge.

When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

Please direct your reply to Tim Ellis, Director, Tenure Actions Branch, Environmental Protection Agency, PO Box 15155, City East, Queensland 4002.

If you have any enquiries please don't hesitate to contact me on (07) 3227 6198.

Yours sincerely

Tim Ellis
Director

Enc. Proposal for Declaration, proposed conservation agreement

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Stephen Potts

From: Iain Witherspoon [redacted] sch4p3(.3) Prejudice the protection of an individuals right to privacy
Sent: Thursday, 4 September 2008 7:52 PM
To: Stephen Potts
Subject: Re: Proposed Steve Irwin Wildlife Reserve Nature Refuge - Final Conservation Agreement

Thank you Stephen. I will print out the document and discuss with John.
I will ensure that he signs the final Agreement - although he will not be back up here for about a week. If you need both joint tenants to sign asap I can probably arrange signing, but in different localities - I would imagine there is a clause that allows for this.

Regards,

Sally Witherspoon

Stephen Potts wrote:
>
> Hi Ken, Sally,
>
> Attached is the final version of the Agreement for the proposed Steve
> Irwin Wildlife Reserve Nature Refuge.
>
> I have made the changes requested by you Ken, sent to me via email on
> 3 September 2008. Schedule 4 item 5(c) has been amended accordingly.
> Please note that I have also included the words "Subject to clauses
> 13.1 and 13.2 of this Agreement…" to aid interpretation of that item.
> It does not change any obligation under the Agreement from what has
> previously been agreed to.
>
> Can you both review the Agreement and if you are satisfied with it
> please reply email your consent, or suggest specific amendment.
>
> [redacted], can you please ensure that your reply is also on behalf of
> [redacted]
>
> Please don't hesitate to contact me should you wish to discuss.
>
> <<draft_ca_v4.doc>> <<Steve_Irwin_Wildlife_Reserve_NR_PA_v1.3.pdf>>
>
> Kind Regards,
>
> Stephen
>
> ***Stephen Potts*
>
> A/Team Leader
>
> Estate Governance Unit**
>
> *Environmental Protection* Agency
>
> *T* 07 3225 1492
> *F* 07 3227 7237
> *P* PO Box 15155, City East Qld 4002
> *W* _www.epa.qld.gov.au_ <http://www.epa.qld.gov.au/>
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Stephen Potts

From: sch4p3(3) Prejudice the protection of an individuals right to privacy
Sent: Wednesday, 3 September 2008 9:57 AM
To: Stephen Potts
Subject: Re: Proposed Steve Irwin Wildlife Reserve Nature Refuge

Thank you for your reply Stephen. I understand re the proposed changes and will await the final copy. This is a good email address to get me - but could you also send a copy to me at [redacted] just to make sure. Neither of these have continious coverage here, but I can usually manage to access emails about one day in four!

Regards,

Sally Witherspoon
---- Stephen Potts <Stephen.Potts@epa.qld.gov.au> wrote:
> Hi Sally,
>
> Thanks for your fax received earlier today regarding approval for the
> proposed Steve Irwin Wildlife Reserve Nature Refuge under the Nature
> Conservation Act 1992. I have been in contact with Ken Hicks (who I
> have copied into this email) and there have been some minor changes
> suggested to the draft conservation agreement sent to you in July of
> this year. I will be amending the draft agreement and will forward the
> final draft to you for your approval.
>
> I acknowledge that you will withhold your consent to the proposal
> until such time that you have received the final draft agreement.
>
> Can you please advise me if this email address is suitable to return
> the final draft agreement to you?
>
> Kind Regards,
>
> Stephen Potts
> A/Team Leader
> Estate Governance Unit
> Environmental Protection Agency
> T 07 3225 1492
> F 07 3227 7237
> P PO Box 15155, City East Qld 4002
> W www.epa.qld.gov.au <http://www.epa.qld.gov.au/>
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RTI DL RELEASE - EHP

Enquiries Stephen Potts
Telephone (07) 3227 6825
Your reference
Our reference BNE33142

2 September 2008

AGL Pipelines Investments (Qld) P/L
GPO Box 2256
BRISBANE QLD 4001

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
TENURE NUMBER: PPL 56
LANDHOLDERS: SILVERBACK P/L AS TRUSTEE
LAND: LOT 4 ON DLH4

RTI DL RELEASE - EHP

In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Sustainability, Climate Change and Innovation (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

If the Minister is satisfied that an area should be declared a protected area, the Minister, under section 44 of the NCA, is required to prepare a Proposal For Declaration and to give written notice to all landholders affected by the proposal. A copy of the Proposal for Declaration is enclosed. If you wish to make a submission about the proposal the closing date for receiving submissions is 28 business days from the date of this letter.

When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

Note that existing and future rights relating to mineral and petroleum extraction have been accommodated in the conservation agreement through the inclusion of the following standard clause:

"The parties acknowledge that:

- existing and future rights related to mineral and petroleum exploration and extraction are not altered by this agreement; and
- any lawfully approved mining or petroleum-related activity on a nature refuge will be planned and conducted in accordance with relevant statutory requirements, including environmental, conservation and cultural heritage requirements relevant to the nature refuge."

Queensland Australia

Queensland Australia
Telephone (07) 3227 6825
Facsimile (07) 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

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For further information about nature refuges and case studies, visit:
http://www.epa.qld.gov.au/nature_conservation/nature_refuges/what_is_a_nature_refuge/
If you have any enquiries please don't hesitate to contact me on (07) 3227 6825.

Yours sincerely

Stephen Potts
Project Manager

Enc. Proposal for Declaration

RTI DL RELEASE - EHP

Stephen Potts

From: Cambourn Neil [Neil.Cambourn@nrw.qld.gov.au]
Sent: Saturday, 30 August 2008 11:33 AM
To: Stephen Potts; Langford Steve; Boult Phil; Kate Markham
Subject: RE: Steve Irwin Wildlife Nature Refuge

I agree with Steve, Delbessie principles are not applicable to this lease until it comes around for renewal again.

Regards Neil Cambourn

From: Stephen Potts [mailto:Stephen.Potts@epa.qld.gov.au]
Sent: Friday, 22 August 2008 11:56 AM
To: Langford Steve; Boult Phil; Kate Markham
Cc: Cambourn Neil
Subject: RE: Steve Irwin Wildlife Nature Refuge

Hi Steve,

Thanks for your reply. As it is currently written your comment applies. That is, the Minister does not need to consider whether the incoming lessee has entered into an identical agreement when approving the transfer of a lease. The obligation is only on the lessee, and therefore your suggested 11.4 is already accomodated.

Hope this helps.

Stephen Potts

From: Langford Steve [mailto:Steve.Langford@nrw.qld.gov.au]
Sent: Friday, 22 August 2008 11:43 AM
To: Boult Phil; Kate Markham; Stephen Potts
Cc: Cambourn Neil
Subject: RE: Steve Irwin Wildlife Nature Refuge

Phil....subject to Neil's views....

My thoughts are that if the conservation agreement is entered into outside of the Delbessie agreement (i.e. the lessee does not gain an increase in the term of the lease under the relevant provisions of the Land Act) the Minister (delegate) should not be need to consider whether the incoming lessee has entered into a conservation agreement with EPA when approving the transfer of the lease.

Accordingly, a clause something along the following should be included in the standard agreement

> 11.4 Notwithstanding clause 11.2, the Minister administering the *Land Act 1994* (LA) does not need to consider in an application to transfer the lease whether the proposed transferee has entered into an agreement with the EPA, unless the agreement was a consideration for sections 155 and 155B of the LA.

Steve Langford
Senior Policy Officer, State Land Administration
Level 4, Mineral House
Telephone 07 322 47706 **Facsimile** 07 340 55522
Email: steve.langford@nrw.qld.gov.au
www.nrw.qld.gov.au
Department of Natural Resources and Water

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41 George Street, Brisbane Q 4000
GPO Box 2454, Brisbane Q 4001

From: Boult Phil
Sent: Thursday, 21 August 2008 4:05 PM
To: 'Kate Markham'; Stephen Potts
Cc: Langford Steve
Subject: RE: Steve Irwin Wildlife Nature Refuge

Kate

Thanks for providing a copy of the Conservation Agreement.

Stephen

With reference to your letter of 21 July regarding this matter, please accept this as my response and my apologies for not responding earlier.

There are a couple of issues that I want to raise with you, namely:

1. Item 11.2 - I'm not sure of what the implications are for the Department in regard to this clause. I've discussed it with Steve Langford who has undertaken to look into it.
2. Schedule 4, Item 5, Part (d) - 'Designing roads and tracks appropriate to site condition and function'. I would prefer that it was worded 'Designing **property** roads and tracks appropriate to site condition and function' or even leaving 'roads and' out alltogether. The reason for this is that we have made an offer for a new lease for pastoral purposes over the current Bertiehaugh lease exclusive an area required to be dedicated as road available for public use to link Stones Crossing on the Wenlock with the Telegraph (Bamaga) Road. Silverback is opposed to having a road through the property but it was identified during the lease renewal investigations that there is a public need for a road in this location. I am concerned that if the present wording is retained, Silverback may promote the Conservation Agreement as being a Government document that supports their stance on not having a dedicated road through the property (even though I consider that it would be 'drawing a very long bow' to adopt such an interpretation) but its not a debate that I want to engage in with them.

Please give me a call if you want to discuss further.

Thanks

Phil Boult
Manager, Cape York Tenure Resolution Task Force,
North Region
Telephone: 07 4039 8227 **Facsimile:** 07 4046 6768
Email: phil.boult@nrw.qld.gov.au
www.nrw.qld.gov.au

Department of Natural Resources and Water
5b Sheridan Street, Cairns Q 4870
PO Box 937, Cairns Q 4870

From: Kate Markham [mailto:kate.markham@epa.qld.gov.au]
Sent: Wednesday, 20 August 2008 2:10 PM
To: Boult Phil
Cc: Stephen Potts
Subject: Steve Irwin Wildlife Nature Refuge

RTI DISCLOSE - DHP

Hi Phil,

Attached is a copy of the draft Conservation Agreement and Protected Area Plan for the Steve Irwin Wildlife Nature Refuge. Please don't hesitate to contact me if you have any questions.

Thanks,
Kate

Kate Markham
Project Officer
Tenure Actions Branch
Sustainable Communities Division
Environmental Protection Agency
Ph: (07) 3227 7032
Fax: (07) 3227 7237
Email: kate.markham@epa.qld.gov.au
Please consider the environment before printing.
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3 sheets of A4 paper = 1 litre of water

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Queensland Government

Department of
Mines and Energy

Your Reference: BNE33142
File: 23725 Ref number: MI08/08901
Author: Barry Neville
Work Unit: Mineral & Extractive Planning
Phone: (07) 3237 1636

29 August 2008

Mr Stephen Potts
Project Manager, Tenure Actions Branch
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4002

RTI DL RELEASE - EHP

Dear Mr Potts

Proposed Steve Irwin Wildlife Reserve Nature Refuge –Lot 4 on Crown plan DLH4

I refer to your letter dated 21 July 2008 regarding the above proposal.

The lot that is the subject of the nature refuge proposal encompasses an application for a Mining Lease, ML 20572, submitted by Cape Alumina Pty Ltd. Under section 45(2) of the *Nature Conservation Act 1992*, if the rights of a mining lease holder will be materially affected, the written consent of the lease holder is required before the conservation agreement can be entered into. Such rights include those relating to access across the property as defined in the compensation agreement between the landholder and the mining lease holder (see sections 279 to 283B of the *Mineral Resources Act 1989*).

I also advise that the proposed nature refuge is currently subject to two granted Exploration Permits for Minerals, EPM 14547 and EPM 15278, and mining tenure applications have been lodged by the holders over bauxite deposits identified within these permits. Access to the nature refuge area is expected to be required by the tenure holders to undertake exploration.

Note that the bauxite deposits identified on the property form a substantial part of the resource base on which the tenure holder seeks to develop a mining and export project. Should the project come to fruition, the State will receive significant economic and employment benefits. The bauxite occurs as shallow deposits and could only be mined by surface mining techniques, involving clearing of vegetation. The proposal to include the bauxite project area, that is the mining lease application area, within a Nature Refuge would be a matter of concern to this Department if it impacted the potential for exploiting the bauxite resource.

Department of Mines and Energy
PO Box 15216
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Telephone +61 7 3898 0375
Facsimile +61 7 3238 3088
Website www.dme.qld.gov.au
ABN 98 628 485 885

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I also advise that there is an application for a Pipeline Licence, PPL 56 held by AGL Pipelines Investments (Qld) Pty Ltd over part of the eastern margin of the proposed nature refuge. However, the application process has been suspended at the company's request pending further review by December 2008. The Environmental Protection Agency may wish to contact the company directly to ascertain whether the proposed pipeline easement is likely to have any impact on the nature refuge.

Provided that there has been a satisfactory resolution of any land use conflicts related to the mining leases and bauxite resources, I advise that this Department will offer no objection to this proposal on the basis of mineral or petroleum issues, subject to the usual condition that the land will remain available for mineral and petroleum exploration and that any application for mining or production of any deposit discovered will be considered on its merits under the *Mineral Resources Act 1989*, *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act 2004*.

Such agreement will remain current for a period of three years from the date of this letter.

Contact details for the tenure holders are given in **attachment 1**.

Yours sincerely

sch4p3(3) Prejudice the protection of an individuals right to privacy

Bob Barker
Manager
Mineral and Extractive Planning

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TENURE NUMBER:	ML 20572	**TENURE STATUS:**	Application
TENURE HOLDER:	Cape Alumina Pty Ltd		
ADDRESS:	GPO Box 122 BRISBANE QLD 4001		

TENURE NUMBER:	EPM 14547	**TENURE STATUS:**	Granted
TENURE HOLDER:	Cape Alumina Pty Ltd		
ADDRESS:	GPO Box 122 BRISBANE QLD 4001		

TENURE NUMBER:	EPM 15278	**TENURE STATUS:**	Granted
TENURE HOLDER:	Cape Alumina Pty Ltd		
ADDRESS:	GPO Box 122 BRISBANE QLD 4001		

TENURE NUMBER:	PPL 56	**TENURE STATUS:**	Application
TENURE HOLDER:	AGL Pipelines Investments (Qld) Pty Limited		
ADDRESS:	GPO Box 2256 BRISBANE QLD 4001		

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V1

sch4p3(3) Prejudice the protection of an individuals right to privacy

20th August, 2008

Mr Stephen Potts
Project Manager
Tenure Actions Branch Planning Division
Environmental Protection Agency
stephen.potts@epa.qld.gov.au

Dear Sir,

I am in receipt of your letter dated 21st July in regards to the Proposed Declaration of the Steve Irwin Wildlife Reserve Nature Refuge.

I have been advised by Mr Ken Hicks, of Ken Hicks Priority Projects, that there have been some changes mooted to the documentation so will await for the changes before giving our consent, as required under section 44 of the Nature Conservation Act.

Is this acceptable?

Yours faithfully,

sch4p3(3) Prejudice the protection of an individuals right to privacy

Sally Witherspoon for
John Clive Witherspoon and Sally-Anne Witherspoon

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V3

Date Prepared:	25 July 2008	Prepared by:	Tim Ellis
		Title:	Director, Tenure Actions
Approved by:	Geoff Clare	Division/Region:	Sustainable Communities
Position:	Executive Director Sustainable Communities	Telephone:	3227 6198
Date Approved:	30 July 2008	Other Refs:	

Ref: ~~BNE33142-1~~
BNE2008/8987
SU/08/3095

- 4 AUG 2008

CAIRNS MODIFIE

Mr Peter Callaghan
Chief Executive Officer
Cape York Land Council
PO Box 2496
CAIRNS QLD 4870

RTI DL RELEASE - EHP

Dear Mr Callaghan

Thank you for your letter of 1 July 2008 in relation to the Bertiehaugh Pastoral Property.

As you are aware, the State is committed to achieving sustainable outcomes for both Indigenous and conservation interests on Cape York Peninsula. In doing so, it is prepared to consider approaches that will maximise the chances of such outcomes being achieved in ways that are efficient for all parties.

As I understand your letter, the Traditional Owners for the land the subject of Bertiehaugh Pastoral Holding (Bertiehaugh) are seeking my commitment as to whether the Environmental Protection Agency (EPA) would be prepared to treat them as registered native title claimants for the next 12 months so they are afforded the equivalent of any procedural and other entitlements under the Commonwealth *Native Title Act 1993* (NTA) and the Queensland *Nature Conservation Act 1992* (NCA). This commitment is sought, in effect, in exchange for the Traditional Owners not filing, in that period, a native title determination application over Bertiehaugh.

I note and appreciate that this offer by the Traditional Owners is not given lightly. In that context, and so that I can properly assess this offer and subsequently provide a response about whether I am prepared to make the commitment, I need further information from you which will allow me to assess the benefits, as well as any associated costs, involved in giving and implementing a commitment of this kind.

So that I might do this, would you please advise:

(a) the details, including the names of those persons to whom such a commitment, if given, would apply;
(b) the level of formality and enforceability those persons expect such a commitment, if given, would be reduced to, i.e. an exchange of letters; a Memorandum of Understanding; an Indigenous Land Use Agreement;

.../2

sch4p3(3) Prejudice the protection of an individuals right to privacy

(c) the nature of the relevant dealings under the NCA those persons are anticipating in the proposed 12 month period; and

(d) based on those relevant dealings, those procedural and other entitlements under the NTA and the NCA that are otherwise anticipated to be received by those persons.

Should you wish to discuss the matter further, please contact Tim Ellis of the Environmental Protection Agency on telephone 3227 6198.

Yours sincerely

SIGNED

Andrew McNamara MP
Minister for Sustainability,
Climate Change and Innovation

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Cape York Land Council

ABN 22 965 382 705
ICN 1163
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CAIRNS QLD 4870

Email: reception@cylc.org.au
Web site: www.cylc.org.au

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Fax: (07) 4051 0097
Freecall: 1800 623 548

Facsimile

RTI DLRELEASE EHP

To:	Tim Ellis Environmental Protection Agency	Fax:	(07) 3227 7237
To:	The Honourable Andrew McNamara, MP Minister for Climate Change, Sustainability and Innovation	Fax:	(07) 3227 6309
To:	The Honourable Craig Wallace, MP Minister for Natural Resources and Water	Fax:	(07) 3210 6214
		Date:	31 July 2008
From:	Michelle Cohen		
Re:	PROPOSED DECLARATION OF A NATURE REFUGE OVER THE BERTIEHAUGH PASTORAL PROPERTY - LOT 4 ON PLAN DLH4		
Pages:	Thirteen (13) including this page.		

Please find letter attached for your attention.

Yours faithfully
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

Darinka Zivkov
Legal Secretary

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Weipa QLD 4874
Phone: (07) 4069 7484/385
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email: weipa@cylc.org.au

Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cylc.org.au

31 July 2008

Mr Tim Ellis
Director
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4000

BY FACSIMILE: (07) 3227 7237

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RTI DL RELEASE - EHP

Dear Mr Ellis

PROPOSED DECLARATION OF A NATURE REFUGE OVER THE BERTIEHAUGH PASTORAL PROPERTY - LOT 4 ON PLAN DLH4

We refer to your letter of 27 June 2008 which advises that the Environmental Protection Agency ("EPA") is proposing to declare a Nature Refuge over the Bertiehaugh Pastoral Property ("Bertiehaugh") under the provisions of the *Nature Conservation Act 1992* (Qld) ("NCA"). CYLC notes that receipt of this correspondence, which is a reply to our letter of 26 May 2008, has crossed over with our further correspondence to the Minister for Sustainability, Climate Change and Innovation dated 1 July 2008, now **attached.**

Your letter describes the EPA's belief that declaration of a Nature Refuge over Bertiehaugh will not affect the native title rights and interests that exist over that property. Your letter explains that this opinion is premised upon the intention of the EPA to bind only the pastoral lessee to the proposed conservation agreement. The conservation agreement would therefore not bind any other land-holder, including native title holders. Your letter states that the EPA accepts that the term "land-holder", as set out in s 44 of the NCA, may include native title holders and that accordingly, in considering a proposal for the declaration of a Nature Refuge, the EPA must consider the affect of the proposal on native title holders.

The NCA allows the State to declare a Nature Refuge under s 46. The consequence of any such declaration is that the area specified becomes a protected area under the NCA. Except in the case of a compulsory nature refuge, the State and any land-holders must enter into a conservation agreement under s 45 before a Nature Refuge can be declared. A

conservation agreement may be made where the matters specified in NCA s 45(1) are agreed. It may, but need not, contain terms of the kind set out in NCA s 45(4) and (5). Any conservation agreement must be consistent with the management principles for the protected area to which it relates (NCA s 45(3)).

CYLC's view is that the declaration of land subject to a pastoral lease (or subject to another kind of non-exclusive lease or licence) as a Nature Refuge will constitute a future act under the NTA. Therefore, any such declaration and associated conservation agreement must be made with the consent of the traditional owners of the land, and through agreement under an indigenous land use agreement ("ILUA"). Our opinion has been provided to the EPA through various avenues, including by way of correspondence dated 26 May 2008, and directly to Karen Robinson (Advisor to the Minister for Sustainability, Climate Change and Innovation) at a meeting specifically convened to discuss the affect of the declaration of a nature refuge on native title rights and interests in Cairns on 18 June 2008.

The basis for our position is now set out below.

The Native Title Act

CYLC is of the opinion that the approach proposed by the State in relation to the declaration of the Nature Refuge mistakenly assumes that, if the State affects native title contrary to the future act provisions of the NTA that part 2 division 3 subdivision O of the NTA will apply. CYLC believes that this is incorrect.

Section 240A of the NTA provides as follows:

> **240A Future acts invalid unless otherwise provided**
> Unless a provision of this Act provides otherwise, a future act is invalid to the extent that it affects native title.

In the case of the declaration of a Nature Refuge under the NCA, part 2 division 3 subdivision M of the NTA is applicable, as the declaration of a Nature Refuge is an act that may occur over freehold land. The declaration will therefore be classed as a valid act, as provided by s 24MD(1) of the NTA. The effect of classification of the declaration of a Nature Refuge as a valid act within the meaning of s 24MD of the NTA is that native title holders must be afforded the same procedural rights as if they were the freehold owner of the land over which the valid act has occurred (see NTA, s 24MD(6A)). In the case of the declaration of a Nature Refuge, the relevant procedural right is set out within s 46(1) of the NCA. That is, that a conservation agreement must be entered into prior to the declaration of the Nature Refuge where the declaration is proposed to occur over land that is not State land. The only

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alternative manner to declare a Nature Refuge is by way of compulsory declaration under s 49 of the NCA.

The State Government is therefore required to enter into a conservation agreement with native title holders, given that the procedural rights that are conferred by part 2 division 3 subdivision M of the NTA will prevail over those set out within the NCA.

Dedication of a Nature Refuge as a Future Act

Section 69 of the NCA provides that a land-holder is not affected by the declaration of a Nature Refuge except to the extent of a binding conservation agreement, a conservation covenant, or a regulation giving effect to a management plan. CYLC is of the opinion that the capacity to make a regulation giving effect to a management plan means that the declaration of a nature refuge will "affect" native title rights and interests in the manner described within s 227 of the NTA. It would also be possible for a proposed conservation agreement to require or authorise an act to be done that could not otherwise be done under the terms of a pastoral lease, and consequently "affect" native title.

Section 62 of the NCA makes it an offence for a person, other than an authorised person, to take, use, keep or interfere with a cultural or natural resource of a protected area in certain circumstances. This is a further basis on which to regard the declaration of a nature refuge as a future act as it would clearly affect native title rights and interests in the manner described within s 227 of the NCA. Whilst s 62(1)(b) of the NCA does allow for a person to take, use, keep or interfere with cultural or natural resources under a conservation agreement or covenant applicable to that area, no security is provided to native title holders under that subsection where it is not proposed for the native title holding group to become a party to a conservation agreement or other covenant applicable to that area. In addition it may be that s 62 of the NCA will prevail over s 69 of the NCA *expressio unius*, thereby affording no protection to traditional owners that their native title rights and interests will remain unaffected in the event that a Protected Area is created by virtue of the declaration of a Nature Refuge.

In the unlikely event that the declaration of a nature refuge does not "affect" native title, s 10 of the *Racial Discrimination Act 1975* (Cth) would then operate to require that native title holders be a party to a conservation agreement prior to the declaration of a nature refuge.

In addition, CYLC is of the opinion that the State is incorrect to assert that a conservation agreement, once registered, will not be binding upon native title holders. A conservation agreement, once registered under s 134 of the NCA, is binding not only on the land-holders who entered into the agreement and their successors in title, but also persons with an interest in the land, as set

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out within s 51(1) of the NCA. An interest in land is defined in s 36 of the *Acts Interpretation Act 1954* (Qld) as "a legal or equitable interest in the land or other property" or "a right, power, privilege over, or in relation to the land or other property". The CYLC believes that there is nothing within the meaning of the holding of an 'interest in the land' that would exclude rights that arise out of custom and tradition under continuing native title, including usufructuary rights. It is not clear if the proposed conservation agreement for Bertiehaugh will include a provision making it a 'registrable conservation agreement'.

The exclusion of a "land-holder" from a conservation agreement is not permissible under s 45 of the NCA. Rather, all land-holders must be parties for the State to declare a nature-refuge over the land of those land-holders. The specific reference to leaseholders, the holders of mining interests and grantees of encumbrances in s 45(2) presents an implication that these persons are not otherwise regarded as land-holders. It does not suggest that native title holders are not land-holders.

The objects of the NCA

The objects of the NCA provide for the recognition of Aboriginal and Torres Strait Islander interests and their cooperation in conservation, as well as the cooperative involvement of land-holders in conservation. Section 6 of the NCA probably imposes a requirement that all persons exercising powers under the NCA consult and have regard to the views of Aboriginal people, giving rise to a legitimate expectation that the State will consult with traditional owners regarding the declaration of any Nature Refuge. In addition, s 22 of the NCA states that a Nature Refuge must be managed to provide for the interests of the land-holder to be taken into account. As noted above, CYLC is of the opinion that there is nothing within the definition of a "land-holder" that would exclude native title holders.

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As noted in our letter to the Minister of 1 July 2008, CYLC is now considering what action is required to protect the interests of the traditional owners that assert native title rights and interests over Bertiehaugh. Consistent with instructions from our clients in this matter, this may include preparation of a native title determination application over Bertiehaugh or the initiation of injunctive proceedings. You will note however, for the reasons set out in our correspondence to the Minister of 1 July 2008, that CYLC is seeking the cooperation of the State Government to avoid the need to prepare and lodge a native title determination application over Bertiehaugh.

CYLC now requests that the State provide the native title holders of Bertiehaugh with the proposal for the declaration as required by s 44(3) of the NCA by the substituted service mechanism as set out in s 24MD(7) of the NTA. CYLC is of the opinion that the "proposal for declaration" attached to your letter of 27 June 2008 is not a notice for the purposes of s 44(3) of the NCA

because it does not contain a deadline for submissions on the proposal, as required by s 44(4) of the NCA.

CYLC also requests that the State provide the CYLC with a copy of the draft proposed conservation agreement over Bertiehaugh in order to allow us to assess, on behalf of our client, the affect of that proposed agreement upon the native title rights and interests of the traditional owners of Bertiehaugh.

As requested in our letter of 26 May 2008, CYLC requests written confirmation of the proposed timing for the execution of the conservation agreement and the subsequent declaration of the Nature Refuge of Bertiehaugh. We also request, in accordance with the matters addressed within this correspondence, advice about the process that the EPA now intends to undertake to consult the traditional owners of Bertiehaugh regarding the proposed declaration of the Nature Refuge.

We look forward to your response as a matter of urgency.

Yours faithfully
CAPE YORK LAND COUNCIL

Section 78B(2) RTI Act

Ann Daniel
PRINCIPAL LEGAL OFFICER

Enc

CC: The Honourable Andrew McNamara, MP
Minister for Climate Change, Sustainability and Innovation
PO Box 15155
BRISBANE QLD 4002

BY FACSIMILE: (07) 3227 6309

The Honourable Craig Wallace, MP
Minister for Natural Resources and Water
PO Box 15456
CITY EAST QLD 4002

BY FACSIMILE: (07) 3210 6214

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Our Ref:
Your Ref:

Contact:
Email:

1st July 2008

Our Ref:

Your Ref:

Contact: Michelle Cohen

Email: mcohen@cylc.org.au
Telephone: (07) 4053 9222

COPY

RTI DL RELEASE - EHP

The Honourable Andrew McNamara MP
Minister for Sustainability, Climate Change & Innovation
PO Box 15155
BRISBANE QLD 4002

By Facsimile: (07) 3227 6309

Dear Andrew

Re: Bertiehaugh Pastoral Property

CYLC is the native title representative body and legal representative for the traditional owners of the Bertiehaugh Pastoral Property ("Bertiehaugh"), located in North West Cape York.

On or around 18 July 2007, a Funding Agreement, under the auspices of the National Reserve System, was executed between Silverback Properties Pty Limited ("Silverback") and the Commonwealth Government for the provision of in excess of $6 million to facilitate the acquisition of Bertiehaugh. Silverback is the corporate trustee of the Terri Irwin Family Trust. The funds were apparently made available by the Commonwealth Government to honour the memory of the late Steve Irwin and to add to the National Reserve System estate.

On 24 July 2007, the Queensland Department of Natural Resources & Water ("DNRW") approved assignment of the Bertiehaugh term lease (pastoral purposes) from the former lessees (the Witherspoons) to Silverback and settlement of the transfer of Bertiehaugh was completed on 31 July 2007.

CYLC and other Cape York Regional Organisations became aware of the acquisition of Bertiehaugh by Silverback on 25 July 2007.

Release

Through examination of documents received in response to applications made under the *Freedom of Information Act 1982* (Cth) and the *Freedom of Information Act 1992* (Qld) ("FOI"), CYLC has become aware that a condition of the Funding Agreement between the Commonwealth and Silverback is that a Conservation Agreement be entered into, and that the property be dedicated as a Nature Refuge under section 46 of the *Nature Conservation Act 1992* (Qld) ("*NCA*"). CYLC has not been able to obtain a copy of the actual Funding Agreement, and is only aware of this condition by reference to other documents obtained under FOI.

CYLC has advised the State through various avenues, and specifically by correspondence to the Regional Managers of the Department of Natural Resources & Water and the Environmental Protection Agency dated 26 May 2008, of CYLC's view that the declaration of a Nature Refuge under the *NCA* is a 'future act' as defined in the *Native Title Act 1993* (Cth) ("*NTA*"). A copy of our letter dated 26 May 2008 is attached. It is CYLC's firm view that in order to be valid any such declaration and attendant Conservation Agreement must be made with the consent of the traditional owners of the land, perhaps through agreement under an Indigenous Land Use Agreement ("ILUA").

CYLC is of the opinion that the native title rights and interests of our clients will be affected by such a future act, even in the absence of a registered native title determination application ("NTDA") over the relevant area. However, to date, CYLC has not received any indication from the Queensland Government that the traditional owners of Bertiehaugh will be afforded any procedural rights under the *NTA* and *NCA* in the absence of a registered NTDA over the area. Specifically, we refer to the contents of the letter from Phil Boult, DNRW dated 20 June 2008, now attached to this correspondence.

CYLC seeks a commitment from the Queensland Government that it is prepared to treat the traditional owners of Bertiehaugh as if they are registered native title claimants for the next 12 month period, in order to ensure that they are afforded their procedural and other entitlements under the *NTA* and *NCA*. CYLC does not seek this commitment lightly and does so under very particular and unique circumstances. Without such a commitment, CYLC will have no choice but to prepare and file a NTDA over Bertiehaugh, in accordance with the clear instructions of our clients. This would be an unfortunate (and in our opinion entirely avoidable) development, given CYLC's commitment to practical, negotiated and expeditious native title outcomes.

PTDL RELEASE EHR

The commitment from the Queensland Government is sought in light of the following policy considerations:

1. The Commonwealth, through the Minister for the Environment, Peter Garrett, has indicated its support for an ILUA to be entered into over Bertiehaugh. CYLC understands that the Commonwealth has received legal advice supporting the negotiation of an ILUA in this situation. The Commonwealth has also undertaken to help fund the ILUA process. We understand that the legal advice and the funding arrangements have been communicated to Silverback by the Commonwealth. CYLC is not aware whether this information has been provided to the Queensland Government. CYLC is concerned by the apparent difference in opinion between the Commonwealth and Queensland governments on this issue, and suggests that the best way to ensure certainty for all parties is through commitment to an ILUA.

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2. Bertiehaugh falls within the proposed North West Cape York region currently under discussion with the Commonwealth and Queensland Governments for fast-track native title resolution by end 2010 - the preparation of a NTDA at this point would constitute a diversion of scarce resources away from this important initiative.
3. The Federal Court of Australia and the current Attorney-General have made plain the ongoing concern about the general lack of progress in native title claims and the need to find other ways to reach agreement outside formal lodgement of an NTDA, where possible.
4. CYLC has recently commenced discussions with Cape Alumina Proprietary Limited regarding the negotiation of an ILUA over the area covered by the Mining Lease Applications 20572, 20573 and 20574 (the Pisolite Hills Project), which includes part of Bertiehaugh.

We seek your urgent response to this request. In the event that the State does not agree to this proposal, the CYLC will, as a matter of urgency, prepare a NTDA for Bertiehaugh to ensure that the native title rights and interests of our clients are protected.

Please contact Ann Daniel if you wish to discuss any matters raised within this correspondence.

Regards,
CAPE YORK LAND COUNCIL

COPY

Section 78B(2) RTI Act

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

Encl.

CC:

The Hon Minister Craig Wallace, MP
Minister for Natural Resources & Water
By facsimile: (07) 3220 2475

The Honourable Peter Garrett MP
Minister for Environment, Heritage and the Arts
By facsimile: (02) 9349 8089

The Honourable Robert McClelland, MP
Attorney-General of Australia
By facsimile: (02) 6273 4102

RTI DL RELEASE - EHP

Release

Queensland Government

Author: Phil Boult
Our Ref: 2005/004522
Your Ref:
Unit: Cape York Tenure Resolution Task Force
Phone: 4039 8227

Department of
Natural Resources and Water

20 June 2008

Michelle Cohen
Legal Officer
Cape York Land Council
Po Box 2496
Cairns Qld 4870

FOI DL RELEASE - EHP

Dear Ms Cohen

Bertiehaugh Pastoral Holding -- Request for Statement of Reasons

I refer to your letter of 26 May 2008 which was received by facsimile transmission on the same day, requesting a Statement of Reasons concerning the status of the Bertiehaugh Pastoral Holding lease and in particular whether the Department of Natural Resources and Water has made a decision to renew the lease pursuant to the *Land Act 1994*, including information relating to the particulars of any offer made by the Department.

I have considered your request in the context of it being a request for a statement of reasons as provided for under section 32 of the *Judicial Review Act 1991 (the Act)*. Section 32(1) states as follows:

> ***Request for statement of reasons***
> *(1) If a person makes a decision to which this part applies, a person who is entitled to make an application to the court under section 20 in relation to the decision may request the person to provide a written statement in relation to the decision.*

Section 20(1) makes it clear that a person who is entitled to make a request for a statement of reasons under section 32(1) must be a person who is aggrieved by a decision to which the Act applies. Section 20(1) states as follows:

> ***Application for review of decision***
> *(1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision.*

Section 7 of the Act provides the meaning of person aggrieved which is as follows:

> ***Meaning of person aggrieved***
> *(1) In this Act, a reference to a person aggrieved by a decision includes a reference—*
> *(a) to a person whose interests are adversely affected by the decision; or*
> *(b) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.*
> *(2) In this Act, a reference—*
> *(a) to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision; or*

Dept of Natural Resources & Mines
Cape York Coordination Unit
L2 William McCormack Place
5b Sheridan St PO Box 937
Cairns Qld 4870
Telephone + 4039 8227
Facsimile + 4031 2984
Website www.dnr.qld.gov.au

Release

(b) to a person aggrieved by a failure to make a decision; includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure.

The decision which is the subject of your request is the decision by the department to renew the Bertiehaugh Pastoral Holding lease. This is a decision to which the Judicial Review Act would apply, however I can see nothing in the material before me, or provided by yourself, which establishes or indicates that the you (or the Cape York Land Council) are a person aggrieved within the meaning of the Act.

Section 33(2) of the Act provides as follows:

Decision maker must comply with request except in certain circumstances

(2) If the decision maker is of the opinion that the requester was not entitled to make the request, the decision maker may, within 28 days after receiving the request—

(a) give to the requester written notice of the decision maker's opinion; or

(b) apply to the Court under section 39 for an order declaring that the requester was not entitled to make the request.

I have formed the opinion that you are not a person aggrieved by a reviewable decision under the Act because your interests are not adversely affected by my decision to offer the lessees of Bertiehaugh Pastoral Holding a new lease for pastoral purposes in accordance with the provisions of the *Land Act 1994*. Therefore I am not prepared to provide you with a Statement of Reasons under the Act.

I am however prepared to provide the following information in respect of your request but on the clear understanding that this is not a Statement of Reasons under the Act:

- Bertiehaugh Pastoral Holding is a current lease for pastoral purposes under the *Land Act 1994* which is due to expire on 31 December 2009;
- As you are aware, on 24 May 2007 an offer was made to John Clive Witherspoon and Sally-Anne Witherspoon, who were the registered lessees at the time, to renew the lease.
- The offer was subsequently accepted.
- The lease has since transferred to Silverback Properties Pty Ltd.
- The company is continuing with the lease renewal offer.

Yours sincerely

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Phil Boult
Manager, Cape York Tenure Resolution Task Force

RTI DL RELEASE - DHP

Dept of Natural Resources & Mines
Cape York Coordination Unit
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Cape York Land Council
ABN 22 965 382 705
Aboriginal Corporation ICN 1163

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PO Box 378
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Fax: (07) 4069 7941
email: weipa@cyle.org.au

Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cyle.org.au
Telephone: 4053 9222

26 May 2008

FAXED 26/5/08 12:19

Attention: Clive Cook
Regional Director
Environment Protection Authority
5B Sheridan Street
CAIRNS QLD 4870

BY FACSIMILE: (07) 4031-4390

FAXED 26/05/08 12:19

Attention: Cyril Cordery
Regional Director (Indigenous Services)
Department of Natural Resources & Water
William McCormack Place
PO Box 937
CAIRNS QLD 4870

BY FACSIMILE: (07) 4039 8298

COPY

RTI/IP RELEASE EHP

Dear Sir/Madam

Bertiehaugh Pastoral Holding No 43/4199 described as Lot 3 on Plan DLH4 - Renewal of Term Lease and dedication of Nature Refuge

On 25 March 2008 the Cape York Land Council Aboriginal Corporation ("CYLC") received advice in writing from the Cape York Tenure Resolution Task Force, Indigenous Services, Department of Natural Resources and Water ("DNRW"), indicating that files in response to our application under the *Freedom of Information Act 1992* (Qld), regarding matters relating to the acquisition of the Bertiehaugh Pastoral Property, were available to be inspected and copied from the Cairns office.

The freedom of information materials contained the following documents:

- Letter dated 24 May 2007 from Mr Ken Hicks, representative of the former leaseholders of the property, seeking Governor in Council approval for the issue of a new Term Lease over the property for Pastoral Purposes. The letter notes that section 159 of the *Land Act 1994* (Qld) requires that the Minister consider certain issues before making a decision to renew a lease;
- Letter dated 10 July 2007 from the Director General of DNRW to the legal representative of the for lessees noting that the lease would be assigned to Silverback Properties Pty Ltd as trustee prior to the offer being finalized and a new lease issuing. The letter indicates that in the event that the offer to assign the lease is finalized, and subject to compliance with the usual lease assignment requirements, including Ministerial approval being sought in

accordance with section 322 of the *Land Act 1994* (Qld), that Silverback Properties Pty Ltd as lessee shall be entitled to the offer to extend that lease for a period of thirty (30) years on the terms and conditions contained in the department's letter of 24 May 2007 to the existing lessees, together with such time extensions that may be granted;

- Ministerial briefing note to the Minister of DNRW dated 10 July 2007 from the Regional Service Director, North Region, regarding the 'Proposed new lease over Bertiehaugh Pastoral Holding 43/4190 on Cape York Peninsula noting that Silverback Properties Pty Ltd would not accept the offer to renew the lease unless the requirement to dedicate a road available for public use was removed.

We now seek confirmation in writing of the current status of the lease. In particular, we seek confirmation of whether DNRW has made a decision to renew the lease over the Bertiehaugh Pastoral Property pursuant to the *Land Act 1994* (Qld) and a Statement of Reasons regarding that decision. CYLC also seeks information relating to the particulars of any offer to renew the lease, including the details of any requirements or conditions attached to the offer.

Furthermore CYLC seeks confirmation of whether a decision has been made by the Environmental Protection Authority to dedicate a Nature Refuge over the Bertiehaugh Pastoral Property pursuant to the *Nature Conservation Act 1992* (Qld), and a Statement of Reasons regarding that decision. CYLC seeks details of the proposed process and timing for the dedication of the Nature Refuge. In particular, we seek details of any proposed consultation with the traditional owners of the Bertiehaugh Pastoral Property in relation to the dedication of the Nature Refuge.

We confirm that CYLC is of the opinion that the declaration of a Nature Refuge or the entering into of a conservation agreement under the *Nature Conservation Act 1992* (Qld) is a future act that would require native title holder consent under an ILUA. Section 22 of the *Nature Conservation Act 1992* (Qld) states that a Nature Refuge must be managed to provide for the interests of the landholders to be taken into account. In Division 8 of the *Nature Conservation Act 1992* (Qld), a landholder is defined to include a person having an interest in land. An 'interest in land' is defined in the *Acts Interpretation Act 1954* (Qld) as a legal or equitable estate in the land or other property; or a right, power or privilege over, or in relation to, the land or other property.

We look forward to your response. Please contact Michelle Cohen, Legal Officer, to discuss any matters that have been raised in this correspondence.

Yours faithfully,
CAPE YORK LAND COUNCIL

COPY

Section 78B(2) RTI Act

MICHELLE COHEN
LEGAL OFFICER

FOI DL RELEASE - EAP

Release

V1

Enquiries Stephen Potts
Telephone (07) 3227 6825
Your reference
Our reference BNE33142

21 July 2008

John Clive Witherspoon and Sally-Anne Witherspoon
C/-Ken Hicks Priority Projects

[redacted] sch4p3(3) Prejudice the protection of an individuals right to privacy

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
SUB-LEASE: No. 711299876
LANDHOLDERS: Silverback P/L A.C.N. 067 400 088
LAND: Whole of Lot 4 on PLAN DLH4

In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Sustainability, Climate Change and Innovation (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

If the Minister is satisfied that an area should be declared a protected area, the Minister, under section 44 of the NCA, is required to prepare a Proposal for Declaration and to give written notice to all landholders affected by the proposal. A copy of the Proposal for Declaration is enclosed. If you wish to make a submission about the proposal the closing date for receiving submissions is 28 days from the date of this letter.

Also, before entering into the conservation agreement the Minister is required, under section 45(2)(b) of the NCA, to obtain your written consent if, as a person entitled to the benefit of the encumbrance, you consider your rights to be materially affected by the conservation agreement.

When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

For further information about nature refuges and case studies, visit:
http://www.epa.qld.gov.au/nature_conservation/nature_refuges/what_is_a_nature_refuge/

If you consider your rights to be materially affected by the conservation agreement, your consent is sought by the Environmental Protection Agency (the EPA), on behalf of the Minister, to the conservation agreement over the subject land. A copy of the proposed conservation agreement is enclosed for your consideration.

RTI DL RELEASE - EHP

Queensland Australia

Queensland Australia
Telephone 3227 6825
Facsimile 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

Please advise within 28 days from the date of this letter whether you consent to the proposed conservation agreement. Direct your reply to Project Officer (Nature Refuges), Tenure Actions Branch, Environmental Protection Agency, PO Box 15155, City East, Qld 4002.

If you have any enquiries please don't hesitate to contact me on (07) 3227 6825

Yours sincerely

sch4p3(3) Prejudice the protection of an individuals right to privacy

Stephen Potts
Project Manager

Enc.

RTI DL RELEASE - EHP

V1

Enquiries Stephen Potts
Telephone (07) 3227 6825
Your reference
Our reference BNE33142

21 July 2008

Senior Land Officer
Department of Natural Resources and Water
PO Box 937
Cairns QLD 4870

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
LANDHOLDERS: Silverback P/L A.C.N. 067 400 088 Trustee Under Instrument 710960437
LAND: Whole of Lot 4 on DLH4

In accordance with the Queensland *Nature Conservation Act 1992* (the NCA), the Minister for Sustainability, Climate Change and Innovation (the Minister) proposes, with the landholders concerned, to enter into a conservation agreement for the establishment of a nature refuge.

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When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

For further information about nature refuges and case studies, visit:
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Can you please advise within 28 days from the date of this letter whether you consent to the proposed conservation agreement. Please direct your reply to Project Officer (Nature Refuges), Tenure Actions Branch, Environmental Protection Agency, PO Box 15155, City East, Qld 4002. If you have any enquiries please don't hesitate to contact me on (07) 3227 6825.

Yours sincerely

[redacted]
sch4p3(3) Prejudice the protection of an individuals right to privacy

Stephen Potts
Project Manager

PTI DL RELEASE - EHP

Queensland Australia

Queensland Australia
Telephone 3227 6825
Facsimile 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

V1

Enquiries Stephen Potts
Telephone (07) 3227 6825
Your reference
Our reference BNE33142

21 July 2008

Mr Bob Barker
Manager
Department of Mines and Energy
PO Box 15216
CITY EAST QLD 4002

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE
LANDHOLDERS: Silverback P/L A.C.N. 067 400 088 Trustee Under Instrument 710960437
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When all the necessary consents have been obtained, the Minister will then, for the State, enter into a conservation agreement with the landholder. Following execution by the parties of the conservation agreement, it is proposed that the Minister would seek Governor in Council approval for the declaration of the nature refuge.

Note that existing and future rights relating to mineral and petroleum extraction have been accommodated in the conservation agreement through the inclusion of the following standard clause:

"The parties acknowledge that:

- existing and future rights related to mineral and petroleum exploration and extraction are not altered by this agreement; and
- any lawfully approved mining or petroleum-related activity on a nature refuge will be planned and conducted in accordance with relevant statutory requirements, including environmental, conservation and cultural heritage requirements relevant to the nature refuge."

RTI DL RELEASE - EHP

Queensland Australia

Queensland Australia
Telephone 3227 6825
Facsimile 3227 7237
Website www.epa.qld.gov.au
ABN 87 221 158 786

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Please advise within 28 days from the date of this letter whether you consent to the proposed conservation agreement. Direct your reply to Stephen Potts, Project Manager, Tenure Actions Branch, Environmental Protection Agency, PO Box 15155, City East, Qld 4002.

If you have any enquiries please don't hesitate to contact me on (07) 3227 6825.

Yours sincerely

sch4p3(3) Prejudice the protection of an individuals right to privacy

Stephen Potts
Project Manager

Enc.

RTI DL RELEASE - EHP

v1

Cape York Land Council
ABN 22 985 382 705
Aboriginal Corporation ICN 1163

Cairns Central Office
32 Florence Street
PO Box 2486
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Phone: (07) 4053 9222
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Fax: (07) 4069 7341
email: weipa@cylc.org.au

Our Ref:
Your Ref:

Contact:
Email:

1st July 2008

Our Ref:

Your Ref:

Contact: Michelle Cohen

Email: mcohen@cylc.org.au
Telephone: (07) 4053 9222

RTI DL RELEASE - EHP

COPY

The Honourable Andrew McNamara MP
Minister for Sustainability, Climate Change & Innovation
PO Box 15155
BRISBANE QLD 4002

By Facsimile: (07) 3227 6309

Dear Andrew

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On or around 18 July 2007, a Funding Agreement, under the auspices of the National Reserve System, was executed between Silverback Properties Pty Limited ("Silverback") and the Commonwealth Government for the provision of in excess of $6 million to facilitate the acquisition of Bertiehaugh. Silverback is the corporate trustee of the Terri Irwin Family Trust. The funds were apparently made available by the Commonwealth Government to honour the memory of the late Steve Irwin and to add to the National Reserve System estate.

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CYLC is of the opinion that the native title rights and interests of our clients will be affected by such a future act, even in the absence of a registered native title determination application ("NTDA") over the relevant area. However, to date, CYLC has not received any indication from the Queensland Government that the traditional owners of Bertiehaugh will be afforded any procedural rights under the *NTA* and *NCA* in the absence of a registered NTDA over the area. Specifically, we refer to the contents of the letter from Phil Boult, DNRW dated 20 June 2008, now attached to this correspondence.

CYLC seeks a commitment from the Queensland Government that it is prepared to treat the traditional owners of Bertiehaugh as if they are registered native title claimants for the next 12 month period, in order to ensure that they are afforded their procedural and other entitlements under the *NTA* and *NCA*. CYLC does not seek this commitment lightly and does so under very particular and unique circumstances. Without such a commitment, CYLC will have no choice but to prepare and file a NTDA over Bertiehaugh, in accordance with the clear instructions of our clients. This would be an unfortunate (and in our opinion entirely avoidable) development, given CYLC's commitment to practical, negotiated and expeditious native title outcomes.

RTI RELEASE - EHR

The commitment from the Queensland Government is sought in light of the following policy considerations:

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3. The Federal Court of Australia and the current Attorney-General have made plain the ongoing concern about the general lack of progress in native title claims and the need to find other ways to reach agreement outside formal lodgement of an NTDA, where possible.
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We seek your urgent response to this request. In the event that the State does not agree to this proposal, the CYLC will, as a matter of urgency, prepare a NTDA for Bertiehaugh to ensure that the native title rights and interests of our clients are protected.

Please contact Ann Daniel if you wish to discuss any matters raised within this correspondence.

Regards,
CAPE YORK LAND COUNCIL

[redacted]Y

PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER

Encl.

CC:

The Hon Minister Craig Wallace, MP
Minister for Natural Resources & Water
By facsimile: (07) 3220 2475

The Honourable Peter Garrett MP
Minister for Environment, Heritage and the Arts
By facsimile: (02) 9349 8089

The Honourable Robert McClelland, MP
Attorney-General of Australia
By facsimile: (02) 6273 4102

RTI DL RELEASE - EHP

Release

Author: Phil Boult
Our Ref: 2005/004522
Your Ref:
Unit: Cape York Tenure Resolution Task Force
Phone: 4039 8227

Queensland Government

Department of
Natural Resources and Water

20 June 2008

Michelle Cohen
Legal Officer
Cape York Land Council
Po Box 2496
Cairns Qld 4870

RTI RELEASE - EHP

Dear Ms Cohen

Bertiehaugh Pastoral Holding – Request for Statement of Reasons

I refer to your letter of 26 May 2008 which was received by facsimile transmission on the same day, requesting a Statement of Reasons concerning the status of the Bertiehaugh Pastoral Holding lease and in particular whether the Department of Natural Resources and Water has made a decision to renew the lease pursuant to the *Land Act 1994*, including information relating to the particulars of any offer made by the Department.

I have considered your request in the context of it being a request for a statement of reasons as provided for under section 32 of the *Judicial Review Act 1991 (the Act)*. Section 32(1) states as follows:

> *Request for statement of reasons*
> *(1) If a person makes a decision to which this part applies, a person who is entitled to make an application to the court under section 20 in relation to the decision may request the person to provide a written statement in relation to the decision.*

Section 20(1) makes it clear that a person who is entitled to make a request for a statement of reasons under section 32(1) must be a person who is aggrieved by a decision to which the Act applies. Section 20(1) states as follows:

> *Application for review of decision*
> *(1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision.*

Section 7 of the Act provides the meaning of person aggrieved which is as follows:

> *Meaning of person aggrieved*
> *(1) In this Act, a reference to a person aggrieved by a decision includes a reference—*
> *(a) to a person whose interests are adversely affected by the decision; or*
> *(b) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.*
> *(2) In this Act, a reference—*
> *(a) to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision; or*

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(b) to a person aggrieved by a failure to make a decision; includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure.

The decision which is the subject of your request is the decision by the department to renew the Bertiehaugh Pastoral Holding lease. This is a decision to which the Judicial Review Act would apply, however I can see nothing in the material before me, or provided by yourself, which establishes or indicates that the you (or the Cape York Land Council) are a person aggrieved within the meaning of the Act.

Section 33(2) of the Act provides as follows:

Decision maker must comply with request except in certain circumstances

(2) If the decision maker is of the opinion that the requester was not entitled to make the request, the decision maker may, within 28 days after receiving the request—

(a) give to the requester written notice of the decision maker's opinion; or

(b) apply to the Court under section 39 for an order declaring that the requester was not entitled to make the request.

I have formed the opinion that you are not a person aggrieved by a reviewable decision under the Act because your interests are not adversely affected by my decision to offer the lessees of Bertiehaugh Pastoral Holding a new lease for pastoral purposes in accordance with the provisions of the *Land Act 1994*. Therefore I am not prepared to provide you with a Statement of Reasons under the Act.

I am however prepared to provide the following information in respect of your request but on the clear understanding that this is not a Statement of Reasons under the Act.

- Bertiehaugh Pastoral Holding is a current lease for pastoral purposes under the *Land Act 1994* which is due to expire on 31 December 2009;
- As you are aware, on 24 May 2007 an offer was made to John Clive Witherspoon and Sally-Anne Witherspoon, who were the registered lessees at the time, to renew the lease.
- The offer was subsequently accepted.
- The lease has since transferred to Silverback Properties Pty Ltd.
- The company is continuing with the lease renewal offer.

Yours sincerely

[redacted]

sch4p3(3) Prejudice the protection of an individuals right to privacy

Phil Boult
Manager, Cape York Tenure Resolution Task Force

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Enquiries Tim Ellis
Telephone (07) 3227 6198
Your reference
Our reference BNE33142-1

27 June 2008

Cape York Land Council
PO Box 2496
Cairns QLD 4870

Dear Sir/Madam

PROPOSED DECLARATION OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE LAND: LOT 4 on PLAN DLH4

The Environmental Protection Agency (EPA) is proposing a nature refuge over lot 4 on crown plan DLH4 to be declared in accordance with the provisions of the *Nature Conservation Act 1992* (NCA). Nature refuges are set aside for the management and conservation of natural resources, and can be declared over areas of private land with the agreement of the land-holder.

The EPA accepts that the term 'land-holder' as used in section 44 of the NCA may include native title holders. Accordingly, in considering a proposal for the declaration of a nature refuge, the EPA must consider the effect of the proposal on native title.

In this case the Agency's intention is to only bind the pastoral lessee to a conservation agreement, and not to bind any other land-holder, including the native title holders. This intention will be included in the conservation agreement and the subsequent declaration of the nature refuge.

The *Native Title Act 1993* protects native title so that if the conservation agreement or the declaration of the nature refuge inadvertently purports to affect native title, it will be invalid to that extent and of no effect with respect to native title. In the case of this proposal I confirm that the EPA does not seek to affect native title rights or to bind native title holders. The EPA wishes to make a conservation agreement with the holder of the pastoral lease and to put in place regulations for the management of the protected area while still permitting the full exercise of native title rights and interest with respect to the land.

The EPA contemplates that, since native title is not intended to be affected by the proposal, the conservation agreement with respect to the proposal will be made between the State of Queensland

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and holder of the pastoral lease. The management intent and the conservation agreement will reflect the intention not to affect native title.

A conservation agreement made in these circumstances will be binding upon the land-holders who enter into the agreement but will not bind other land-holders such as native title holders or successors in title to the pastoral lease.

Although you are not required to respond to this letter, if you choose to do so your reply would be appreciated by 31 July 2008.

Should you have any inquiries please do not hesitate to call me (07) 3227 6198.

Yours sincerely

Tim Ellis
Director

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Encl. proposal for declaration

V1

Cape York Land Council
Aboriginal Corporation ICN 1163
ABN 22 905 382 705

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Phone: (07) 4053 9222
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Our Ref:
Your Ref:

Contact: Michelle Cohen
Email: mcohen@cylc.org.au
Telephone: 4053 9222

26 May 2008

FAXED 26/5/08 12:19

Attention: Clive Cook
Regional Director
Environment Protection Authority
5B Sheridan Street
CAIRNS QLD 4870

BY FACSIMILE: (07) 4031-4390

FAXED 26/05/08 12:19

Attention: Cyril Cordery
Regional Director (Indigenous Services)
Department of Natural Resources & Water
William McCormack Place
PO Box 937
CAIRNS QLD 4870

BY FACSIMILE: (07) 4039 8298

COPY

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Dear Sir/Madam

Bertiehaugh Pastoral Holding No 4374199 described as Lot 3 on Plan DLH4 - Renewal of Term Lease and dedication of Nature Refuge

On 25 March 2008 the Cape York Land Council Aboriginal Corporation ("CYLC") received advice in writing from the Cape York Tenure Resolution Task Force, Indigenous Services, Department of Natural Resources and Water ("DNRW"), indicating that files in response to our application under the *Freedom of Information Act 1992* (Qld), regarding matters relating to the acquisition of the Bertiehaugh Pastoral Property, were available to be inspected and copied from the Cairns office.

The freedom of information materials contained the following documents:

- Letter dated 24 May 2007 from Mr Ken Hicks, representative of the former leaseholders of the property, seeking Governor in Council approval for the issue of a new Term Lease over the property for Pastoral Purposes. The letter notes that section 159 of the *Land Act 1994* (Qld) requires that the Minister consider certain issues before making a decision to renew a lease;
- Letter dated 10 July 2007 from the Director General of DNRW to the legal representative of the for lessees noting that the lease would be assigned to Silverback Properties Pty Ltd as trustee prior to the offer being finalized and a new lease issuing. The letter indicates that in the event that the offer to assign the lease is finalized, and subject to compliance with the usual lease assignment requirements, including Ministerial approval being sought in

accordance with section 322 of the *Land Act 1994* (Qld), that Silverback Properties Pty Ltd as lessee shall be entitled to the offer to extend that lease for a period of thirty (30) years on the terms and conditions contained in the department's letter of 24 May 2007 to the existing lessees, together with such time extensions that may be granted;

- Ministerial briefing note to the Minister of DNRW dated 10 July 2007 from the Regional Service Director, North Region, regarding the 'Proposed new lease over Bertiehaugh Pastoral Holding 43/4190 on Cape York Peninsula noting that Silverback Properties Pty Ltd would not accept the offer to renew the lease unless the requirement to dedicate a road available for public use was removed.

We now seek confirmation in writing of the current status of the lease. In particular, we seek confirmation of whether DNRW has made a decision to renew the lease over the Bertiehaugh Pastoral Property pursuant to the *Land Act 1994* (Qld) and a Statement of Reasons regarding that decision. CYLC also seeks information relating to the particulars of any offer to renew the lease, including the details of any requirements or conditions attached to the offer.

Furthermore CYLC seeks confirmation of whether a decision has been made by the Environmental Protection Authority to dedicate a Nature Refuge over the Bertiehaugh Pastoral Property pursuant to the *Nature Conservation Act 1992* (Qld), and a Statement of Reasons regarding that decision. CYLC seeks details of the proposed process and timing for the dedication of the Nature Refuge. In particular, we seek details of any proposed consultation with the traditional owners of the Bertiehaugh Pastoral Property in relation to the dedication of the Nature Refuge.

We confirm that CYLC is of the opinion that the declaration of a Nature Refuge or the entering into of a conservation agreement under the *Nature Conservation Act 1992* (Qld) is a future act that would require native title holder consent under an ILUA. Section 22 of the *Nature Conservation Act 1992* (Qld) states that a Nature Refuge must be managed to provide for the interests of the landholders to be taken into account. In Division 8 of the *Nature Conservation Act 1992* (Qld), a landholder is defined to include a person having an interest in land. An 'interest in land' is defined in the *Acts Interpretation Act 1954* (Qld) as a legal or equitable estate in the land or other property; or a right, power or privilege over, or in relation to, the land or other property.

We look forward to your response. Please contact Michelle Cohen, Legal Officer, to discuss any matters that have been raised in this correspondence.

Yours faithfully,
CAPE YORK LAND COUNCIL

COPY

Section 78B(2) RTI Act

MICHELLE COHEN
LEGAL OFFICER

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Other Bundle.

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QUEENSLAND GOVERNMENT

Hon Andrew Powell MP
Minister for Environment and Heritage Protection

Ref CTS 16695/12

3 DEC 2012

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Mr Matthew Moharich
Principal Legal Officer
Cape York Land Council
Aboriginal Corporation
PO Box 2496
CAIRNS QLD 4870

RTI DE-RELEASE EHP

Dear Mr Moharich

Thank you for your letter of 2 November 2012, which was received by email on the same day, requesting a statement of reasons pursuant to part 4 of the *Judicial Review Act 1991* regarding the declaration of Steve Irwin Wildlife Reserve Nature Refuge (SIWRNR) on behalf of your clients.

I have considered your request in the context of it being a request for a statement of reasons as provided for under section 32(1) of the Act which states:

32 Request for statement of reasons

(1) If a person makes a decision to which this part applies, a person who is entitled to make an application to the court under section 20 in relation to the decision may request the person to provide a written statement in relation to the decision.

The Act only applies to a decision of an administrative character and only a person who is aggrieved by a decision is entitled to make a request for a statement of reasons under section 32(1).

Section 7 of the Act states the meaning of a person aggrieved as:

7 Meaning of person aggrieved

(1) In this Act, a reference to a person aggrieved by a decision includes reference-

(a) to a person whose interests are adversely affected by the decision; or

(b) in the case of a decision by way of the making of a report or recommendation – to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

(2) In this Act, a reference –

(a) to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision; or

(b) to a person aggrieved by a failure to make a decision;

includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure.

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The decision, which is the subject of your request, is the decision of the Govenor in Council; however, I am the Minister responsible for the administration of the relevant enactment under which the decision was made. Section 32(2)(a) states:

> ***32 Request for statement of reasons***
> *(2) The request must be made by written notice given to –*
> *(a) if the decision was made by the Governor in Council or by Cabinet – the Minister responsible for the administration of the enactment, or the scheme or program, under which the decision was made;*

Your correspondence of 2 November 2012 does not state the basis upon which you suggest that the decision was one of an administrative character or that Cape York Land Council (CYLC) or your clients Olive Bagie, Bernard Charlie, Bethina McDonnell, Roy McDonnell, Walter Moses, Sandra Sebasio or Richard Woosup are persons aggrieved within the meaning of the Act.

I am prepared to provide information (enclosed) contained in response to your request on the clear understanding that neither I, nor the Governor in Council, concede that the decision was one of an administrative character; that CYLC or your clients are persons aggrieved under the Act; or that CYLC or your clients are entitled to receive a Statement of Reasons. Also as per your request, a copy of the Protected Area Plan (PA429) is enclosed pertaining to SIWRNR.

I hope this information has been of assistance to you. Should you have further enquiries, please contact my Chief of Staff, Mr Troy Collings on 3239 0844.

Yours sincerely

Section 78B(2) RTI Act

ANDREW POWELL MP
Minister for Environment and Heritage Protection

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Information in relation to my decision, as Minister, to recommend that the Governor in Council declare Steve Irwin Wildlife Reserve Nature Refuge (SIWRNR) under the *Nature Conservation Act 1992* (NCA)

Date: 17 February 2012

Action: Execution of the conservation agreement for SIWRNR by the then Minister for Environment, Vicky Darling MP.

Date: 27 August 2012

Decision: Approval of the submission of an Executive Council Minute – A Regulation, by Minister Powell

Evidence or other material considered

In arriving at my decision I:

- considered the following material which is directly relevant to SIWRNR. The following material was provided to me on 22 August 2012, as per Ministerial and Executive Correspondence System item 11268/12, and was approved by me on 27 August 2012 –
  - Nature Conservation (Protected Areas) Amendment Regulation (No..) 2012.
  - Minister's Memorandum regarding the Executive Council Minute for the Nature Conservation (Protected Areas) Amendment Regulation (No..) 2012.
  - Explanatory Memorandum regarding the Nature Conservation (Protected Areas) Amendment Regulation (No..) 2012.
  - Explanatory Notes for the Nature Conservation (Protected Areas) Amendment Regulation (No..) 2012.
  - The cover for the Subordinate Legislation.
  - Approval to Submit an Executive Council Minute.
  - Attachment 1 - Draft Media Statements for proposed nature refuges.
  - Attachment 2 (i) - email from Queensland Treasury regarding the Preliminary Impact Assessment for the proposed SIWRNR.
  - Attachment 2 (ii) – Preliminary Impact Assessment for the proposed SIWRNR.
  - Attachment 2 (iii) - Regulatory Assessment Statement (RAS) system short forms for multiple proposals with no significant adverse effects on business, government or the community.
  - Attachment 2 (iv) - Regulatory Principles Checklists.
- sought advice from Allan Williams, Director – Tenures and Covenants Unit of my department on declarations of nature refuges under the NCA.
- considered a hard-copy of the Protected Area Plan (PA429) for proposed SIWRNR.

Findings on material questions of fact

I made the following findings of fact –

General:

1. Lot 4 on Plan SP222990 was purchased by Silverback Properties Pty Ltd (Australia Zoo) as a legacy/memorial to the late Steve Irwin with Australian Government funding, a condition of which was the establishment of a nature refuge over the property. The terms of the Commonwealth funding and the intent of Australia Zoo was to establish a nature refuge over the property.
2. The Australian Government had already designated the subject property as a high conservation area for international reporting purposes.

Negotiation and declaration of nature refuges under the NCA:

3. The Department of Environment and Heritage Protection (EHP) negotiates legally binding conservation agreements with landholders on behalf of the State. After conservation agreements have been executed by the Minister or Director-General, the nature refuges with which they are associated are

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considered for declaration in the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) through the Executive Council and subsequently notified in the Government Gazette.

4. The execution of a conservation agreement is a valid statutory action of the Minister responsible for the enabling Act (i.e. the NCA) on behalf of the State of Queensland as a continuing legal entity.

5. Nature refuges must be declared in the Regulation in order to be in effect and conferred statutory protection rights and obligations under the NCA.

6. The Executive Council Minute contains a *Nature Conservation (Protected Areas) Amendment Regulation* (the Amendment Regulation) prepared and certified by the Office of the Queensland Parliamentary Counsel for the purpose of amending the Regulation to provide for amendments to the protected area estate (refer to Sections 46(1), 50 and 175 of the NCA).

7. Section 46 of the NCA provides that the Governor in Council may, by regulation, declare a specified area of State land, or the area the subject of a conservation agreement, as a nature refuge. The NCA does not impose an explicit requirement on the Minister to propose the declaration to the Governor in Council. However, this is implicit in the provisions of the NCA. The NCA envisages that unless a foundational issue of material consequence has changed between the execution of a conservation agreement and a proposed declaration, a proposal would follow. The wording 'may' is a reflection that Parliament cannot impose 'must' on the Governor in Council.

8. Declaration of new nature refuges and amendments to existing nature refuges are considered low risk as they are established through a voluntary agreement with the landholders, and the State undertakes consultation with interests potentially affected by the nature refuge proposal in accordance with Sections 44 and 45 of the NCA.

Declaration of SIWRNR:

9. The Amendment Regulation provided for my consideration sought declaration of 29 new nature refuges (including SIWRNR), additional area to an existing nature refuge and amendment to three other existing nature refuges.

10. The conservation agreement for SIWRNR clearly articulates that the intent of the State and Australia Zoo in entering into the conservation agreement is to formally establish, through declaration, the associated nature refuge. For example, Recital C of the conservation agreement for SIWRNR states "The Minister and the Lessee of Steve Irwin Wildlife Reserve have agreed to enter into a conservation agreement in accordance with Section 45 of the Act [the NCA] to facilitate the declaration of the SIWRNR." Clause 2.1 of the agreement states "this Agreement is made pursuant to Section 45 of the Act [the NCA] as a precondition to declaring the Land, as a nature refuge, pursuant to Section 7 of the *Nature Conservation (Protected Areas) Regulation 1994*." Clause 2.2 of the agreement does however clarify that "If the declaration in Clause 2.1 is not made on or before that date specified in Item 4 in Schedule 1 [Note: This is no later than 12 months after the date the agreement is executed], then the Lessee will continue to manage the Land in accordance with the Management Principles and the terms and conditions of this Agreement.".

Consultation, Preliminary Impact Assessments (PIA) and the Regulatory Assessment Statements (RAS):

11. Consultation regarding the proposal to declare SIWRNR was undertaken with the Mines and Energy section of the former Department of Employment, Economic Development and Innovation and the Native Title Representative Body, CYLC, as no current Native Title claim exists. Parties consulted under Section 44 and 45 of the NCA, included sub-lessees, applicants for a mining lease and the holders of exploration permits for minerals. No other interested parties under Sections 44 and 45 of the NCA were identified.

12. Consultation was also undertaken with the Resources and Economic Development Branch, Queensland Treasury, regarding the proposed amendments and the RAS process.

13. A PIA was undertaken for the proposed SIWRNR on request by Queensland Treasury. A PIA is the first stage of assessment of the potential impacts of a regulatory proposal on business, community and government; and assists government agencies in identifying the need for an RAS.

14. The PIA for the proposed SIWRNR noted that all legislative requirements under the NCA had been fulfilled for the declaration of this nature refuge and that CYLC, representing the Traditional Owners,

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and mining company Cape Alumina Ltd, did not provide their consent to the declaration. Based on legal advice, the State Government's position is that Native Title Rights and Interests are not impaired or otherwise affected by the declaration of a nature refuge. Mining rights and interests are similarly not affected by the declaration of a nature refuge. Consent for declaration was received from the sub-lessees.

15. The PIA noted that CYLC had indicated they may hold a position other than the State's relative to the impacts of nature refuges on Native Title, and have presented views that all State land dealings should be subject to an Indigenous Land Use Agreement (ILUA) process.
16. The Australian Government provided funding to CYLC to support Traditional Owners to negotiate an ILUA with Australia Zoo. It is recognised that reasonable endeavours have been made to negotiate an ILUA and that these negotiations are understood to be protracted and in abeyance.
17. The PIA for the proposed SIWRNR recommended progressing declaration of the proposed nature refuge, in addition to the 28 other proposed new nature refuges and amendments to four existing nature refuges. This recommendation was considered appropriate as all legislative requirements in relation to SIWRNR had been met, no appreciable negative impacts had been identified for any party and all parties had either provided consent and/or additional provisions had been included within the conservation agreement to clarify whose and what rights are or are not affected.
18. Queensland Treasury advised that an RAS was not required for the Amendment Regulation based on the information provided, including the PIA for the proposed SIWRNR.

Reason for the decision:

I was satisfied that due process, including all legislative requirements, had been observed in executing the conservation agreement for SIWRNR and in preparing the nature refuge for gazettal. Subsequently, there was no evident reason for me not to recommend the proposed SIWRNR, or any of the other 28 proposed new nature refuges in the Amendment Regulation to the Governor in Council for declaration, as per Section 46 of the NCA.

Date: 3 September 2012

Action: Formal lodgement of the Executive Council Minute and associated documents with the Department of Premiers and Cabinet.

Date: 10 September 2012

Action: Cabinet consideration of the Executive Council Minute and associated documents.

Date: 13 September 2012

Action: Governor in Council consideration and approval of the Executive Council Minute and associated documents.

Date: 14 September 2012

Action: Declaration of SIWRNR under the *Nature Conservation (Protected Areas) Regulation 1994*, in accordance with Section 46 of the NCA and notification in the Government Gazette.

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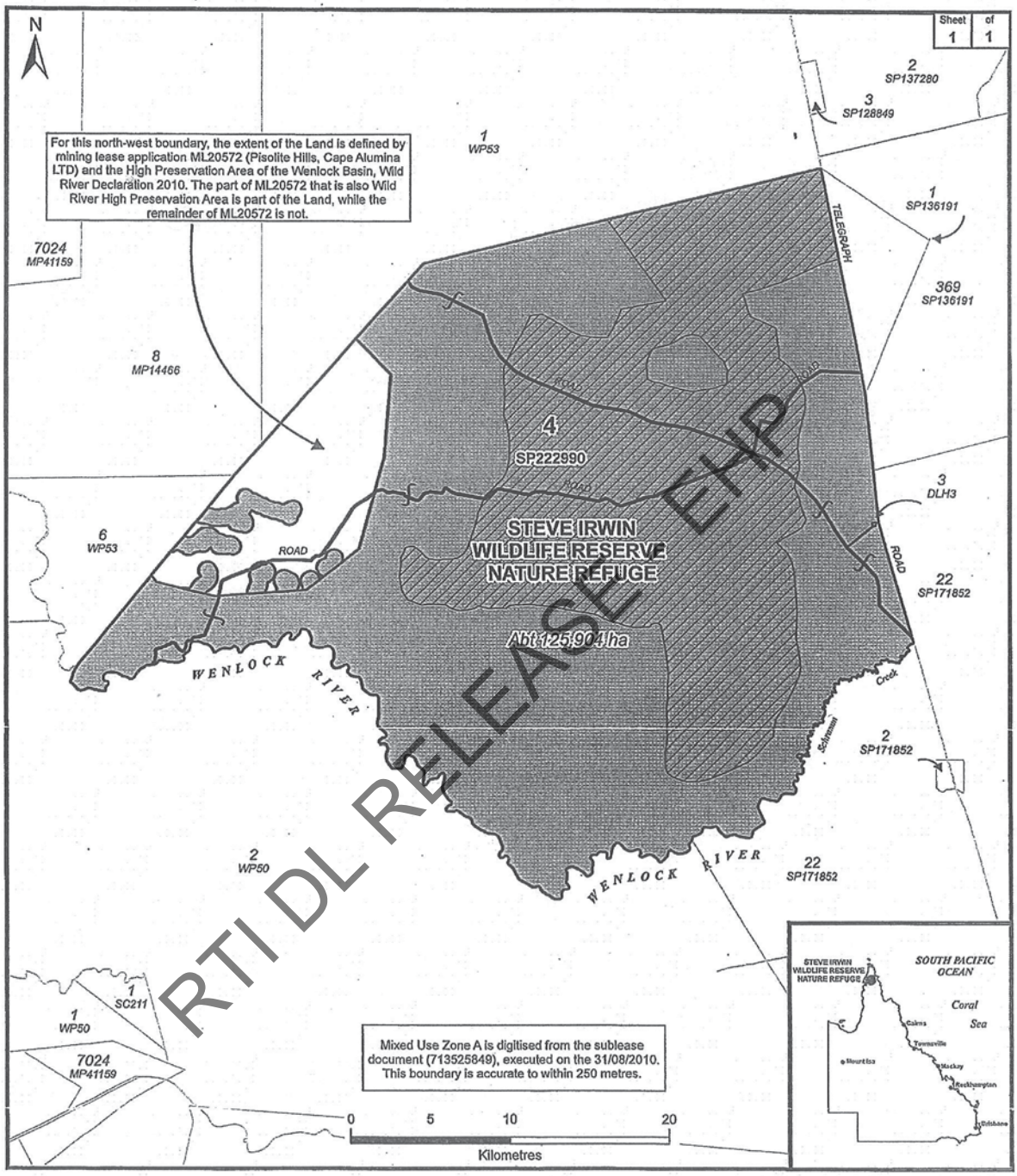
Protected Area Plan (PA429) for Steve Irwin Wildlife Reserve Nature Refuge



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Queensland Government GDA DATUM: GDA94 ZONE: MGA 54

PLAN OF STEVE IRWIN WILDLIFE RESERVE NATURE REFUGE

Steve Irwin Wildlife Reserve Nature Refuge

Mixed Use Zone A (Abt 51,070 ha)

© The State of Queensland (Department of Environment and Resource Management) 2011.

PARISH: BEEVOR	LOCAL AUTH: COOK SHIRE	Scale: 1:220000	
COUNTY: DULHUNTY	REGION: CAPE YORK / SAVANNA	Note A4 copy is reduced.	
LOCALITY: WENLOCK	ELECTORATE: COOK		
SYSINT Code: 8329SIW001	PA Number: PA429	Drawn By: CH	AP18994
File Ref: BNE33142 Vol.1	Map Ref: 7373-24122	Date: 08/04/2011	

Schedule 4 F:\Nature Refuges\Gazettals\Nature Refuges\Steve Irwin Wildlife Reserve (WAGIS data)\Workspaces\Steve_Irwin_NR_AR_landarg.mxd

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Pages 314 through 382 redacted for the following reasons:
- -
sch3(3)(1)(e) Executive Council - Would disclose consideration by Executive Council