

# **Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement**

**Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited**

**Traditional Owners**

and

**Kimberley Land Council Aboriginal Corporation**

**Freehills**

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In this paper is the agreement between Argyle, Traditional Owners for the mine area and the Kimberley Land Council. This paper carries all the rules to make sure that we treat each other properly. It has taken many years and a lot of hard work to make this agreement. We are very proud to sign it. With this agreement as a start, we can make the future better for Traditional Owners and Argyle.

There are two parts to the agreement between Argyle and Traditional Owners. This part is called the ILUA. It talks about the history between Argyle and Traditional Owners and how Argyle will recognise Traditional Owners with money and other benefits. It talks about Traditional Owners agreeing to Underground Mining and other operations by Argyle and how Traditional Owners can get Country back.

The rules in this part of the agreement are very hard to change. The other part of the agreement is called the Management Plan Agreement. The rules in the Management Plans can change if Argyle and Traditional Owners agree.

The English in these agreements is very high. It was written in a High English that lawyers and the courts can understand. To make it easier for people who don't know this kind of English, we have put in some plain English boxes to help people understand.

This ILUA is made up of 20 different parts called *clauses*. Each clause talks about a different idea. There are plain English boxes at the start of each clause to help you understand what it is talking about. At the back of the agreement are 20 different parts called *schedules*. Schedules give people extra information about what is in the agreement. The schedules have maps, old agreements and other things that help people understand the agreement. At the start of every *schedule* there is a plain English box to help you understand what is in it.

The plain English boxes don't say everything that is in a clause – only the main ideas.

For people who can't read, we have made a video that tells people about the main things in this agreement between Argyle and Traditional Owners.

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## Table of contents

<i>Clause</i>		<i>Page</i>
<b>1</b>	<b>Reconciliation</b>	<b>2</b>
<b>2</b>	<b>Recognition</b>	<b>3</b>
<b>3</b>	<b>Consent to and support for mining</b>	<b>4</b>
<b>4</b>	<b>Historical Benefits</b>	<b>6</b>
<b>5</b>	<b>Support for Local Aboriginal Communities</b>	<b>8</b>
<b>6</b>	<b>TO Benefits</b>	<b>9</b>
<b>7</b>	<b>Grazing Lease</b>	<b>14</b>
<b>8</b>	<b>Native Title</b>	<b>16</b>
<b>9</b>	<b>Argyle Interests prevail</b>	<b>18</b>
<b>10</b>	<b>Compensation and claims</b>	<b>19</b>
<b>11</b>	<b>Default Events</b>	<b>20</b>
<b>12</b>	<b>ILUA registration &amp; support</b>	<b>22</b>
<b>13</b>	<b>Transfer and Novation</b>	<b>23</b>
<b>14</b>	<b>No variation</b>	<b>24</b>
<b>15</b>	<b>Warranties</b>	<b>25</b>
<b>16</b>	<b>Term</b>	<b>27</b>
<b>17</b>	<b>Dispute Resolution</b>	<b>27</b>
<b>18</b>	<b>General</b>	<b>28</b>
<b>19</b>	<b>Tax</b>	<b>32</b>
<b>20</b>	<b>Dictionary</b>	<b>33</b>

<b>Schedule 1 - Agreement Making Process</b>	<b>44</b>
<b>Schedule 2 - Agreement Area</b>	<b>140</b>
<b>Schedule 3 - Management Plans for the purposes of clause 3</b>	<b>142</b>
<b>Schedule 4 - Historical Arrangements</b>	<b>144</b>
<b>Schedule 5 - TO Claim</b>	<b>168</b>
<b>Schedule 6 - KLC Certification</b>	<b>168</b>
<b>Schedule 7 - ILUA – Registration Application</b>	<b>168</b>
<b>Schedule 8 - Map of Designated Areas</b>	<b>168</b>
<b>Schedule 9 - Consent Determination</b>	<b>168</b>
<b>Schedule 10 - Charitable Trust Deed</b>	<b>168</b>
<b>Schedule 11 - Special Purposes Trust Deed</b>	<b>168</b>
<b>Schedule 12 - Description and Map of Current Mining Area</b>	<b>168</b>
<b>Schedule 13 – Land Trust</b>	<b>168</b>
<b>Schedule 14 – Deed of Transfer – Argyle to Substitute Party</b>	<b>168</b>
<b>Schedule 15 – Deed of Novation – TOs to TO PBC</b>	<b>168</b>
<b>Schedule 16– Costs of the Special Purposes Trust and the Charitable Trust and the Executive Officer</b>	<b>168</b>
<b>Schedule 17 – Supplier Statement</b>	<b>168</b>
<b>Schedule 18 – CD Rom containing maps</b>	<b>168</b>
<b>Schedule 19 – Trust Payments</b>	<b>168</b>
<b>Schedule 20 – Confidential Provisions</b>	<b>168</b>

*Here we say who is in this agreement. This agreement is between Argyle Diamonds, Traditional Owners for the mine area and the Kimberley Land Council.*

## **This Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement**

is made on

between the following parties:

- 1 Argyle Diamonds Limited (ABN 36 009 102 621) and Argyle Diamond Mines Pty Limited (ABN 52 008 912 418) both of 2 Kings Park Road, West Perth, Western Australia (together Argyle)**
- 2 George Dixon, Evelyn Hall and Patsy Hall on their own behalf, and on behalf of the Mandangala/Tiltuwam dawang (dawaam) comprised of the Toby, Dixon, Hall and Curtin families, and on behalf of all other Miriwung, Gidga, Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 3 Goody Barrett, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Larry Thomas and Norman Thomas on their own behalf, and on behalf of the Mandangala/Tiltuwam dawang (dawaam) comprised of the Thomas and Barrett families, and on behalf of all other Miriwung, Gidga, Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 4 Churchill Cann, Nancy Nodea, and Maggie John on their own behalf, and on behalf of the Yunurr/Yalangga dawang (dawaam), and on behalf of all other Miriwung, Gidga, Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 5 Peggy Patrick, Mona Ramsay, Ronnie Ramsey, Fred Timms and Clancy Patrick on their own behalf, and on behalf of the Neminuwarlin dawang (dawaam), and on behalf of all other Miriwung, Gidga, Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 6 Nancy Dilyai, Phyllis Ningamarra and Jeff Janama on their own behalf, and on behalf of the Balaburr dawang (dawaam), and on behalf of all other Miriwung, Gidga, Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 7 Ben Ward, Ruth Ward and Marjorie Brown on their own behalf, and on behalf of the Bilbidjing dawang (dawaam), and on behalf of all other Miriwung, Gidga, Wularr, and Malignin people who have Traditional Rights in the Agreement Area**

- 8 Una Morgan, Frank Sampi, Morton Moore, Tiger Moore and Charlie Martin on their own behalf, and on behalf of the Dundun dawang (dawaam), and on behalf of all other Miriwung, Gidga , Wularr and Malignin people who have Traditional Rights in the Agreement Area**
- 9 Kimberley Land Council Aboriginal Corporation**  
(ABN 96 724 252 047) The Registered Native Title Representative Body for the Kimberley Region Pursuant to Section 202 of the NTA of 36 Pembroke Street, Broome, Western Australia (KLC)

### **Recitals – Intentions**

- A. Argyle Diamonds Limited is the owner of the Argyle Diamond Mine. Argyle Diamond Mines Pty Limited is the manager of the Argyle Diamond Mine. Together they hold the Granted Argyle Interests and operate the Argyle Diamond Mine in the Agreement Area.
- B. The TOs hold Traditional Rights in the Agreement Area.
- C. The intention of Argyle and the TOs in entering this agreement, is to renew and refresh the relationship between Argyle and the TOs and to provide a transparent basis for that relationship to continue for the life of the Argyle Operations.
- D. The parties intend this agreement to be an Indigenous Land Use Agreement (Area Agreement) covering the Agreement Area.

### **The parties agree**

in consideration of, among other things, the mutual promises contained in this agreement:

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## **1 Reconciliation**

*Argyle and the Traditional Owners recognise what has happened before and say how they came together openly and honestly to make a new future in this agreement.*

### **The historical relationship between Argyle and the TOs**

- 1.1 Argyle and the TOs acknowledge their shared history which forms the background to this agreement.

### **Agreement making process**

- 1.2 The parties acknowledge that this agreement has been made as a result of good faith negotiations by each party. A summary of those negotiations and the role of each party is set out in the Agreement Making Process at Schedule 1.

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## 2 Recognition

*Here Argyle says to the Traditional Owners: "We recognise you are the people for this country, and we recognise your rights".*

*The Traditional Owners say to Argyle: "We recognise your rights that come from the whitefella law".*

*And the Traditional Owners say to each other: "We all have rights in this country – we can't push anyone out".*

### **Argyle recognises TOs and Traditional Rights**

2.1 Argyle recognises:

- (a) that the TOs are the traditional owners of the Agreement Area in accordance with traditional Aboriginal laws and customs; and
- (b) the TOs' Traditional Rights.

### **TOs recognise the Argyle Interests**

2.2 The TOs recognise that:

- (a) the Granted Argyle Interests, the Diamond Act and the Diamond Agreement are valid, effective and enforceable; and
- (b) Argyle may exercise all rights conferred and comply with all obligations imposed under the Granted Argyle Interests, the Diamond Act and the Diamond Agreement subject only to the provisions of this agreement and the Law.

### **TOs recognise each other**

2.3 The TOs:

- (a) recognise that each Estate Group holds the Traditional Rights in the Agreement Area;
- (b) agree not to challenge the Traditional Rights of any other Estate Group; and
- (c) recognise each others rights and obligations under this agreement.



### 3 Consent to and support for mining

*Here the Traditional Owners and Argyle say, "It is a good thing for everyone if diamond mining keeps going and makes money."*

*Traditional Owners agree that Argyle can keep mining the Open Pit and make a decline tunnel and Underground mine. Traditional Owners agree that Argyle can look around for more diamonds and dig them up in new areas, so long as Argyle follows the rules in this agreement.*

*The Traditional Owners promise they will not block Argyle from getting any licence or permission from Government, that Argyle needs to do mining. Traditional Owners promise they will sign any papers to help Argyle get mining permission and to do mining.*

*There is an area in the Argyle Mining Lease called the Current Mining Area where Argyle is already mining or plans to mine soon. You can see a map of this area at the back of this agreement – in **Schedule 12**. Traditional Owners agree, that this area is cleared for mining – Argyle can do anything in that area for mining.*

#### **Continuation of the diamond mine**

- 3.1 Argyle and the TOs agree that this agreement is a strong agreement that respects and protects the TOs' interests in the Agreement Area, and provides substantial benefits to the TOs and Aboriginal people in the East Kimberley region. Argyle and the TOs agree that it is in the best interests of the parties if Argyle is able to continue to operate a commercially sound diamond mining business.

#### **Consent to and support for mining**

- 3.2 The parties consent to, support, and will not object to Argyle conducting the Argyle Operations, including:

- (a) Open Pit Mining Operations;
- (b) the Exploratory Decline;
- (c) Underground Mining;
- (d) Future Mining Activities;
- (e) Future Exploration Activities; and
- (f) all things necessary, conducive and incidental to the conduct of or in connection with the matters set out in (a) – (e),

subject to clause 3.3.

- 3.3 The parties' consent to Future Mining Activities and Future Exploration Activities under clause 3.2(d) and (e) is subject to Argyle's compliance with:

- (a) the Law;
- (b) this agreement; and
- (c) those Management Plans (or part thereof) which relate to Future Mining Activities and Future Exploration Activities and which are listed in **Schedule 3**.

- 3.4 The TOs agree to do all things, including signing any documents, necessary to give effect to the consent and support in clause 3.2.

### **Consent to, support for grant and renewal of Argyle Interests**

- 3.5 The parties consent to, support and will not object to the grant and renewal, as relevant, of each Argyle Interest necessary or incidental to the conduct of the Argyle Operations, provided that Argyle complies with this agreement.

- 3.6 The TOs agree to do all things, including signing any documents, necessary to give effect to the consent and support in clause 3.5.

- 3.7 The parties agree that:

- (a) the consents set out in this clause 3 constitute:
  - (1) statements for the purposes of s24EB of the NTA; and
  - (2) all consents relevant to the doing of Future Acts necessary or incidental to the conduct of Argyle Operations; and
- (b) Subdivision P of the NTA does not apply to those Future Acts.

### **Aboriginal Heritage**

- 3.8 The TOs:

- (a) agree that the Current Mining Area is Cleared;
- (b) consent to the conduct of all Argyle Operations in the Current Mining Area;
- (c) acknowledge that Argyle is entitled to conduct the Argyle Operations under the terms of existing section 16 and section 18 consents granted to Argyle in relation to the Current Mining Area; and
- (d) will not oppose any application by Argyle for a section 16 or section 18 consent in relation to the conduct of Argyle Operations in the Current Mining Area.

- 3.9 The maps in Schedule 2 of Management Plan 1 show all of the Aboriginal Sites within the Agreement Area of which Argyle has knowledge as at the date of this agreement.

### **Costs**

- 3.10 To the extent that the costs of compliance by the TOs with clauses 3.4 and 3.6 are not otherwise provided for in clauses 6.25 to 6.27 of this agreement or clause 4.68 of the Argyle Diamond Mine Participation Agreement – Management Plan Agreement, Argyle will agree to pay the TO's costs of compliance with those clauses provided that the purpose of the expenditure, and the costs, are reasonable.

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## 4 Historical Benefits

*Before Argyle started mining, it made an agreement with some Aboriginal people. This was called the Good Neighbour Agreement.*

*Later on, Argyle started to provide funding to the Woolah and Warmun Communities. This was called the Good Neighbour Programme.*

*In 1995 Argyle agreed to pay money to those old people who signed the Good Neighbour Agreement. This was called the Signatories Payments.*

*All of these old arrangements are in **Schedule 4** at the back of this agreement. Schedule 4 also says how much money Argyle paid under these arrangements.*

*Here Argyle says: "When we made these arrangements, we thought we were talking with all the Traditional Owners. Now we understand that before, we only talked to some Traditional Owners. We want to make this new agreement with all the right people".*

*Everyone agrees that these old arrangements, the Good Neighbour Agreement, the Good Neighbour Programme and the Signatories payments should finish up. This new agreement will take their place.*

### Historical arrangements

4.1 The following arrangements are operative immediately prior to the Commencement Date:

- (a) Good Neighbour Agreement
  - (1) The Good Neighbour Agreement was entered into by John Toby, George Dixon, Evelyn Hall, Peggy Patrick and Argyle in 1980.
  - (2) A copy of the Good Neighbour Agreement is in **Schedule 4**.
  - (3) Over the life of the Good Neighbour Agreement, Argyle has provided the Mandangala Community with the amounts of money set out in **Schedule 4**.
- (b) Good Neighbour Programme
  - (1) The Good Neighbour Programme was formed by a commitment given by Argyle in letters to the Woolah and Warmun Communities dated 6 July 1981 and the letters from the Chairman of the Woolah and Warmun Communities to the General Manager, Ashton Joint Venture on 18 July and 18 August 1981 respectively.
  - (2) A copy of each of these letters is in **Schedule 4**.
  - (3) Over the life of the Good Neighbour Programme, Argyle has provided the Woolah and Warmun Communities with the amounts of money set out in **Schedule 4**.
- (c) Signatories Payments
  - (1) These payments are explained in the letter from Argyle to John Toby, George Dixon, Evelyn Hall and Peggy Patrick dated 1 December 1995.
  - (2) A copy of this letter is in **Schedule 4**.

- (3) Argyle has made all the payments consistent with the letter in Schedule 4 between 1995 and immediately prior to the Commencement Date.
- (d) Decline Bonus
  - (1) This commitment is explained in the letter from Argyle to Traditional Owners dated 28 May 2003.
  - (2) A copy of this letter is in **Schedule 4**.
- (e) The arrangements referred to in clauses 4.1(a), (b) and (c) and (d) are the **Historical Arrangements**.

## **Background**

- 4.2 Argyle entered into the Historical Arrangements on the understanding, derived from consultations with Aboriginal people and reports from the WA Museum, that the parties and communities involved in the Historical Arrangements were the traditional owners of the land contained in the Argyle Interests.
- 4.3 Argyle acknowledges that all TOs wish to formally participate in the relationship with Argyle and that this is a broader group of traditional owners than those people who are a party to the Historical Arrangements.

## **Termination and Replacement of Historical Arrangements**

- 4.4 In the event that:
  - (a) all of John Toby, George Dixon, Evelyn Hall and Peggy Patrick execute this agreement, then as from the date at which this agreement is executed by the last of those persons, the Good Neighbour Agreement is terminated and replaced by the commitment contained in clause 5.2(a); or
  - (b) not all of John Toby, George Dixon, Evelyn Hall and Peggy Patrick have executed this agreement, then the Good Neighbour Agreement continues in full force and effect according to its terms and Argyle has no obligation to make the payments set out in clause 5.2(a) and 5.4(a).
- 4.5 The parties agree that as from the Commencement Date the Good Neighbour Programme is terminated and replaced by the commitments contained in clause 5.2(b) and (c).
- 4.6 In the event that:
  - (a) any of John Toby, George Dixon, Evelyn Hall and Peggy Patrick execute this agreement, then as from the date at which that person executed this agreement, the Signatories Payments to that person cease and that person will receive payments in accordance with clauses 6.1 to 6.8; or
  - (b) any of John Toby, George Dixon, Evelyn Hall or Peggy Patrick have not executed this agreement, then the Signatories Payments to that person who did not execute this agreement continue in accordance with the letter dated 1 December 1995 referred to in clause 4.1(c), and Argyle has no obligation to make the payments set out in clauses 6.1 to 6.8 to that person.

## 5 Support for Local Aboriginal Communities

*Here Argyle says how much it will pay to communities so everybody can know how much communities will get.*

*Right now, Argyle gives \$309,300 to Mandangala. Argyle gives \$116,610 to Woolah and \$288,578 to Warmun. Argyle will keep on paying this money and will top it up each year to keep up with things costing more.*

*Argyle is also going to pay \$45,000 to Juwulinypany and \$25,000 to Crocodile Hole, Argyle will top up this money as well.*

- 5.1 Argyle intends to provide financial assistance to Local Aboriginal Communities. The arrangements with Local Aboriginal Communities referred to in this clause 5 are set out in this agreement to ensure that there is transparency as to the benefits that Argyle will be providing to communities and the benefits to be provided by Argyle to TOs.
- 5.2 Argyle currently provides and will continue to provide the following financial assistance to the following Local Aboriginal Communities:
- (a) subject to clause 4.4(b), Mandangala Community - \$309,300 per year (indexed for CPI from 1 January 2004);
  - (b) Woolah Community - \$116,610 per year (indexed for CPI from 1 January 2004); and
  - (c) Warmun Community - \$295,726 per year (indexed for CPI from 1 January 2004).
- (Note: these sums are equal to the 2004 payments payable to these Local Aboriginal Communities under the Good Neighbour Agreement and the Good Neighbour Programme)*
- 5.3 Argyle also intends to provide the following financial assistance to the Local Aboriginal Communities set out below:
- (a) Juwulinypany Community - \$45,000 per year (indexed for CPI from 1 January 2005); and
  - (b) Crocodile Hole Community - \$25,000 per year (indexed for CPI from 1 January 2005).
- 5.4 Argyle will pay the sums set out in:
- (a) clause 5.2(a), subject to clause 4.4(b), to the Mandangala Community on the first Business Day of the next calendar year after the Commencement Date and annually thereafter until Closure. The commitment by Argyle to make the payments to the Mandangala Community until Closure is to ensure consistency with the terms of the former Good Neighbour Agreement;
  - (b) clause 5.2(b) and (c) to the Woolah Community and the Warmun Community on the first Business Day of the next calendar year after the Commencement Date and annually thereafter until 6 months after the Cessation of Production Operations; and
  - (c) clause 5.3 to the Juwulinypany Community and the Crocodile Hole Community on the Commencement Date and annually thereafter on the

first Business Day of the next calendar year until 6 months after the Cessation of Production Operations.

- 5.5 The payments referred to in clauses 5.2 and 5.3 will be made by depositing the annual sum in the bank account nominated by the community council of the relevant Local Aboriginal Community to Argyle in writing from time to time, at least 5 Business Days before the date for payment set out in clause 5.4.

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## 6 TO Benefits

*This clause talks about money that Argyle will give to Traditional Owners.*

*Argyle will pay money to the old people who signed the Good Neighbour Agreement, or their kids if they have passed away. Argyle will also pay money to other senior Traditional Owners. If these old people pass away, Argyle will keep paying this money to their kids.*

*Argyle will pay this money every year to these old people or their kids until mining finishes up.*

*Argyle will also pay money into two Trusts for Traditional Owners. .*

*The first trust is called the Special Purposes Trust. The Trust will hold money that is split up between the seven family groups who are Traditional Owners for the mine area.*

*The second trust is called the Charitable Trust. This Trust holds money for future generations. Some money from the Charitable Trust can go for things to help everyone in the East Kimberley.*

### Individual Payments

- 6.1 Subject to clause 4.6, Argyle and the TOs wish the Recipients to receive an annual sum on the terms set out in this clause. The Recipients were chosen on the following criteria:
- (a) John Toby, George Dixon and Evelyn Hall: Senior Mandangala/Tiltuwam TOs and signatories to the Good Neighbour Agreement;
  - (b) Patsy Hall: Senior Mandangala/Tiltuwam TO;
  - (c) Chocolate Thomas, Goodie Barrett, Lena Nyadbi and Madigan Thomas: Senior Mandangala/Tiltuwam TOs;
  - (d) Geraldine Bedford, the descendent Joe Lissadell a Senior Mandangala/Tiltuwam TO;
  - (e) Peggy Patrick: a signatory of the Good Neighbour Agreement; and
  - (f) Mona Ramsey, Linda Timms, Kim Timms, Timmy Timms Jnr and Alan Timms, the descendents of Timmy Timms. Timmy Timms witnessed the Good Neighbour Agreement.
- 6.2 Provided:
- (a) each Recipient has a valid will and subject to clause 4.6, the annual sum which each of the Recipients referred to in clauses 6.1(a) to 6.1(e) will

receive under this clause 6 is the Individual Payment Sum indexed for CPI from 1 January 2005;

- (b) Mona Ramsey, Linda Timms, Kim Timms, Timmy Timms Jnr and Alan Timms have a valid will, they will each receive an annual sum being an equal one-fifth share of the Individual Payment Sum indexed for CPI from 1 January 2005.
- 6.3 In relation to John Toby, George Dixon, Evelyn Hall and Peggy Patrick, Argyle will, subject to clause 4.6, make the first payment of the sum set out in 6.2 on the first Business Day of the next calendar year after the Commencement Date and annually thereafter until the Cessation of Production Operations.
- 6.4 In relation to Patsy Hall, Chocolate Thomas, Goodie Barrett, Lena Nyadbi and Madigan Thomas, Argyle will make the first payment of the sum set out in 6.2 on the Commencement Date and annually thereafter on the first Business Day of the next calendar year until the Cessation of Production Operations.
- 6.5 In relation to the descendents of Timmy Timms and Joe Lissadell, Argyle will make the first payment of an equal share of the sum otherwise payable to their ancestor under clause 6.2 on the Commencement Date and annually thereafter on the first Business Day of the next calendar year until the Cessation of Production Operations.
- 6.6 If a Recipient passes away before the Cessation of Production Operations, then Argyle will pay, in accordance with clause 6.8, the annual sum to which that Recipient was entitled for the benefit of the beneficiaries in that Recipients will but the total payment shall not exceed the Individual Payment Sum, indexed for CPI from 1 January 2005.
- 6.7 If a beneficiary under a will of a Recipient who is entitled to receive a payment under clause 6.6 passes away before the Cessation of Production Operations, then Argyle will pay, in accordance with clause 6.8, the annual sum for the benefit of the beneficiaries in that beneficiaries will but the total payment shall not exceed the Individual Payment Sum, indexed for CPI from 1 January 2005.
- 6.8 Payments to the Recipients will be made as follows:
- (a) the first payments to the Recipients referred to in clauses 6.4 and 6.5, which are to be made on the Commencement Date, will be paid by Argyle directly to those Recipients;
  - (b) the payments to be made on 1 January 2005 to the Recipients, will be paid by Argyle directly to the Recipients; and
  - (c) thereafter, all payments referred to in clauses 6.3 to 6.7 above will be made to the Recipients by the Special Purposes Trust. To enable those payments to be made Argyle will deposit the sums referred to in clauses 6.2 to 6.7 in a bank account held by the Special Purposes Trust and nominated in writing to Argyle by the trustee of the Special Purposes Trust at least 14 Business Days before the dates for payment set out in clauses 6.3 to 6.5.

With respect to the payments referred to at (a) and (b), Argyle must be reasonably satisfied that the Recipients have a valid will for the purposes of clause 6.2.

## **Trust Payments**

- 6.9 Argyle will make the Trust Payments for the benefit of the TOs on the conditions set out in clauses 6.10 to 6.24.
- 6.10 The obligation of Argyle to make the Trust Payments does not commence until Registration has occurred.
- 6.11 The TOs will be entitled to receive the benefit of the Trust Payments from the Registration Date until the date 6 months after the Cessation of Production Operations calculated from 1 July 2004.
- 6.12 Argyle will calculate and make the Trust Payments in accordance with **Schedule 19**.
- 6.13 As soon as practicable after the execution of this agreement, Argyle will execute a Charitable Trust Deed and a Special Purposes Trust Deed substantially in the forms set out in **Schedules 10 and 11** and will otherwise do all things necessary to establish the Charitable Trust and the Special Purposes Trust.

## **Change in International Accounting Standards**

- 6.14 If there is a change in the International Accounting Standards which directly causes a significant increase or decrease in the real value of the Trust Payments, then:
  - (a) any party may, by written notice to the others, notify the other parties of the details of the change in International Accounting Standards and the effects that the party considers the change in International Accounting Standards has on the real value of the Trust Payments; and
  - (b) the affected parties must promptly meet and begin (or if they already have begun, continue) negotiating in good faith, with a view to reaching agreement on what changes, if any, should be made, in order to maintain the real value of the Trust Payments as assessed on the day before the relevant change to the International Accounting Standards.
- 6.15 If the relevant parties fail to reach agreement as to the matters set out in clause 6.14(b) within 2 months from the date of the giving of the notice referred to in clause 6.14(a), then the dispute can be referred by any relevant party to an Independent Expert for determination by either party issuing a notice to the other party including a statement of the matters to be resolved.
- 6.16 Within 5 Business Days of issue by a party of a notice under clause 6.15, the parties must agree on the person who is to be the Independent Expert and if the parties cannot reach agreement within this time period, then the parties will, as soon as practicable, request the President of the International Accounting Standards Board to appoint an Independent Expert.
- 6.17 Any person nominated to act as an Independent Expert will be required to fully disclose any interest or duty prior to that the person's appointment. If that person has or may have any interest or duty which conflicts with their appointment as an Independent Expert, then that person may not be appointed except with the agreement of the parties.
- 6.18 It will be a term of the Independent Expert's appointment that the Independent Expert will be required to undertake to keep confidential matters coming to the



Independent Expert's knowledge by reason of the Independent Expert's appointment and carrying it out.

- 6.19 Each party must provide to the Independent Expert (with a copy to the other party) a written submission, incorporating all documentation, information (confidential or otherwise), materials and statements of persons relevant to the controversy or dispute.
- 6.20 The written submissions referred to in clause 6.19 must be provided to the Independent Expert within 20 Business Days (or such other period as agreed by the parties) of the appointment of the Independent Expert.
- 6.21 It will be a term of the Independent Expert's appointment that the Independent Expert will be required to make a determination of the dispute within 20 Business Days of the Independent Expert receiving from both parties the written submissions referred to in clause 6.19 or such further period as the parties may agree. If any party considers that the dispute is of an urgent nature and needs to be resolved within a shorter period, then that party may require the period of 20 Business Days to be reduced to such period as that party may reasonably require, being not less than 5 Business Days.
- 6.22 The parties agree that the Independent Expert's decision in respect of the dispute notified under 6.15 will be final and binding upon the parties.
- 6.23 The Independent Expert will act as an independent expert, not as an arbitrator.
- 6.24 The fees and expenses of the Independent Expert will be borne in such proportion and in such manner as the Independent Expert decides, having regard to all relevant circumstances. One of the relevant circumstances will be the position taken by each party at the conclusion of negotiations under clause 6.14.

### **Administration Payments**

- 6.25 Subject to clause 6.27, Argyle will make annual payments to the trustees of the Charitable Trust and the Special Purposes Trust for the following purposes:
  - (a) to the trustee of Charitable Trust, for the purpose of assisting with the establishment and implementation of the Charitable Trust, and to provide funds to the trustee of the Charitable Trust to assist with the employment of the Executive Officer by the Trustee of the Charitable Trust;
  - (b) to the trustee of the Special Purposes Trust, for the purpose of assisting with the establishment and implementation of the Special Purposes Trust.
- 6.26 The annual payments to be made by Argyle in accordance with clause 6.25 will be in the sums set out in the "Total Cost" column of **Schedule 16**, which sum will be allocated as follows:
  - (a) 80% to the trustee of the Charitable Trust; and
  - (b) 20% to the trustee of the Special Purposes Trust.

Subject to consulting with the trustees of the Charitable Trust and the Special Purposes Trust respectively, Argyle may vary from time to time the allocation percentages referred to in (a) and (b) above.
- 6.27 The Administration Payments will be paid as follows:

- (a) the 2004 payment will be paid within 10 Business Days of the establishment of the Charitable Trust and Special Purposes Trust respectively;
- (b) thereafter, the annual Administration Payments will be paid to the trustees of the Charitable Trust and Special Purposes Trust respectively, on 1 January of each year until the Cessation of Production Operations or 1 January 2008, whichever is the earlier.

### **Decline Bonus**

- 6.28 Pursuant to the Decline Bonus Letter, Argyle agreed to pay the Decline Bonus on the terms and conditions set out in the Decline Bonus Letter.
- 6.29 In the event that the Decline Bonus becomes due and payable by Argyle in accordance with the terms of the Decline Bonus Letter, the TOs have requested, and Argyle has agreed, to pay the Decline Bonus as follows:
- (a) \$300,000 to the Charitable Trust;
  - (b) \$100,000 to the KLC, which sum must be held by the KLC on trust for the use and benefit of Miriuwung people;
  - (c) \$100,000 to the KLC, which sum must be held by the KLC on trust for the use and benefit of the Malarngowem Native Title Claimants, for the purpose of assisting the Malarngowem Native Title Claimants to obtain access agreements with pastoralists in the Malarngowem Claim Area.
- 6.30 With respect to the payment referred to at:
- (a) 6.29(a), Argyle must request the trustee of the Charitable Trust to allocate the whole of the payment to the Sustainability Fund;
  - (b) 6.29(b), the KLC must distribute the sum held on trust in accordance with the written directions of all those TO Representatives who are Miriuwung. For the avoidance of doubt, the TO Representatives who are Miriuwung, are those TO Representatives appointed by the Mandangala/Tiltuwam dawang (dawaam) comprising the Toby, Dixon, Hall and Curtin families, the Bilbidjing dawang (dawaam), Dundun dawang (dawaam) and Balaburr dawang (dawaam);
  - (c) 6.29(c), the KLC must distribute the sum held on trust in accordance with the written directions of the named applicants of the Malarngowem Native Title Claim.

### **Miscellaneous**

- 6.31 Argyle will not be bound to enquire into or be responsible for the manner in which any payments made under this clause 6 are applied.

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## 7 Grazing Lease

*Here Argyle says to the Traditional Owners: "We will hold a grazing lease in trust for you so that the Courts can recognise your full strength native title in the grazing lease land."*

*Argyle will hold that lease on Trust until 18 months after mining has finished up. Then Traditional Owners can ask the State to give the Traditional Owners Freehold Title over the Grazing lease land.*

*Traditional Owners have to tell Argyle if they want to run cattle on this lease themselves, before the mine finishes. Argyle will let them run it if they can do it properly.*

### **Surrender of Grazing Lease**

- 7.1 Argyle will surrender the Grazing Lease upon completion of all of the following conditions:
- (a) Registration has occurred;
  - (b) the State has consented to the surrender of the Grazing Lease by Argyle and all Ministerial consents required under the Diamond Act, the Diamond Agreement, the Land Administration Act 1997 (WA) and any other Law have been provided to Argyle;
  - (c) the State has agreed to grant Argyle a replacement lease which meets the conditions in clause 7.2 and is otherwise in a form acceptable to Argyle and the TOs, at the same time as Argyle surrenders the Grazing Lease;
  - (d) the current sub-lessee of the Grazing Lease has consented to the surrender of the Grazing Lease and the grant of a replacement lease in accordance with this clause 7; and
  - (e) any other conditions or requirements of the State are met.

### **Grant of Replacement Lease**

- 7.2 At the same time as the surrender of the Grazing Lease by Argyle, it is proposed that the State will grant Argyle a lease under section 79 of the Land Administration Act 1997 (WA) to hold on trust for the benefit of the TOs under the Land Trust and subject to the terms and conditions of this agreement and which meets the following criteria:
- (a) the boundaries are identical to the boundaries of the Grazing Lease;
  - (b) the purpose is for grazing purposes only;
  - (c) the conditions are consistent with the conditions of a pastoral lease under the Land Administration Act 1997 (WA);
  - (d) the term is for 21 years with an option to renew for a further 21 years; and
  - (e) the form of the lease is otherwise acceptable to Argyle and the TOs.
- 7.3 For the avoidance of doubt, the consents of the parties under clause 3 includes the parties' consent to the grant of the Replacement Lease.

## **Replacement Lease to be held on trust**

- 7.4 As soon as practicable after the execution of this agreement, Argyle will execute the Land Trust substantially in the form set out in **Schedule 13** and will otherwise do all things necessary to establish the Land Trust.

## **Management of the Replacement Lease**

- 7.5 While the Replacement Lease is held on trust by Argyle or any other trustee under the Land Trust, the TOs acknowledge and consent to the following conditions applying to dealings with the Replacement Trust by the Trustee:

- (a) The Trustee may sublease the Replacement Lease or any part or interest therein to other persons on such terms and conditions as the Trustee sees fit but for a maximum term of 5 years. In this respect, the Grazing Lease is currently subleased to Baldy Bay Pty Ltd. The parties acknowledge that the Trustee intends to maintain a subleasing arrangement with Baldy Bay Pty Ltd once the Replacement Lease is granted and the consent of Baldy Bay Pty Ltd required under clause 7.1(d) will be sought on that basis.
- (b) If the TOs wish to operate the Replacement Lease they may make a request to this effect and must satisfy the Trustee that the TOs have sufficient capital and the business and pastoral management expertise necessary to operate the Replacement Lease. In forming a decision under this clause the Trustee will consider:
  - (1) the TOs' demonstrated ability to operate other Aboriginal controlled pastoral operations;
  - (2) if the TOs have guaranteed access to sufficient operating capital; and
  - (3) if the TOs have developed a viable management plan for the management of the Replacement Lease.
- (c) The Trustee may, subject to the State's consent, grant the TOs a sublease of the Replacement Lease:
  - (1) if the Trustee is satisfied, within the Trustee's absolute discretion, that the TOs are capable of operating the Replacement Lease;
  - (2) only upon the expiry of any sublease or management agreement which is in force at the time of the request under clause 7.5(b) and formal termination of that sublease under the terms of that sublease agreement and subject to the sublessee having been given 12 months notice in writing of the Trustee's intention to terminate the sublease; and
  - (3) on such terms and conditions as the Trustee sees fit.

## **Future Acts**

- 7.6 The parties agree that:

- (a) the consents and procedures set out in this clause 7, including the consent of the parties to the grant of the Replacement Lease constitute:
  - (1) statements for the purposes of s24EB of the NTA; and

- (2) all consents and procedures relevant to the grant of the Replacement Lease and the doing of Future Acts necessary or incidental to the grant of the Replacement Lease; and
- (b) Subdivision P of the NTA does not apply to those Future Acts.

### **Support for freehold title**

- 7.7 Argyle acknowledges that upon Closure, the TOs propose to seek from the State the conversion of the Replacement Lease to a freehold title. Argyle will provide active non-financial support for the TO's proposal and indicate to the State that Argyle supports the conversion of the Replacement Lease to a freehold title upon Closure.

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## **8 Native Title**

*Here we talk about what everyone has to do so the Courts can recognise full strength native title over the Grazing Lease land.*

*Argyle and the Traditional Owners will go together to the State and the Federal Court and ask them to recognise the Traditional Owners' native title rights on the Grazing Lease land.*

*The Traditional Owners agree that they will not put a native title claim over any other part of Argyle's mining lease until the mine is all shut down.*

### **Recognition of Native Title over the Grazing Lease Area**

- 8.1 The parties wish to secure the recognition of Native Title Rights over the Grazing Lease Area, and will take the following steps to achieve this:
- (a) Argyle will apply for Registration of this agreement (in accordance with clause 12);
  - (b) upon Registration, Argyle will surrender the Grazing Lease (in accordance with clause 7);
  - (c) upon surrender of the Grazing Lease, the Replacement Lease will be granted to Argyle (in accordance with clause 7);
  - (d) the Replacement Lease will be held by Argyle on trust for the TOs (in accordance with clause 7);
  - (e) the TOs will then lodge the TO Claim (in accordance with clause 8);
  - (f) the parties will seek a Consent Determination of Native Title Rights (in accordance with clause 8); and
  - (g) the parties will present submissions to the Federal Court (in accordance with clause 8) as to why any previous extinguishment of Native Title Rights should be disregarded and a determination of Native Title should be made in the form of the Consent Determination.

### **Process Steps**

- 8.2 The parties acknowledge that:
- (a) native title may have been wholly or partially extinguished in the land contained in the Grazing Lease; and

- (b) a Court may disregard this extinguishment in certain circumstances if section 47 of the NTA applies.
- 8.3 The parties agree that:
- (a) they will follow the process set out at clauses 7 and 8;
  - (b) they will jointly consult with the State with a view to negotiating a determination of native title in the form of the Consent Determination;
  - (c) the TO Claim will be lodged in accordance with clause 8.4 and the parties will make submissions to the Federal Court that section 47 of the NTA applies to the land contained in the Replacement Lease with the effect that:
    - (1) any extinguishment of native title in relation to that land must be disregarded; and
    - (2) native title may be recognised in the form set out in the Consent Determination.
- 8.4 The TOs and the KLC will do all things and execute all documents necessary to lodge the TO Claim substantially in the form set out in **Schedule 5** which claim must be lodged with the Federal Court within 90 days of the grant of the Replacement Lease or such later date as is agreed by Argyle and the TOs.
- 8.5 Within 28 days of the lodgement of the TO Claim in the Federal Court, or such later date as is agreed by Argyle and the TOs, the TO Applicants, the KLC and Argyle will, subject to the consent of the State, file with the Federal Court:
- (a) a notice of motion seeking a determination of native title in the form of the Consent Determination; and
  - (b) a minute of proposed Consent Determination substantially in the form set out in **Schedule 9**.
- 8.6 With respect to the establishment of the TO PBC:
- (a) The KLC and the TOs will, prior to the lodgement of the TO Claim, establish a TO PBC within the meaning of section 59 of the NTA, for the purpose of the Consent Determination.
  - (b) The TO PBC will be a corporation governed by the Aboriginal Councils and Associations Act 1976 (Cth) and the Native Title (Prescribed Body Corporate) Regulations 1999 (Cth).
  - (c) The original rules of the TO PBC must be in a form agreed by Argyle and the TOs prior to the lodgement of the TO Claim. Argyle will not unreasonably withhold its agreement.
- 8.7 Argyle, the TOs and the KLC will each do all things necessary to:
- (a) support the lodgement and registration of the TO Claim;
  - (b) obtain the State's consent to the making of the Consent Determination; and
  - (c) support the making of the Consent Determination, including supporting the contention that section 47 of the NTA operates to allow recognition of the native title rights and interests set out in the Consent Determination.

## **No other native title claims**

- 8.8 The TOs agree that they will not, without Argyle's consent in writing, lodge a native title determination application and/or seek a determination of native title over any part of the Agreement Area other than the land and waters the subject of the Grazing Lease in accordance with clauses 8.2 to 8.7, until the Completion of Decommissioning.

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## **9 Argyle Interests prevail**

*Here the Traditional Owners say: "We recognise that you have a right to mine on this land if you follow the rules of white fella law and this agreement. Argyle's mining rights sit on top of Traditional Owner rights until the mine is finished."*

- 9.1 The TOs acknowledge that:
- (a) Argyle may conduct the Argyle Operations in any manner and at any time which:
    - (1) Argyle, in its absolute discretion, considers appropriate; and
    - (2) is in accordance with:
      - (A) the Law;
      - (B) the terms and conditions of the Argyle Interests;
      - (C) all requirements or permissions contained in the Argyle Interests; and
      - (D) the Management Plans.
  - (b) The Argyle Interests and all Argyle Operations conducted under 9.1(a) prevail over the Native Title Rights and the Traditional Rights and any exercise of the Native Title Rights and the Traditional Rights.
  - (c) The existence and exercise of the Native Title Rights and the Traditional Rights do not prevent the conduct of the Argyle Operations or the implementation of any requirements or permissions contained in the Argyle Interests.
- 9.2 To the extent permitted by Law, the parties intend that the non-extinguishment principle will apply to the grant of the Future Argyle Interests.
- 9.3 For the avoidance of doubt, any breach of the Management Plans by any party will have no effect upon the efficacy of the consents given in clause 3 of this agreement.

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## 10 Compensation and claims

*Here, it says that Traditional Owners can't claim any compensation money from Argyle for things that happened in the past. Everyone agrees that the money and other benefits in this agreement are enough compensation for things that happened before. Traditional Owners can't claim any more.*

### Full and Final Compensation

10.1 The TOs acknowledge and agree that the Benefits are full and final compensation for the Effects on TO Rights.

### No Claim and plea in bar

10.2 The TOs acknowledge and agree that:

- (a) subject to clause 10.3, the TOs will not make a Claim against Argyle or the State under any Compensation Right for the Effects on TO Rights; and
- (b) if the TOs make a Claim in breach of (a) but not otherwise, Argyle and the State may each plead the terms of this agreement in bar of that Claim.

### Permitted Claims

10.3 The provisions of this clause 10.3 are set out in **Schedule 20**.

### Recovery and Set off

10.4 If a Court orders Argyle or the State or both to pay compensation to any TO and/or Aboriginal person for the Effects on TO Rights then:

- (a) the TOs acknowledge and agree that Argyle may recover the Benefits from third parties including the trustees of the Charitable Trust and Special Purposes Trust and/or set off the Benefits against any judgement or order:
  - (1) against Argyle for compensation; and/or
  - (2) against the State, for compensation, where the State seeks to recover that liability from Argyle; and
- (b) the TOs:
  - (1) indemnify Argyle to the extent of the judgment debt relevant to Argyle;
  - (2) agree that Argyle will, as the case requires, give the quantum of that recovered sum or set-off to the State, the TO or the Aboriginal person referred to in the judgement or order; and
  - (3) acknowledge that the TOs have no right to recover that quantum from Argyle.

### References to Argyle

10.5 References to Argyle in this clause 10 will be read as including a reference to:

- (a) Argyle Diamonds Limited ABN 36 009 102 621;
- (b) all Joint Venturers, whether they were Joint Venturers before or after the Commencement Date;



- (c) Argyle Diamond Mines Pty Limited ABN 52 008 912 418 and every other person engaged as manager or operator of the Argyle operations by the Joint Venturers, whether before or after the Commencement Date; and
- (d) the holder from time to time of an Argyle Interest, whether before or after the Commencement Date..

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## 11 Default Events

*Argyle and Traditional Owners agree that Argyle can stop paying money if Traditional Owners break this Agreement.*

*If Traditional Owners try to block Argyle's right to mine or claim more compensation or lodge a new native title claim or try to change this agreement Argyle can stop paying money. Argyle can also stop paying money if the Trusts for Traditional Owners are not being run properly or if the agreement stops being registered at the National Native Title Tribunal as an ILUA or if Aboriginal people who are not parties to this agreement are recognised by the Court as having native title rights in the Agreement Area.*

*If Traditional Owners sort out any problems that happened when they broke the rules, and they start following the rules in this agreement again, then Argyle can start paying money again, if it wants to.*

### TO Default Event

- 11.1 If Argyle considers that a TO Default Event has occurred then Argyle may serve a Make Good Notice. The Make Good Notice must include details of the determination that Argyle proposes to make under clause 11.2 in the event that the TO Default Event is not remedied in accordance with the Make Good Notice or otherwise to Argyle's satisfaction. The Make Good Notice must also include reasons for the proposed determination.
- 11.2 If within 2 months of the date of the Make Good Notice or such further period as Argyle allows, the TO Default Event is not remedied in accordance with the Make Good Notice or otherwise to Argyle's satisfaction, or a further TO Default Event has occurred and has not been remedied within that 2 month period, Argyle may, irrespective of whether a Dispute Notice has been served, determine to:
  - (a) terminate, suspend or reduce the payment of all Monetary Benefits; or
  - (b) terminate, suspend or reduce the payment of Monetary Benefits to particular Local Aboriginal Communities and/or particular Estate Groups.
- 11.3 In making the determination referred to at 11.2(a) or (b) Argyle must have regard to the cause of the TO Default Event, in particular whether the TO Default Event is caused by a person or persons not authorised by the TOs and whether the TOs have provided a written declaration from the TO Representatives to Argyle that the person or persons who caused the TO Default Event is not authorised by the TOs.

### Dispute Resolution

- 11.4 Upon receipt of a Make Good Notice, a party may serve a Dispute Notice on Argyle:

- (a) disputing that a TO Default Event has occurred;
  - (b) contending that a TO Default Event has been satisfactorily remedied; and/or
  - (c) contending that a different determination under clause 11.2 should be made by Argyle.
- 11.5 Upon the service of the Dispute Notice the provisions of clause 17.1 to 17.8 apply and Argyle must hold any Monetary Benefits withheld under clause 11.2, on trust until the dispute is determined in accordance with this clause 11. Monetary Benefits held on trust, must be distributed within 14 days of the completion of the dispute resolution process under this clause, in accordance with the outcome of that dispute resolution process.
- 11.6 In the event that the dispute cannot be resolved by mediation, any party may refer the dispute to arbitration and subject to clauses 11.7 to 11.10 below, the provisions of clause 17.9 – 17.13 apply.
- 11.7 If the matter referred to arbitration is whether a TO Default Event has occurred and the arbitrator determines that a TO Default Event has not occurred, then all payments withheld by Argyle under clause 11.2 become due and payable together with interest on that sum calculated at the rate prescribed for interest on judgement debts from time to time under the Supreme Court Act 1935 (WA).
- 11.8 If the dispute referred to arbitration is a contention that a different determination under clause 11.2 should have been made by Argyle, the arbitrator must determine whether the determination of Argyle stands or should be amended.
- 11.9 If the arbitrator finds that the determination of Argyle under clause 11.2 should be amended, the arbitrator must determine whether to:
- (a) terminate, suspend or reduce the payment of all Monetary Benefits, and if a determination is made to suspend or reduce the Monetary Benefits payable, make a determination as to the terms of that suspension or reduction; or
  - (b) terminate, suspend or reduce the payment of Monetary Benefits to particular Local Aboriginal Communities and/or particular Estate Groups, and if a determination is made to suspend or reduce the Monetary Benefits payable to a particular Local Aboriginal Community and/or a particular Estate Group, make a determination as to the terms of that suspension or reduction.
- 11.10 In making the decision referred to in 11.8 and 11.9 the arbitrator must have regard to:
- (a) whether Argyle is able to continue, in whole or in part, with the Argyle Operations;
  - (b) where Argyle is able to continue Argyle Operations, the duration of the impact of the TO Default Event on Argyle;
  - (c) the cause of the TO Default Event, in particular whether the TO Default Event is caused by a person or persons not authorised by the TOs and whether the TOs provided the written declaration referred to in clause 11.3;

- (d) the amount of any losses, costs, expenses or liabilities incurred and likely to be incurred by Argyle in the future arising, directly or indirectly as a result of the TO Default Event; and
- (e) whether having regard to the cause of the TO Default Event, it is just in all the circumstances to terminate, suspend or reduce some or all of the Monetary Benefits payable, or whether it is just in all the circumstances to terminate, suspend or reduce some or all of the the Monetary Benefits payable to particular Local Aboriginal Communities and/or particular Estate Groups.

### **The subsequent remedying of a TO Default Event**

- 11.11 Subject only to the decision of the arbitrator under clauses 11.8 and 11.9, if at any time, including after mediation or arbitration has occurred under this clause, a TO Default Event is remedied in accordance with the Make Good Notice or otherwise to Argyle's satisfaction, Argyle may within its discretion, resume payments of Monetary Benefits.
- 11.12 Nothing in clause 11.11 requires Argyle to pay any Monetary Benefits that were withheld during the period in which the TO Default Event remained unremedied.

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## **12 ILUA registration & support**

*In this clause, Argyle, the Traditional Owners and the KLC all agree to do everything they can to make sure this agreement is registered by the National Native Title Tribunal as an ILUA. ILUA stands for Indigenous Land Use Agreement.*

### **Intention of the parties**

- 12.1 The parties intend that this agreement will be registered as an Indigenous Land Use Agreement (Area Agreement) under Part 2, Division 3, subdivision C of the NTA in respect of the Agreement Area.

### **KLC Certification**

- 12.2 The KLC will execute the authorisation certificate set out in **Schedule 6** of this agreement at the same time as the execution of this agreement.

### **Registration Application**

- 12.3 The parties agree that Argyle will submit to the Registrar a Registration Application in the form set out in **Schedule 7**.

### **Consent, support, no objection**

- 12.4 The parties consent to, will do all things necessary to support and will not object to the registration of this agreement as an ILUA by the NNTT under the NTA. If any party becomes aware of an objection having been lodged in relation to the Registration Application that party will notify the other parties the parties must do all things within their power and necessary and incidental to ensure that the objection is withdrawn.

## 13 Transfer and Novation

*Here we say what happens if Argyle wants to sell the mine or some of its mining rights to another mining company. Before Argyle can sell any mining rights it has to make sure that the new mining company promises to follow the rules in this agreement.*

*Traditional Owners will soon have to set up an Aboriginal Corporation to look after their Native Title rights. This corporation is called a Prescribed Body Corporate. This part also talks about how the Traditional Owners can hand-over to a Prescribed Body Corporate so it is part of this agreement too. If the Traditional Owners hand-over to the Prescribed Body Corporate, the Prescribed Body Corporate has to promise to follow the rules in this agreement.*

### Transfer by Argyle

#### 13.1 Subject to:

- (a) Argyle complying with all Governmental Requirements; and
- (b) Argyle procuring the third party (**Substitute Party**) to enter into a deed of transfer substantially in the form of **Schedule 14**.

Argyle may transfer to the Substitute Party the whole or any part of the Argyle Interests including the rights, titles and interests arising under this agreement attaching or relating to those Argyle Interests.

### Transfer Effective

- 13.2 Any exercise by Argyle of its right under clause 13.1 will become effective on the date the deed of transfer substantially in the form of Schedule 14 is executed by both Argyle and the Substitute Party.

### Effect of Transfer by Argyle

- 13.3 Upon Argyle transferring its rights, titles and interests in a part only of any of the Argyle Interests in accordance with this agreement, Argyle will be jointly and severally liable with the Substitute Party for the performance of the obligations under this agreement in respect of the part of the Argyle Interests transferred.
- 13.4 Upon Argyle transferring its rights, titles and interests in the whole of any of the Argyle Interests in accordance with this agreement, Argyle will thereupon be released from its obligations under this agreement in respect of all the Argyle Interests, with effect from the date the deed of transfer referred to in clause 13.1 is executed by Argyle and the Substitute Party. For the avoidance of doubt, Argyle remains liable for any obligations arising under this agreement before the date at which the deed of transfer is executed by Argyle and the Substitute Party.

### Novation by the TOs

#### 13.5 Subject to:

- (a) the TOs complying with all Governmental Requirements;
- (b) a Consent Determination being made;
- (c) the TOs procuring the TO PBC to enter into a deed of novation substantially in the form of **Schedule 15**; and

- (d) Argyle and the Substitute Party agreeing to the amendments, if any, required to be made to this agreement as a result of the intended novation and documenting those amendments in the deed of novation referred to in clause 13.5(c),

the TOs may novate this agreement to the TO PBC.

### **Reversion to TOs**

13.6 If:

- (a) the TOs enter into the deed of novation substantially in the form of **Schedule 15** and novate this agreement to the TO PBC under clause 13.5; and
- (b) following this novation, Argyle acting reasonably and in good faith forms the opinion that the TO PBC:
- (1) has ceased to exist;
  - (2) has ceased to operate; or
  - (3) has failed to comply with its obligations under this agreement,

then this agreement will be novated back to the TOs in accordance with the terms and conditions set out in the deed of novation entered into between the parties (including the TO PBC).

13.7 For the avoidance of doubt, and without limiting any obligation imposed on the TOs under the deed of novation entered into by the parties (including the TO PBC) under clause 13.5, if this agreement is novated back to the TOs, the TOs acknowledge and agree that they will:

- (a) be responsible for, and be deemed to have carried out, any and all acts and omissions of the TO PBC in respect of this agreement;
- (b) be deemed to have received and accepted all rights, interests and benefits arising or accruing to the TO PBC in respect of this agreement; and
- (c) not, and not be entitled to, bring any claim or action against Argyle for a failure by Argyle to perform any of its obligations under this agreement where Argyle has discharged or performed such obligations for the benefit of the TO PBC.

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## **14 No variation**

*This agreement can only be changed if Argyle, the Traditional Owners and the KLC agree in writing for that change. This clause also talks about what happens if the Government changes the law in a way that affects this agreement. If this happens, everyone has to sit down and talk about any changes to this agreement.*

### **No variation of Consent Determination or ILUA registration**

14.1 Argyle, the TOs and the KLC agree that they will not, without the consent in writing of each of the other parties, make any application to revoke or vary:

- (a) the determination of native title made in accordance with clause 8; and/or

- (b) the registration of this agreement as an ILUA in accordance with clause 12.

### **No variation of agreement**

14.2 This agreement may not be varied without the consent in writing of each of the parties.

### **Change of Law**

14.3 If there is a change in Law which:

- (a) directly impacts on Argyle's obligations to pay Monetary Benefits;
- (b) is beyond the reasonable control of the parties;
- (c) could not have been reasonably contemplated or allowed for in entering into this agreement; and
- (d) causes a significant change to the liability of Argyle as a result of the change,

then:

- (e) any party may, by written notice to the others, notify the other parties of the details of the change in Law and the effects that the party considers that the change in Law has on the terms of the agreement;
- (f) the affected parties must promptly meet and begin (or, if they already have begun, continue) negotiating in good faith, with a view to reaching agreement on what changes should be made to the terms of the agreement to minimise the disadvantage to any party arising from the change in Law; and
- (g) if the relevant parties fail to agree upon all of those changes within 2 months from the date of giving of the notice referred to in clause 14.3(e) then the provisions of clause 17 will apply to the dispute.

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## **15 Warranties**

*Here the Traditional Owners tell Argyle that they are the right people to make this agreement and nobody has been left out.*

*The Traditional Owners say to Argyle, "The people who sign this agreement have got the right to sign for us and make us part of this agreement".*

*The Traditional Owners also tell Argyle that lawyers and other people have given them good advice about the agreement. Traditional Owners say, "We understand what is in the agreement."*

*The KLC also promises here that they gave good advice to the Traditional Owners and that they did their best to make sure all the right people are part of the agreement.*

### **TO Warranties**

15.1 The TOs who sign this agreement represent and warrant that the TOs:

- (a) have reviewed the Ethnography and agree that the Ethnography correctly identifies:

- (1) all of the people who hold Traditional Rights in the Agreement Area; and
  - (2) the nature and extent of those Traditional Rights;
- (b) are the only people who hold Traditional Rights in relation to the Agreement Area under traditional Aboriginal laws and customs;
  - (c) have authorised the TOs who sign this agreement to enter into this agreement on behalf of all of the TOs and that the TOs have the full power and authority to enter into and perform the TOs' obligations under this agreement;
  - (d) have received full and proper legal and financial advice during the Agreement Making Process and about the content and effect of this agreement;
  - (e) are making this agreement on the basis of an informed understanding of its contents;
  - (f) have authorised the TO Applicants as the applicants to make the TO Claim and pursue the Consent Determination; and
  - (g) have authorised the KLC to do all things necessary to facilitate the making of the TO Claim and the Consent Determination.

#### **KLC warranty**

15.2 The KLC warrants that the KLC has used its best endeavours to ensure that:

- (a) all persons who hold Traditional Rights in the Agreement Area have been identified by the Ethnography;
- (b) the Ethnography was conducted in accordance with best anthropological practice; and
- (c) the TOs received full and proper legal and financial advice during the Agreement Making Process and about the content and effect of this agreement.

#### **Reliance on Warranty**

15.3 For the purposes of this agreement, Argyle is entitled to rely on:

- (a) the warranties contained in this agreement; and
- (b) any authorisation, consent or notice given by the TOs in writing apparently in compliance with this agreement.

#### **Survival of warranties**

15.4 A warranty given by a Party in this agreement will not merge on the completion of the matters referred to in, or contemplated by, this agreement, but will survive that completion even if any Party has:

- (a) waived any right under this agreement; or
- (b) failed to take proceedings for any breach.

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## 16 Term

*This agreement starts when everyone has signed and finishes up when Argyle gives up all its mining titles. Some of the Benefits don't start until this agreement is registered by the National Native Title Tribunal.*

- 16.1 Subject to clauses 16.2 and 16.3, this agreement will commence on the Commencement Date and terminate upon Closure.
- 16.2 Clauses 5.2(a) and 5.4(a) commence on the date upon which the last of John Toby, George Dixon, Evelyn Hall and Peggy Patrick have each executed this agreement.
- 16.3 Clauses 6.9 to 6.12 and 6.14 to 6.24 commence upon the Registration Date.

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## 17 Dispute Resolution

*Here we say: "If we have an argument, first we will try and sort it out ourselves. If this doesn't work, then together we will ask a mediator to help us – someone separate from both sides. With some arguments we have to ask someone to judge which way to go. This person is called an arbitrator. If the mediator or the arbitrator can't sort it out, and we still have an argument, then we can go to Court.*

### Mediation

- 17.1 If a dispute arises between 2 or more parties in relation to this agreement:
  - (a) any party may give notice in writing to the other party setting out details of the dispute; and
  - (b) the parties must use their best endeavours to resolve that dispute between themselves.
- 17.2 If the parties fail to resolve the dispute within 21 days after service of a notice under clause 17.1, then either party may refer the dispute to mediation by written notice to the other party.
- 17.3 The mediation is to be conducted by an independent person appointed by agreement of the parties.
- 17.4 If the parties do not agree on the appointment of a mediator within 21 days of a referral under clause 17.2, then either party may request the President of the Law Society of WA to appoint an independent mediator who has experience in the area of the dispute and if possible, indigenous cultural experience.
- 17.5 The costs of the appointed mediator will be borne equally by the parties up to a total cost of \$20,000, after which the costs of the appointed mediator will be borne 75% by Argyle and 25% by the TOs.
- 17.6 Except to the extent of any inconsistency with this clause, the mediation will be conducted in accordance with the Mediation Rules of the Law Society of New South Wales.



- 17.7 The parties will hold the mediation in Kununurra, Western Australia unless otherwise agreed. Any resolution arising from the mediation must be in writing signed by both parties, and will not be binding until it has been put in writing.
- 17.8 The parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the dispute. If the parties fail to achieve a resolution of the dispute by mediation within 4 weeks of the appointment of a mediator under this clause or such further time as is agreed by the parties, either party may take such action as it considers appropriate, including commencing legal proceedings.

### **Arbitration**

- 17.9 Where this agreement requires the appointment of an arbitrator the relevant dispute must be referred to arbitration under the Commercial Arbitration Act 1984 (WA).
- 17.10 The arbitration will be held in Kununurra, Western Australia or any other place as agreed by the parties.
- 17.11 The parties will appoint a person agreed between themselves to be the arbitrator of the dispute.
- 17.12 If the parties fail to agree on a person to be the arbitrator under clause 17.11 then the parties must request the President of the Law Society of WA to appoint an arbitrator who has experience in the area of the dispute and if possible, indigenous cultural experience.
- 17.13 A party must not commence or maintain any legal action relating to any dispute until the dispute has been arbitrated finally under clause 17.9 to 17.13.

### **No proceedings until Dispute Resolution Procedures followed**

- 17.14 Each party must ensure that it or any person on its behalf does not commence or maintain any Claim, action or proceeding in any Court or any other tribunal, seek an order, declaration or other ruling from any Governmental Agency without that party first having complied with the provisions of clauses 17.1 to 17.8 or if this agreement requires a matter to be referred to arbitration, having complied with the provisions of clauses 17.9 to 17.13, except to the extent that adherence to this clause would contravene any Law.

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## **18 General**

*This clause talks about a lot of different things:*

1. *It tells Argyle and the Traditional Owners where to send papers under this agreement.*
2. *It says that Argyle and Traditional Owners will still follow the laws of Western Australia, no matter what is in this agreement.*
3. *It says if we can't follow a rule in this agreement, because the State law blocks it, then the rest of the agreement is still OK.*
4. *It says that the Traditional Owners or Argyle can't give up their rights in this agreement unless they say so in writing.*
5. *The Traditional Owners and Argyle promise they will do everything that needs to be done to make this agreement work.*

6. *The Traditional Owners and Argyle agree that this new agreement takes the place of all other agreements between us.*
7. *It also says that Argyle and the Traditional Owners can sign separate copies of the agreement.*
8. *This agreement will not be kept private except for the Genealogies and some money information. Anyone can find out what is in this agreement. No secrets.*
9. *Argyle and the Traditional Owners will pay their own lawyers for making this agreement, but Argyle will pay any government taxes on the agreement.*

## Notices

18.1 Any notice or other communication including any request, demand, consent or approval, to or by a party to this agreement:

(a) must be in writing and addressed as shown below:

(1) if to Argyle Diamond Mines Pty Limited:

Address: 2 Kings Park Road  
WEST PERTH, WA 6005

Attention: The General Manager responsible for  
Community Relations

Facsimile: 08 9482 1161;

(2) if to the TOs, the Executive Officer:

Address: Argyle Charitable Trust  
PO Box 5  
KUNUNURRA 6743 WA

Attention: TOs – Re Argyle Diamond Mine Participation  
Agreement

Facsimile: 08 9193 6279,

(3) if to the KLC:

Address: The Kimberley Land Council Aboriginal  
Corporation  
36 Pembroke Street  
BROOME WA 6725

Attention: Chief Executive Officer

Facsimile: 08 9193 6279

or as specified to the sender by any party by notice;

(b) must be signed by the sender (if a natural person) or an officer or under the common seal of the sender (if a corporation);

(c) is regarded as being given by the sender and received by the addressee:

(1) if by delivery in person, when delivered to the addressee;

- (2) if by post, 5 Business Days from and including the date of postage;  
or
- (3) if by facsimile transmission, if legibly received, when transmitted to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and

- (d) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

18.2 A facsimile transmission is regarded as legible unless the addressee telephones the sender within 1 Business Day after transmission is received or regarded as received under clause and informs the sender that it is not legible.

18.3 In this clause 18, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

#### **Role of the Executive Officer**

18.4 If and until the assignment of this agreement to the TO PBC under clause 13, the TOs authorise the Executive Officer to receive and give notices on behalf of the TOs and communicate decisions of the TOs to Argyle.

#### **Governing law and jurisdiction**

18.5 This agreement is governed by the laws of Western Australia.

18.6 The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.

#### **Severance**

18.7 If any clause of this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

#### **Waivers**

18.8 Waiver of any right arising from a breach of this agreement or of any power arising upon default under this agreement or upon the occurrence of a TO Default Event must be in writing and signed by the party granting the waiver.

18.9 A failure or delay in exercise, or partial exercise, of:

- (a) a right arising from a breach of this agreement or the occurrence of an event of default; or
- (b) a power created or arising upon default under this agreement or upon the occurrence of a TO Default Event,

does not result in a waiver of that right or power.

18.10 A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this agreement or on a default under this agreement or on the occurrence of an event of default as constituting a waiver of that right or power.

- 18.11 A party may not rely on any conduct of another party as a defence to the exercise of a right or power by that other party.
- 18.12 This clause may not itself be waived except by writing.

### **Further assurances**

- 18.13 Each party must do all things and execute all further documents necessary to give full effect to this agreement.

### **Entire agreement**

- 18.14 This agreement supersedes all previous agreements in respect of its subject matter, and embodies the entire agreement between the parties in respect of its subject matter.

### **Time**

- 18.15 Any time periods in this agreement may be varied by written agreement of the parties affected by that variation.

### **Counterparts**

- 18.16 This agreement may be executed in any number of counterparts.
- 18.17 All counterparts, taken together, constitute 1 instrument.
- 18.18 A party may execute this agreement by signing any counterpart.

### **To the extent not excluded by law**

- 18.19 The rights, duties and remedies granted or imposed under the provisions of this agreement operate to the extent not excluded by law.

### **Attorneys**

- 18.20 Each of the attorneys executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

### **Confidentiality**

- 18.21 Subject to clause 18.22, the existence and terms of this agreement are not subject to any confidentiality provisions.
- 18.22 The parties agree that the Genealogies and **Schedule 20** are confidential, and that they will not disclose the Genealogies or **Schedules 20**, or any information in the Genealogies or **Schedules 20** to any person, unless that disclosure or that information:
- (a) is at the material time in the public domain;
  - (b) is required by law to be communicated to a person who is authorised by law to receive it;
  - (c) is necessarily made to a court, or mediator or to an arbitrator or to legal counsel in the course of proceedings;
  - (d) is required to be disclosed to any Governmental Agency;
  - (e) is to a servant, agent or contractor of the party, when that disclosure is reasonably necessary for the conduct implementation and/or enforcement of this agreement or the Argyle Diamond Mine Participation Agreement – Management Plan Agreement;

- (f) with the exception of the Genealogies which remain confidential, is to a member of a Local Aboriginal Community;
- (g) was consented to in writing by the other party; or
- (h) is required to be disclosed to a stock exchange.

### **Costs and stamp duty**

- 18.23 Each party is responsible for its own legal and other costs and expenses but Argyle must pay the stamp duty on this agreement and the stamp duty on any instruments created in accordance with this agreement.

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## **19 Tax**

*This clause talks about two kinds of tax that must be paid to the government: There is GST and PAYG tax. Argyle has to pay the government GST on the money it pays to Traditional Owners and Communities in the agreement. Argyle will do the paperwork for tax so it can claim some of this money back later on. Traditional Owners and Communities can't claim it.*

*PAYG Tax is tax that comes out of wages. When Argyle pays Traditional Owners or Communities for work that they do, Argyle has to take tax money out of this pay to give to the government. Argyle has to take out nearly half the pay for tax, unless Traditional Owners can fill out the form in **Schedule 17** at the back of this agreement. If Argyle takes out tax from the pay, Traditional Owners can claim some back from the Government.*

### **GST**

- 19.1 Any reference in this clause to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.
- 19.2 Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST. To the extent that any supply made under or in connection with this agreement is a taxable supply, the recipient must pay, in addition to the consideration to be provided under this agreement for that supply (unless it expressly includes GST) any amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- 19.3 The supplier must issue a tax invoice to the recipient of a taxable supply to which clause 19.2 applies at the same time as payment of the GST inclusive consideration for that supply.

### **PAYG Withholding**

- 19.4 Before making any payments to the TOs under this agreement, Argyle will deduct and remit any tax which Argyle may be required by the Tax Law to deduct and remit to the Commissioner of Taxation from time to time.
- 19.5 Argyle will not be required to deduct and remit tax at the rate of 48.5% under the Tax Law provided that the TOs receiving payments under this agreement give to Argyle a written statement in the form contained in Schedule 17, to the effect that

their supply of services is made in their capacity as an individual and their supply is wholly of a private or domestic nature.

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## 20 Dictionary

*There are lots of words in this agreement that have special legal meaning. This clause gives the meaning of many important words used in this agreement.*

### Definitions

**Aboriginal Heritage Act** means the Aboriginal Heritage Act 1972 (WA);

**Aboriginal Site** means an Aboriginal site as defined in the Aboriginal Heritage Act and a Significant Aboriginal Area as defined in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth);

**ABN (Australian Business Number)** means the entity's ABN as shown in the Australian Business Register;

**Administration Payments** means the payments by Argyle to the trustees of the Charitable Trust and the Special Purposes Trust respectively, as set out in clauses 6.25 and 6.26.

**Agreement Area** means the area of land and waters comprising the Granted Argyle Interests excluding that portion of Mining Lease 80/42 which is within the area of land and waters the subject of a native title determination in *State of Western Australia v Ward* (WAG6001/1995). A map of the agreement area as at the Commencement Date is set out in **Schedule 2** and an electronic version is contained on the disc attached at **Schedule 18**;

**Agreement Making Process** means the process followed by the parties in negotiating this agreement as set out in **Schedule 1**;

**Argyle Acts** means:

- (a) the enactment of the Diamond Act;
- (b) the making of the Diamond Agreement;
- (c) the grant of the Argyle Interests; and
- (d) the conduct of Argyle Operations;

**Argyle Interests** means the Granted Argyle Interests, the Interests and the Future Argyle Interests;

**Argyle Operations** means the conduct, by Argyle, of:

- (a) past, present and future Mining Operations within the Agreement Area including without limitation:
  - (1) the mining of ore from the Agreement Area;
  - (2) the processing, extraction and commercial sale of diamonds and other materials extracted as a by-product of diamond mining operations;
  - (3) the construction, development or installation of plant, facilities and infrastructure;

- (4) mine development and other earth-moving or earth disturbing activities; and
  - (5) all other activities which Argyle considers to be necessary, incidental or conducive to the extraction of minerals from within the Agreement Area.
- (b) Exploration within the Agreement Area;
  - (c) Decommissioning and rehabilitation of any completed Exploration or Mining Operations
  - (d) grazing operations within the Agreement Area;

**Argyle Diamond Mine Participation Agreement – Management Plan Agreement** means the agreement with that title executed by Argyle and the TOs on the same date as the execution of this agreement;

**Australian Business Register** means the register established under section 24 of the A New Tax System (Australian Business Number) Act 1999;

**Balaburr dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Balaburr Genealogy** means the genealogy for the Balaburr dawang (dawaam) originally prepared by Kim Barber, edited by Kim Barber and Hilary Rumley on 14 March 2003 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**Benefits** means all consideration and benefits provided by Argyle under this agreement whether monetary or non-monetary;

**Bilbidjing dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Bilbidjing Genealogy** means the genealogy for Bilbidjing dawang (dawaam) originally prepared by Kim Doohan and Kim Barber dated 12 April 1997, edited by Kim Barber and Hilary Rumley on 16 May 2004 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**Business Days** means a day which is not a weekend or public holiday in Perth Western Australia;

**Cessation of Production Operations** means the point in time when the mining and processing of ore within the Agreement Area has permanently ceased and Argyle notifies the TOs in writing of that fact;

**Charitable Trust** means the trust to be established under the trust deed set out in **Schedule 10**;

**Claim** means any claim for compensation, damages, restitution, benefits or loss however arising;

**Cleared** means that the TOs have formed the view that Argyle Operations may be carried out in the Current Mining Area, that those Argyle Operations will not have an inappropriate effect on any Aboriginal Site and no further Aboriginal Site surveys are required;

**Closure** means the date upon which the last of the following has occurred: Completion of Decommissioning , Argyle has complied with all Rio Tinto policies and standards and Governmental Requirements, and the last Argyle Interest has been determined, surrendered or otherwise terminated;

**Commencement Date** means the date upon which all of Argyle, the KLC and individual TOs who have been authorised to execute this agreement by the TOs, executes this agreement. The individual TOs who are authorised by the TOs to execute this agreement are George Dixon, Evelyn Hall, Patsy Hall, Goody Barret, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Larry Thomas, Norman Thomas, Churchill Cann, Nancy Nodea, Maggie John, Mona Ramsay, Ronnie Ramsey, Fred Timms, Clancy Patrick, Nancy Dilyai, Phyllis Ningamarra, Jeff Janama, Ben Ward, Ruth Ward, Marjorie Brown, Una Morgan, Frank Sampi, Morton Moore, Tiger Moore and Charlie Martin;

**Commonwealth** means the Commonwealth of Australia;

**Compensation Right** means any right to make a Claim under the NTA, the Mining Act, the Diamond Act, the Diamond Agreement, the Racial Discrimination Act, the Aboriginal Heritage Act, at common law, equity or otherwise at Law;

**Completion of Decommissioning** means the point in time when Argyle notifies the TOs in writing that:

- (1) Argyle has removed all mining infrastructure associated with Argyle Operations in the Agreement Area which Argyle is required to remove or wishes to remove; and
- (2) completed all major Rehabilitation;

**Consent Determination** means a consent determination in the form set out in **Schedule 9**;

**Consent Determination Date** means the date upon which the Federal Court makes a Determination of native title in the form of the Consent Determination, or in a form which is substantially the same as the Consent Determination;

**CPI** means the All Groups Consumer Price Index for Perth or, if the index is no longer published, an equivalent index nominated by Argyle;

**Current Mining Area** means the areas of land and water including:

- (a) the Designated Areas;
- (b) the existing open pit mine and associated infrastructure;
- (c) the underground operations and associated infrastructure; and
- (d) areas of likely future alluvial mining (cleared by TOs on 4 to 6 August 2004),

which is described at **Schedule 12** and also delineated on the map at **Schedule 12** (an electronic version of which is contained on the disc attached at **Schedule 18**).

**dawang (dawaam)** means an estate or local group with Traditional Rights in an area of land and/or water;

**Decline Bonus** means the sum of \$500,000;

**Decline Bonus Letter** means the letter from Argyle to the TOs dated 28 May 2003, a copy of which is set out in **Schedule 4**;

**Decommissioning** means the removal by Argyle of all mining infrastructure situated within the Agreement Area associated with the Argyle Operations which Argyle is required to remove or wishes to remove;

**Designated Area** means the areas of land the subject of a declaration by the Governor from time to time under section 15 of the Diamond Act, a map of which areas at the date



of this agreement is set out in **Schedule 8** and contained on the disc attached at **Schedule 18**;

**Determination** means a determination of native title as defined under s225 of the NTA and which has not been appealed within 21 days, or if an appeal has been lodged, the final determination of that appeal or any subsequent appeal;

**Diamond Act** means the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 (WA);

**Diamond Agreement** means the agreements which form schedules to the Diamond Act;

**Dispute Notice** means a notice in writing of a dispute under clause 11.4;

**Dundun dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Dundun (D1) Genealogy** means the genealogy for the Dundun dawang (dawaam) prepared by Kim Barber and Hilary Rumley, dated 25 May 2004 as part of the Ethnography and which was delivered to Argyle by hand by the KLC on 8 September 2004;

**Dundun (D2) Genealogy** means the genealogy for the Dundun dawang (dawaam) prepared by Kim Barber and Hilary Rumley, dated 24 May 2004 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**Effects on TO Rights** means the effects of the Argyle Acts upon TO Rights in the Agreement Area.

**Estate Group** means each of the Balaburr dawang (dawaam), Bilbidjing dawang (dawaam), Dundun dawang (dawaam), Mandangala/Tiltuwam dawang (dawaam), Neminuwarlin dawang (dawaam) and the Yunurr/Yalangga dawang (dawaam) identified by the Ethnography;

**Ethnography** means the ethnographic study undertaken by Kim Barber and Hilary Rumley dated September 2004 and which study was provided to Argyle by the KLC on 23 September 2004 and which identifies the traditional owners of the Agreement Area;

**Executive Officer** means the Executive Officer engaged by the TOs under the Argyle Diamond Mine Participation Agreement – Management Plan Agreement;

**Exploration** means any activity determined by Argyle to be necessary or desirable to explore for diamonds;

**Exploratory Decline** means the construction of an exploratory decline and other Mining Operations conducted by Argyle in the Current Mining Area for the purposes of the Underground Mining feasibility study and which are preliminary to full scale Underground Mining;

**Future Argyle Interests** means any Interest held or applied for by Argyle or granted to Argyle necessary or incidental to the conduct of the Argyle Operations and applied for or granted after the Commencement Date;

**Future Exploration Activities** means any Exploration conducted by Argyle after the Commencement Date within the Agreement Area but outside the Current Mining Area;

**Future Mining Activities** means any Mining Operations conducted by Argyle after the Commencement Date within the Agreement Area but outside the Current Mining Area;

**Genealogies** means the Mandangala/Tiltuwam (MT1) Genealogy, the Mandangala/Tiltuwam (MT2) Genealogy, the Balaburr Genealogy, the Bilbidjing Genealogy, the Neminuwarlin Genealogy, the Dundun (D1) Genealogy, the Dundun (D2) Genealogy and the Yunurr/Yalangga Genealogy;;

**Gidga** means members of the Gidga language group who have Traditional Rights in the Agreement Area as identified in the Ethnography;

**GNA and Good Neighbour Agreement** means the agreement referred to in clause 4.1;

**Good Neighbour Programme** means the programme referred to in clause 4.1;

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority tribunal, government Minister, agency or entity;

**Governmental Requirements** means Laws connected with the completion of Argyle Operations and the terms of any interest, grant, authority, consent, permit, title, requirement or permission granted or imposed by a Governmental Agency.

**Granted Argyle Interests** means any Interest held by Argyle in relation to the Argyle Operations and granted before the Commencement Date, and includes:

- (a) the Grazing Lease;
- (b) Mining Lease 259SA granted under the Mining Act pursuant to the Diamond Act;
- (c) Mining Leases 80/42, 80/43, 80/44, 80/45 and 80/114 granted under the Mining Act; and
- (d) Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 granted under the Mining Act;

**Grazing Lease** means grazing lease 3116/8547 also identified as LGE I/154304 held by Argyle and granted on 3 February 1986 under section 116 of the Land Act 1933 and clause 24 of the Diamond Act;

**Grazing Lease Area** means the area of land contained within the Grazing Lease;

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999;

**Historical Arrangements** means the Good Neighbour Agreement, the Good Neighbour Programme and the Signatories Payments described in clause 4;

**ILUA** means an Indigenous Land Use Agreement (Area Agreement) under Part 2, Division 3, subdivision C of the NTA;

**Independent Expert** means the person who is to consider a dispute and make a decision under clause 6.15 to 6.24;

**Individual Payment Sum** is the sum set out in **Schedule 20**;

**Interests** means the Diamond Act, the Diamond Agreement and any interest under the Diamond Act, the Diamond Agreement or the Mining Act and any other legal or equitable interest in relation to the Argyle Operations and includes any lease, licence, grant, authority, consent, permit, title or permission granted or given to Argyle and necessary or incidental to Argyle Operations;

**International Accounting Standards** means those standards published by the International Accounting Standards Board, or such entity which replaces the

International Accounting Standards Board, in their form from time to time. The International Accounting Standards are published at [www.iasb.org.uk](http://www.iasb.org.uk);

**Joint Venturers** has the same meaning as that expression has under the Diamond Act and the Diamond Agreement and includes any person who has been, is or becomes a joint venturer within the meaning of the Diamond Act and the Diamond Agreement;

**Law** means the laws applicable in the State of Western Australia from time to time, both statutory and common law;

**Land Trust** means the trust to be established under the deed of trust between Alan Tietzel and Argyle to establish the Argyle Diamond Mine Land Trust;

**Local Aboriginal Communities** means the Mandangala, Woolah, Warmun, Crocodile Hole and Juwulinypany Communities and any other Aboriginal community which Argyle considers in its absolute discretion should receive benefits from Argyle;

**Make Good Notice** means a notice issued under clause 11.1 requiring the relevant party to remedy a TO Default Event in the time and in the manner set out in the notice;

**Malarngowem Claim Area** means the land and waters the subject of the Malarngowem Native Title Claim;

**Malarngowem Native Title Claim** means the native title determination application made in the Federal Court No. WAG 6182 of 1998;

**Marlarngowem Native Title Claimants** means all those persons on whose behalf the Malarngowem Native Title Claim is made;

**Malgnin** means members of the Malgnin language group who have Traditional Rights in the Agreement Area as identified in the Ethnography;

**Management Plan** means a management plan formed by Argyle and the TOs under the Argyle Diamond Mine Participation Agreement – Management Plan Agreement;

**Mandangala/Tiltuwam dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Mandangala/Tiltuwam (MT1) Genealogy** means the genealogy for the Mandangala/Tiltuwam dawang (dawaam) prepared by Kim Barber and Hilary Rumley, dated 13 March 2003 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**Mandangala/Tiltuwam (MT2) Genealogy** means the genealogy for the Mandangala/Tiltuwam dawang (dawaam) originally prepared by Kim Doohan and Kim Barber dated 11 April 1997, edited by Kim Barber and Hilary Rumley on 13 March 2003 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**Mining Act** means the Mining Act 1978 (WA);

**Mining Operations** has the meaning set out in section 8 of the Mining Act and includes all activities authorised under the Argyle Interests, the Diamond Act and the Diamond Agreement;

**Miriuwung** means members of the Miriuwung language group who have Traditional Rights in the Agreement Area as identified in the Ethnography;

**Monetary Benefits** means Benefits which are purely monetary;

**Native Title Rights** means the Traditional Rights recognised to be native title rights by the Federal Court in a determination of native title in relation to the Agreement Area;

**Neminuwarlin dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Neminuwarlin Genealogy** means the genealogy for Neminuwarlin dawang (dawaam) prepared by Kim Barber and Hilary Rumley dated 25 May 2004 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

**New Native Title Claim** means an application made under the NTA for a determination of native title which:

- (a) affects the whole or part of the Agreement Area;
- (b) is not the TO Claim or an amendment to, replacement or consolidation of, or substitution for the TO Claim; and
- (c) is made by Aboriginal people who:
  - (1) are not covered by the TO Claim, or
  - (2) are covered by the TO Claim, but assert a different set of native title rights and interests from those set out in the TO Claim;

**NNTT** means the National Native Title Tribunal established under the NTA;

**NTA** means the Native Title Act 1993 (Cth);

**Open Pit Mining Operations** means any Mining Operations conducted within the Current Mining Area using open pit techniques and includes alluvial mining and Exploration and all things necessary or incidental to the conduct of those Mining Operations;

**Parties or parties** means the parties to this agreement;

**Prescribed Body Corporate** means a registered native title body corporate within the meaning of section 253 of the NTA and in a form prescribed under section 59 of the NTA;

**Racial Discrimination Act** means the Racial Discrimination Act 1975 (Cth);

**Recipients** means John Toby, George Dixon, Evelyn Hall, Patsy Hall, Chocolate Thomas, Goodie Barrett, Lena Nyadbi, Madigan Thomas, Peggy Patrick, the descendents of Timmy Timms being Mona Ramsey, Linda Timms, Kim Timms, Timmy Timms Jnr and Alan Timms and the descendent of Joe Lissadell being Geraldine Beford and any successors under clauses 6.1 to 6.8;

**Register** means as the context requires the Register of Native Title Claims, the National Native Title Register or the Register of Indigenous Land Use Agreements;

**Registrar** has the meaning set out in s253 of the NTA;

**Registration** means registration of this agreement as an ILUA by the NNTT;

**Registration Application** means an application under s24CG of the NTA by a party for the registration of this agreement as an ILUA;

**Registration Date** means the date on which the NNTT registers this agreement as an ILUA;

**Rehabilitation** means the regeneration of land in the Agreement Area disturbed by Argyle Operations;

**Replacement Lease** means a lease granted to Argyle under clause 7;

**section 16 consent** means the consent of the Registrar of Aboriginal Sites under section 16 of the Aboriginal Heritage Act;

**section 18 consent** means the consent of the Minister responsible for the Aboriginal Heritage Act under section 18 of that Act;

**Senior Mandangala/Tiltuwam TOs** are those TOs listed in clause 6.1;

**Signatories Payments** means the payments made in accordance with the arrangements set out in the letter referred to in clause 4.1(c);

**Special Purposes Trust** means the trust to be established under the trust deed set out in Schedule 11;

**State** means the Crown in right of Western Australia;

**Sustainability Fund** has the same meaning as in the Charitable Trust Deed set out at Schedule 10;

**this agreement** means this Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement which is intended by the Parties to be an ILUA;

**Tax Law** means the Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 and Taxation Administration Act 1953;

**TOs** means:

- (a) the members of the Mandangala/Tiltuwam dawang (dawaam) comprised of the Toby, Dixon, Hall and Curtin families identified as Miriwung which have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80/44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (b) the members of the Mandangala/Tiltuwam dawang (dawaam) comprised of the Thomas and Barrett families identified as Gidga which have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80/44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (c) the Yunurr/Yalangga dawang (dawaam) identified as Miriwung, Gidga and/or Malgnin which have primary Traditional Rights in the southernmost portion of Mining Lease 259SA which Traditional Rights are shared with the Mandangala/Tiltuwam dawang (dawaam) referred to at (a) and (b) above;
- (d) the Neminuwarlin dawang (dawaam) which have primary Traditional Rights in that portion of the Grazing Lease to the south west of Mining Lease 259SA in the vicinity of Bow River;
- (e) the Balaburr, Bilbidjing, Yunurr/Yalangga, Neminuwarlin and Dundun dawang (dawaam) which have secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80/44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26, which rights are characterised as the right to access, to hunt and gather and to be included in and

informed about decisions in relation to the Mandangala/Tiltuwam dawang (dawaam); and

- (f) other Miriwung, Gidga, Wularr and/or Malignin people who have secondary Traditional Rights in the Agreement Area, which are characterised by the right to be included in and informed about decisions in relation to areas of spiritual and ceremonial significance in the Agreement Area, in particular in relation to Aboriginal Sites and possible impacts on Aboriginal Sites.

The membership of the Estate Groups referred to at (a) – (e) and the language groups referred to at (f), their particular Traditional Rights and the interaction of those Traditional Rights is more fully described in the Ethnography and the Genealogies;

**TO Applicants** means those persons named in the TO Claim who are making the TO Claim on behalf of all TOs;

**TO Claim** means an application for a determination of native title made by the Tos in relation to the TO Claim Area in the form set out in **Schedule 5**;

**TO Claim Area** is the Grazing Lease Area which is also described in the schedule to the TO Claim;

**TO Default Event** means an event by which:

- (a) the KLC, any TO, or any person on their behalf makes any claim for compensation against the State (other than in the circumstances referred to in clause 10.3), and/or Argyle in respect of the making of the Diamond Agreement, the enactment of the Diamond Act, the grant of any of the Argyle Interests and/or the conduct of the Argyle Operations in the Agreement Area, or otherwise asserts a Compensation Right against the State and/or Argyle;
- (b) the rights of Argyle to conduct the Argyle Operations are challenged by the KLC, any TO, or any person on their behalf;
- (c) a New Native Title Claim is made;
- (d) any application is made by the KLC, any TO, or any person on their behalf to vary, revoke, remove or oppose:
- (1) the determination of native title in accordance with clause 8; and/or
  - (2) the registration of this agreement as an ILUA;
- (e) the independent auditor of the Charitable Trust or the Special Purposes Trust reports that either trust has been the subject of maladministration;
- (f) this agreement ceases to be registered as an ILUA; or
- (g) there is a Determination that any person other than the Tos hold native title rights in relation to any part of the Agreement Area;

**TO PBC** means the Prescribed Body Corporate established to hold the Tos' Native Title Rights;

**TO Relationship Committee** means the committee established under clause 4 of the Argyle Diamond Mine Participation Agreement-Management Plan Agreement;

**TO Representative** means a person appointed by the TOs under clause 4 of the Argyle Diamond Mine Participation Agreement-Management Plan Agreement from time to time to represent the TOs on the TO Relationship Committee;

**TO Rights** means:

- (a) the Native Title Rights;
- (b) the Traditional Rights; and
- (c) any other rights held by Aboriginal people in relation to the Agreement Area;

**Traditional Rights** means rights and interests identified in the Ethnography and held by the TOs under Aboriginal laws and customs in relation to the Agreement Area, including rights and interests which, although not recognised by the Law, are, subject to this agreement, exercisable in relation to the entire Agreement Area;

**Trust Payments** means the payments made by Argyle to the Charitable Trust and to the Special Purposes Trust under clause 6.9 to 6.12;

**Trustee** means the Trustee appointed under the Land Trust from time to time;

**Underground Mining** means any Mining Operations conducted within the Current Mining Area using block caving or other underground mining techniques and all things necessary or incidental to the conduct of those Mining Operations;

**Wularr** means members of the Wularr language group who have Traditional Rights in the Agreement Area as identified in the Ethnography; and

**Yunurr/Yalangga dawang (dawaam)** means the dawang (dawaam) identified by that name in the Ethnography;

**Yanurr/Yalangga Genealogy** means the genealogy for the Yanurr/Yalangga dawang (dawaam) originally prepared by Kim Doohan and Kim Barber, edited by Kim Barber and Hilary Rumley on 14 March 2003 as part of the Ethnography and which was delivered by hand to Argyle by the KLC on 8 September 2004;

## **Words and expressions defined in the NTA**

20.2 Unless the context otherwise requires, words and expressions defined in the NTA have the same meaning where used in this agreement.

## **Interpretation**

20.3 In this agreement, headings and bold type and text in boxes form part of this agreement and will be construed as a part thereof intended to assist in explaining its purport and object. In the event of an inconsistency between the words in clauses, headings, bold type and text boxes, the words in clauses prevail.

20.4 Unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 20 implies that performance of part of an obligation constitutes performance of the obligation;

- (f) a reference to a clause, party, or schedule is a reference to a clause of, and a party, and schedule to, this agreement and a reference to this agreement includes any schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance, standard or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party or a party to a document includes that party's successors and permitted assigns, nominees, employees, officers, agents and contractors;
- (j) a covenant or agreement on the part of 2 or more persons binds them jointly and severally;
- (k) a reference to an agreement other than this agreement includes an undertaking, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (n) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (o) specifying anything in this agreement after the word "includes" or "for example" or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (p) a reference to any mining tenement or other title includes a reference to each renewal of that mining tenement or other title;
- (q) a reference to the renewal of any mining tenement or other title includes the re-grant, extension, renewal, conversion, or substitution of the mining tenement or other title;
- (r) words such as "may" which impart permission to conduct an activity, include a permission to suspend or cease to conduct that activity; and
- (s) currency is a reference to Australian currency and all amounts payable under this agreement must be paid in Australia in Australian dollars.

20.5 A reference to Argyle is a reference to Argyle Diamonds Limited and Argyle Diamond Mines Pty Limited jointly or severally, as the context requires.



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## Schedule 1 - Agreement Making Process

*This schedule shows how we made this agreement. It shows the names of all the people who worked on the agreement and what they did. It shows all the meetings where people talked about the agreement and the main events that led up to signing the agreement and many other things. This schedule is very long – each part has a Plain English box saying what is in it.*

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### 1 PEOPLE

*This part shows the names of all the people who worked on the agreement – Traditional Owners, Argyle workers, KLC workers and many others. It also says what jobs they did.*

#### 1.1 Traditional Owner Committee

The members of the Agreement Making Group are the following people nominated by the Traditional Owners:

<b>Mandangala</b>	<b>Assistants</b>
George Dixon	Jodie Hall-Simon
John Toby	James Dixon
Evelyn Hall	Ted Hall
Patsy Hall	Ralph Gerrard
	<b>Policeman</b>
	Button Jones
<b>Tiltuwam</b>	<b>Assistants</b>
Goody Barrett	Helen Pinday
Lena Nyadbi	Ronnie Ramsey
Madigan Thomas	John Curtin
Chocolate Thomas	Geraldine Bedford

(a) Two people from each of the following five groups:

#### **Bilbildjing**

Marjorie Brown

Ruth Ward

Ben Ward

David Ward

**Neminuwarlin**

Peggy Patrick

Mona Ramsey

Freddie Timms

**Yunurr**

Churchill Cann

Alphonse Parks

Patrick McGinty

Mark Nodea

Dougie McCale

Antony Yalanga

Maggie John

Patrick Mung Mung

**Doon Doon**

Tiger Moore

Una Morgan

Frank Sampi

Moreton Moore

Freddie Martin

Rebecca Sampi

Dean Morgan

Kevin Morgan

Colin Morgan

**Balaburr**

Nancy Dilyai

Phyllis Ningamarra

Jeff Janama

Cecil Ningamarra

Annette Janama

Ryan Janama

## **1.2 Argyle Diamond Mine**

### **(a) Staff**

Ian Bell – Manager Resource Development

Susan Buchanan – Administration Officer, Participation Agreement

Bruce Cox – General Manager, Sales and Finance

Neala Gillespie – Superintendent Environment

Janina Gawler – Principal Advisor, Aboriginal Relations, Rio Tinto

Brendan Hammond – Managing Director

Pam Jones – Administration Assistant, Participation Agreement

Fred Murray – Superintendent, Community Liaison

Simon Nish – Manager, Participation Agreement

Rob Piper – Manager, Health, Safety and Environment

Helen Pittendreigh – Business Support Officer, Participation Agreement

Alan Tietzel – General Manager, Regional Strategies

Neville Tiffen - Chief Counsel, Rio Tinto

Jeff Waddington – Environmental Adviser

Joanna White (Simon Trott) – Financial Analyst

### **(b) Consultants**

Joh Bommman – Mintupela Pty Ltd: Heritage protection and land management.

Kim Doohan - Mintupela Pty Ltd: Heritage protection, cross cultural training, history, regional engagement and development.

Cathy Gupanis – Corporate Environmental Consultancy Pty Ltd: Scoping study and environmental approvals.

Ken Jagger- Partner Freehills: Legal advice and drafting.

Helen Kurz – Solicitor Freehills: Legal advice and drafting.

Professor Marcia Langton – Mala Consulting Pty Ltd: Heritage protection, cross cultural training, history, regional engagement and development.

Chloe Piper – Senior Associate, Freehills: Legal advice and drafting.

Stephanie Stonier – Stonier & Stonier Consulting Pty Ltd: logistics, Daawam/ Dawawang Committee meetings.

Ian Williams - Williams Associates: Regional engagement and development.

Matt Wrigley – Rockpool Communications: Communication strategy and tools.

## **1.3 Kimberley Land Council**

### **(a) Executive**

Tom Birch – Chairman

Wayne Bergmann - Executive Director

Frank Davies - Executive Member

John Watson - Executive Member

(b) Staff

Allan Wedderburn (Linda Weatherhead, Bevan Stott) - Project Manager

Archie Tanna – Male Liaison Officer

Natasha Hamilton - Female Liaison Officer

Divina Cox - Administration Officer

(c) Consultants

Michael Neal - Negotiation Coordinator

Professor Ciaran O’Faircheallaigh – Financial advice, social impact assessment

Kim Barber – Anthropologist (male), Traditional Owner Ethnography

Hilary Rumley - Anthropologist (female), Traditional Owner Ethnography

#### **1.4 Jointly Engaged Consultants**

Dr Bill Pritchard – Economic impacts on East Kimberley Region & Aboriginal communities & Commonwealth Grants Commission’s treatment of mining royalties paper

John Taylor – Baseline Aboriginal Population Profiles for Development Planning in the hinterland of Argyle Diamond Mine

Cath Elderton – Impact Assessment of Argyle Diamond Mine on Aboriginal Communities

#### **1.5 Traditional Owner Ethnography Peer Reviewers**

Dr Nancy Williams

Dr Peter Sutton

#### **1.6 National Native Title Tribunal**

Fred Chaney – Deputy President

Ruth Wade – Member

Dan O’Dea - Member

Christine Scoggin – Case Manager

#### **1.7 Kimberley interpreting service**

Leslie Baxter – Co-ordinator

Bonnie Edwards – Interpreter

Annette Janima – Interpreter

Frances Kofod – Language Consultant

David Newry – Interpreter

Rammel Peters – Interpreter

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## 2 KEY EVENTS

*This part talks about all the main things that happened along the road to the agreement, starting in September 2001. It shows all the meetings we had, all the letters we sent and the tours that we went on to make the agreement.*

### 2.1 Agreements

Memorandum of Understanding - 27 September–2001 - attached

Framework Agreement – 20 June 2003 - attached

Plain English Framework Agreement Guide ratified by Traditional Owners July 2003

Heads of Agreement – 22 July 2004 - attached

### 2.2 Letters

Argyle apology for past impacts letter of 28 May 2003

Argyle initial offer to Traditional Owner's of transfer of Grazing Lease transfer and Exploratory decline bonus letter of 28 May 2003

KLC letter of 16 June 2003 - Traditional Owner conditional approval of Exploratory Decline

KLC letter of 26 August 2004 to Argyle – regarding Current Operations Inspection

### 2.3 Daawam/Dawawang Committee – KLC Preparatory Meetings

- 29 April 2003 – Wandarrie – Argyle Mine
- 2 July 2003 – Glen Hill / Warmun
- 3 July 2003 – Bow River
- 4 July 2003 – Doon Doon
- 21 August 2003 – Glen Hill
- 22 August 2003 – Warmun
- 23 August 2003 – Kununurra

### 2.4 Daawam/Dawawang Committee/KLC/Argyle - Argyle Offer (Financial and Non-Financial) Preparation & Community Meetings

- 25 February 2004 – Preparation Meeting Glen Hill
- 26 February 2004 – Preparation Meeting Warmun
- 27 February 2004 – Community Meeting Doon Doon
- 28 February 2004 – Preparation Meeting Kununurra
- 23 March 2004 – Community Meeting Wyndham
- 25 March 2004 – Community Meeting Halls Creek
- 29 March 2004 – Community Meeting Kununurra

- 30 March 2004 – Community Meeting Malarngowem & Warmun

## **2.5 Daawaam/Dawawang/KLC/Argyle – Trust and Governance Preparation Meetings**

- 24 August 2004 – Second Gorge
- 25 August 2004 – Warmun
- 29 August 2004 – Kununurra

## **2.6 Meetings**

- 11/12 September 2002 - Argyle Agreement Co-ordinating Group Meeting, Wandarrie, Argyle Mine Site
- 18/19 March 2003 – TO/Community meeting - results of ethnography, Wandarrie, Argyle Mine Site (Argyle attended some sessions to explain Underground project / model)

## **2.7 Daawam/Dawawang Committee – Argyle Meetings**

- 30 April 2003 (Steering Committee Meeting) – Wandarrie, Argyle Mine Site
- 10/11 June 2003 – Junction Ord and Bow Rivers
- 8/9 July 2003 – Junction Ord and Bow Rivers
- 26/27 August–2003 - Junction Ord and Bow Rivers
- 12 October–2003 -WCCCA Trustees Visit
- 13/14 October 2003 - Lake Argyle
- 26 November 2003 – Wandarrie, Argyle Mine site
- 3/4 March 2004 - Lake Argyle
- 31 May – 2 June 2004 – Lake Argyle
- 21-22 July 2004 – Lakeside, Kununurra
- 30 August - 1 September 2004 – Lakeside, Kununurra (Trust and Governance)

## **2.8 Community Meetings**

- 27 November 2001 – Large Community Meeting Argyle - Mine Site (MOU signed)
- 19 March 2002 – Woolah (Doon Doon) Community meeting
- 19 March 2002 – Juwulinypany Community meeting
- 20 March 2002 – Warmun Community meeting
- 18 June 2002 - Warmun Community information session
- 19 June 2002 – Woolah (Doon Doon) Community information session
- 8-10 July 2002 – TOs/KLC Training Workshop (Argyle attended some sessions), Wandarrie, Argyle Mine Site

- 20 August 2002 – Warmun Community meeting
- 21 August 2002 – Woolah (Doon Doon) Community meeting
- 27 August 2002 – Warmun Community meeting
- 28 August 2002 Woolah (Doon Doon) Community meeting
- 16 September 2002 – Warmun Community meeting
- 17 September 2002 – (Woolah) Doon Doon Community meeting
- 28 May 2003 – Warmun Community meeting (apology/water questions)
- 23 June 2003 – Warmun Community meeting
- 30 September 2003 – Warmun Community meeting
- 1 October 2003 – Glen Hill Community meeting
- 3 October 2003 – Kununurra Community meeting

## **2.9 KLC/ Argyle Meetings**

- 4/5 September 2002 – KLC/Argyle review ESIA Scoping Study - Cairns
- 18/19 September 2002 – KLC/Argyle planning ESIA process/timing - Brisbane
- 23 August 2002 – KLC/Argyle Leadership Group Meeting – Broome
- 24 June 2004 – KLC/Argyle Financial Briefing - Broome

## **2.10 KLC/Argyle Negotiation Meetings**

- 14/15 August 2003 – M Neal/ S Nish Structure of Agreement meeting – Cairns
- 24/25 September 2004– KLC/Argyle Negotiation Meeting - Kununurra (4 TOs)
- 27 October 2003 – KLC/Argyle Financial aspects of Agreement meeting – Perth
- 29/30 October 2003 - KLC/Argyle Negotiation Meeting – Perth (7 TOs)
- 12/13 November 2003 - KLC/Argyle Negotiation Meeting - Kununurra (1 TOs)
- 24/25 November 2003 - KLC/Argyle Financial Negotiation Meeting – Perth
- 12 December 2003 – KLC/Argyle Governance Arrangements teleconference
- 4 February 2004 – KLC/Argyle Planning Meeting – Perth
- 4 February 2004 - KLC/Argyle/Rio Tinto Exploration meeting - Perth
- 5 February 2004 - KLC/Argyle Financial Benefits, Trust & Governance Arrangement Meeting – Perth
- 5 February 2004 – KLC/Argyle/Indigenous Land Corporation (ILC), information session – Perth

- 5 February–2004 - KLC/Argyle/DIA Meeting – Perth
- 10/11 March 2004 – KLC/Argyle Negotiation Meeting – Kununurra
- 5/6 April 2004 – KLC/Argyle Negotiation Meeting – Perth
- 11/12 May 2004 – KLC/Argyle Negotiation Meeting – Perth
- 30 July 2004 – KLC/Argyle Negotiation Meeting – Darwin

#### **2.11 Outcomes of Daawam/Dawawang Committee Meetings produced by the NNTT**

- 10-11 June 2003 (Ruth Wade/ Dan O’Dea)
- 8-9 July 2003 (Dan O’Dea/ Lynda Strawbridge)
- 26-27 August 2003 (Fred Chaney/Lynda Strawbridge)
- 13-14 October 2003 (Fred Chaney)
- 3- 4 March 2004 (Fred Chaney)
- 30 May -1 June 2004 (Fred Chaney)
- 21-22 July 2004 (Fred Chaney)
- 30 August – 1 September 2004 (Fred Chaney) – Outcomes not yet received

#### **2.12 Authorisation Meetings/Information Sessions**

- 6 September 2004 – Glen Hill
- 8 September 2004 – Warmun
- 10 September 2004– Kununurra
- 14 September 2004– Halls Creek (Information Meeting)
- 20 September 2004– Wyndham (Information Meeting)

#### **2.13 Reports**

- Completion of Traditional Owner Ethnography – 30 April 2004

#### **2.14 Tours**

*Water Tours:* organised to show Traditional Owners the water management at the site in response to questions posed at various committee and community meetings on water flows around the mine site.

- 31 July 2003
- 18 August 2003

*North Parkes Mine Tour (NSW):* organised to show Traditional Owners what a block cave mine looks like and how it works – September 2003

- Ground Breaking (Decline) Ceremony – 30 July 2003
- Box Cut Manthe – December 2003



### 3 HERITAGE PROTECTION

*This part shows all work done to make sure Aboriginal Sites did not get damaged while we made the agreement.*

#### 3.1 Heritage Protection Agreements

- Heritage Protection Agreement - 23 September 2002 (Exploration Work Program)
- KLC/Argyle agreed Work Program Survey Process for exploratory decline work - 14 April 2003
- Heritage Protection Protocol, Exploratory Decline, Plain English Summary – 15 April 2003
- Interim Heritage Protection Agreement - 15 May 2003
- Heritage Protection Agreement, Plain English Summary of New Agreement, 30 June 2003
- Archaeological Work Area Clearance Survey Methodology for 2003/2004 Work Program Clearances 16 July 2003 (Heritage Protection Agreement - 10 June 2003)

#### 3.2 Work Program Clearances

- 24 September 2002 – Argyle State Agreement Area 2002 Work Program Amendment, Updated 16th September 2002 (Exploration – Pitt Range)
- 2 April 2003 – Argyle Regional Hydrology Programme 2002
- 15/16 April 2003 – Exploratory Decline
- 27-29 July 2003 – Relocation of Explosives Plant; Proposed New Argyle Southern Boundary Fence and Area Contained Therein; Exploratory Decline Groundwater Monitoring Bores and Access Tracks
- 19/20 August 2003 – Part 5 Drilling Geophysical Targets – High Impact Work; Part 4 Alluvial Exploration – Clearance requested for High Impact Bulk Sampling; (Exploration – Argyle SAA 2003)
- 5 November 2003 – Proposed Extension of the current AK1 Tailings Dam;
- 6 November 2003 -Drainage Sampling – South of Pitt Range (Low Impact Work) – Exploration
- 6 August 2004 – Proposed New AK1 Tailing Storage Facility and Reclaim Pond

#### 3.3 Current Operations Inspection

- 2 August 2004 – Warmun Community Information Meeting
- 3 August 2004 – Mandangala Community Information Meeting
- 4-6 August 2004 – Current Operations Inspection including tour of decline
- Tuesday 05 August 2004:

There were 7 flights and the flight path generally took the following route:

- Depart Argyle Airport, fly east to intercept 132KV powerline from Ord Hydro;
- Follow powerline north toward Lake Argyle;
- View ATD5 on RHS;
- View aircraft navigational aids and beacon on Mt Evelyn;
- View decommissioned gauging station on Smoke Creek on LHS;
- View location of water supply barges in Lake Argyle;
- View boat launching ramp on LHS;
- View main pump station;
- Follow road, water supply pipeline and 33KV power line south toward the Argyle mine;
- Overfly booster pump station;
- Overfly airport;
- View Alluvial plant & ATD1, 2, 3, & 4 on the LHS;
- View Barclay's Hill on RHS;
- Track to Gap Dam, view Village and sewerage lagoons on LHS;
- View the Gap Dam Pipeline Control Centre on the LHS;
- Overfly Gap Dam;
- View northern waste rock dumps;
- View AK1 mine pit from above northern dumps;
- View communications infrastructure on East Ridge;
- View AK1 TSF on LHS;
- View AK1 plant below and to the LHS;
- View Jacko's Dam on the LHS;
- View the Orica explosives plant below and to the LHS;
- View southern waste rock dumps and topsoil clearing inside new DA fenceline;
- View topsoil stockpile;
- View Wesley Spring bore installation;
- View Government survey mark on hill south of mine;
- View Wesley Spring gauging station installation;
- Track to sand lease and view from above Bow River;
- Track back to the Wandarrie borrow pit;
- View Wandarrie accommodation village and the Wandarrie sewage lagoons;
- Overfly site of new AK1 TSF and RCP3;
- View the water treatment plant; and

- Return to airport.

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## 4 LAND MANAGEMENT

*This part shows work done by Argyle and Traditional Owners to look after the country, while we made this agreement.*

### 4.1 Consultation

- 21 October–2003 - Alluvial Tailings Dam #5 decommissioning consultation

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## 5 KLC NEWSLETTERS

*This part shows all the newsletters sent out by KLC to tell Traditional Owners about the agreement.*

- KLC Argyle Diamond Mine Agreement Newsletter Number 1 – February 2002
- KLC Argyle Diamond Mine Agreement Newsletter Number 2 – May 2002
- KLC Argyle Diamond Mine Agreement Newsletter Number 3 – July/Aug 2002
- KLC Argyle Diamond Mine Agreement Newsletter Number 4 – March 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 5 – May 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 6 – June 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 7 – July 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 8 – August 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 9 – October 2003
- KLC Argyle Diamond Mine Agreement Newsletter Number 10 – March 2004
- KLC Argyle Diamond Mine Agreement Newsletter Number 11 – June 2004
- KLC Argyle Diamond Mine Agreement Newsletter Number 12 – August 2004

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## 6 CONSULTATION AND COMMUNICATION TOOLS UTILISED BY ARGYLE

*This part shows all the things that Argyle did to make sure that Traditional Owners understand about mining, business and Argyle's ideas about the agreement.*

### 6.1 Agreement Process

- Brendan Hammond speech of 27 September 2001 video – English and Kriol
- Argyle Diamonds A New Agreement video of July 2002 – English and Kriol
- Participation Agreement video of 8 July 2003 comprising:
  - Getting Story Straight – Kriol story
  - Brendan Hammond's Talk – Kriol
  - Letter of Offer from Brendan Hammond - Kriol
  - Letter of Offer from Alan Tietzel – Kriol
  - Getting Country Back Map – Kriol story
  - Water Flows Map and Plain English Story
  - Monitoring Bores and Springs Map and Plain English Story
  - Bores around Argyle Mine Map and Plain English Story
  - Sustainability Principles – The rules for how Argyle does its work. There are four parts to the Sustainability Principles. Each one is translated into Kriol
    - People Business
    - Money Business
    - Country Business
    - Management Business
  - Argyle's Sustainability Principles: Economic; Environmental; Governance; Social
  - Argyle's Sustainability Principles – plain English
  - Life of Mine animation of September 2003 – English and Kriol
  - Agreement Posters:
    - How things are now.
    - Who can talk
    - Work and Training
  - ILUA
  - ILUA – Argyle's ideas
  - Proposed Agreement contents

- Pannikin image
- Pannikin
- Employment Story – Plain English Script v0.0 and posters
- Aboriginal people working at Argyle after next wet: 160 or 32%
- Aboriginal people employed at Argyle now: 80 or 16%
- Getting work at Argyle v1.0
- Strong communities v1.0
- Getting the story straight poster (May 2003)
- Timeline poster
- Argyle Company Structure
- Argyle's Offer storyboard - posters
- Old signatories money
- Fixing old signatories money
- Good neighbour benefits - now
- Good neighbour benefits – future
- Trust and Governance
- Where \$100 goes – open pit
- Where \$100 goes – underground
- Getting country back
- Cross Cultural Training
- Land Management
- Site Protection
- Jobs and Training

## **6.2 Water**

- Ground Water Story animation video – English
- Mackie Water Report No 1
- Mackie Water Report No 2
- Stygofauna handout (Mtg 8-9 July 2003)
- Proximity of drawdown to Glen Hill and the Mandangala Community

## **6.3 Underground**

- Block Cave mining animation video – plain English & technical English
- Exploratory Decline animation video
- Exploratory Decline Information – Plain English scripts and posters May 2003
- The Decline and Goanna Hole (introduction to the Decline & Box Cut)

- What about the water in the tunnel (water discharge)
- When Argyle build the tunnel will the country around it get dry (dewatering)
- Will the tunnel be safe when Argyle finish with it (Decline closure)
- More about making the country good again when the tunnel is finished (rehabilitation)
- Making the tunnel safe for the workers (safety)
- Cleaning up ready for the tunnel (clean up)
- 3D tabletop model of proposed underground development
- Posters
- The Box Cut due to start July 2003
- The Decline Tunnel due to start December 2003
- The ARMCO Tunnel due to start October 2003
- Northparkes mine tour video

#### 6.4 Maps

- Locality Map
- Regional Map
- Proposed new groundwater monitoring bores & surface water gauging stations - solid
- Proposed new groundwater monitoring bores & surface water gauging stations – contours
- Exploratory decline groundwater usage
- Change in groundwater level due to dewatering
- Change in groundwater level due to dewatering – contours
- Layout of surface features for Exploratory decline
- Average water flows (m<sup>3</sup>/year) based on 2002 operations
- Groundwater bore locations
- Spring and surface water monitoring locations and creeks

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## 7 FUNDING:

*This part shows how much money Argyle, ATSYS and the National Native Title Tribunal put in to help KLC and Traditional Owners make this agreement. It also shows who got that money and how it was spent.*

### 7.1 Summary of Argyle funding to KLC:

#### MOU 2001 – April 2003

KLC cost to prepare MOU	\$ 59,413.20
-------------------------	--------------

Negotiation Management	\$294,029.95
Traditional Owner Ethnography	\$377,614.05
Preliminary Review of Mining Operations and ESIA work	\$ 37,910.19
Traditional Owner Payments	\$ 11,000.00
Consu-tant - Confirming modelling of hydrogeological impacts of decline	\$33,000.00
Balance paid under MOU	\$78,729.27
<b>TOTAL MOU (Includes GST):</b>	<b>\$891,696.66</b>

**FRAMEWORK AGREEMENT (FA) May 2003 – June 2004**

Negotiation Management:	\$547,087.36
Traditional Owner Ethnography	\$68,515.18
Project Management	\$99,625.59
Preliminary Review of Mining Ops and ESIA work	\$94,790.50
Negotiation Expertise for Comprehensive Agreement	\$38,804.90
Traditional Owner Payments	\$105,138.00
<b>TOTAL FA (Includes GST)</b>	<b>\$953,961.53</b>

<b>SOCIAL IMPACT ASSESSMENTS (SIA) - consultants</b>	<b>\$157,172.00</b>
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**TOTAL ARGYLE FUNDING:**

MOU	\$891,696.66
SIA*	\$157,172.00
FRAMEWORK AGREEMENT	\$953,961.53
<b>TOTAL(includes GST)</b>	<b>\$2,002,830.19</b>

\* Joint engagement of consultants by Argyle and the KLC, which consultants were managed by the KLC

**Summary of ATSYS funding to KLC:**

2003	\$350,415.00
2004	\$400,000.00
<b>TOTAL</b>	<b>\$750,415.00</b>

**Summary of Argyle funding to Daawam/Dawawang Committee Members:**

11/12 September-2002 - Argyle Agreement	\$2,520.00
Co-ordinating Group Meeting, Wandarrie, Argyle Mine Site 10/11 June 2003 - Daawam/Dawawang Committee & Argyle Meeting Junction Ord & Bow	\$14,700.00

Rivers	
<b>TOTAL</b>	<b><u>\$17,220.00</u></b>

**Summary of NNTT funding to KLC**

Meeting costs incurred in 2003 and 2004	\$42,750.72
Authorisation meeting costs incurred in August and September 2004, Maximum commitment to fund	\$5,050.00
<b>TOTAL</b>	<b><u>\$47,800.72</u></b>

**8 ARGYLE INFORMATION SUPPLIED TO KLC**

*This part shows what reports and papers that Argyle gave to the KLC. Most of these reports were about how much money Argyle is making and how much Argyle can make in the future*

**8.1 Information provided to KLC**

- List of information provided to KLC through out the negotiation process – attached

**8.2 The following confidential financial information was provided to Ciaran O’Faircheallaigh, KLC consultant**

- |                 |  |
|-----------------|--|
| 11 April 2003   | 1 x CD (covered by Confidential Deed)<br><br>Schedule 1 pdf file & excel file: 1. Historical information for period 1983-2020; 2. Projections for the period 2003-2007 (a) Operating and capital costs data, (b) production data, (c) other financials; 3. Projections for the period 2003-2020 costs (a) Operating and capital costs data, (b) production data, (c) other financials<br><br>Narrative pdf file – Argyle Diamonds Historical and Future Production and Financial Information |
| 19 June 2003    | 1 x CD containing amended financial data adjusted for adverse movement in \$A exchange rate  |
| 24 July 2003    | 1 x CD containing confidential information – revised figures   |
| 26 August 2003  | 1 x CD containing confidential information – revised figures and explanation of revised information  |
| 7 November 2003 | 1 x CD containing additional confidential financial information<br><br>Argyle Diamonds State of Financial Performance 2003-2020 at an exchange rate of US 0.65   |



- Argyle Diamonds Statement of Financial Position 2003 to 2020 at an exchange rate of USD 0.65
- Argyle Diamonds State of Financial Performance 2003-2020 at an exchange rate of US 0.70
- Argyle Diamonds Statement of Financial Position 2003 to 2020 at an exchange rate of USD 0.70
- 21 November 2003 Hard copies of additional financial data
- Correction to information provided on 7 November for foreign exchange of USD 0.65 and 0.70 figures
- Additional tables for foreign exchange of USD 0.725 and 0.75
- 25 February 2004 Additional confidential financial information – Argyle Diamonds Statement of Financial Performance 2003 to 2020 at exchange rates of USD 0.80, 0.70, 0.60
- 22 March 2004 Further Confidential Financial Information – revised offer scenarios at USD:AUD 80, 70 and 60 cents for 2004 to 2020 with the calculation of EBITDA based on stripping costs as capex and waterfall charts showing where \$100 goes at USD:AUD 70 and 60 cents.

(This information has now been returned to Argyle by Ciaran O’Faircheallaigh).

### 8.3 Financial Scenarios provided to the KLC

- 20 February 2004 – Scenario: USD:AUD 60, 70 and 80 Cents
- 22 March 2004 – Offer Scenario Performance Revised EBITDA: USD:AUD 60, 70 and 80 Cents
- 28 June 2004 – Reforecast Scenario: USD:AUD 70 Cents
- 13 July 2004 – Revised Reforecast Scenario: USD:AUD: 70 Cents
- 16 July 2004 – Revised Reforecast Scenario simplified: USD:AUD 70 Cents
- 26 August 2004 – Revised scenario to illustrate KLC modelling
- 17 September 2004 – Revised financial scenario, EBITDA adjusted
- 18 September 2004 – Further revised financial scenarios, new definition of EBITDA adjusted for open pit (2004-2008) and underground



**MEMORANDUM OF UNDERSTANDING (MOU)**

*between*

**Argyle Diamonds Mines Pty Limited**

(ABN 52 008 912 418)

*on behalf of*

**Ashton Argyle Holdings Pty Ltd,**

**Capricorn Diamonds Ltd and**

**Perpetual Trustees (WA) Ltd and their Successors**

*and*

**Kimberley Land Council Aboriginal Corporation**

(ABN 94 724 252 047) the Registered Native Title Representative Body for the Kimberley Region Pursuant to Section 202 of the Native Title Act 1993 (Commonwealth)

27 September 2001

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamonds Mines Pty Limited and the Kimberley Land  
Council Aboriginal Corporation



Page 1 of 18

## 1. INTRODUCTION

- 1.1 Argyle Diamond Mines Pty Ltd (ADM) has conducted diamond mining activity and operations within the area of Mineral Lease 259SA and each of the leases listed in Attachment 2, since 1979 under its valid mining tenements and its rights under the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 (State Agreement Act). ADM proposes to continue those operations into the future. These mining operations and activities, ADM's mining tenements, leases and the rights of ADM under the State Agreement Act are referred to in this agreement interchangeably as the ADM lease area and the Argyle Diamond Mine.
- 1.2 ADM and the Kimberley Land Council (KLC) acknowledge that there are Aboriginal people who have traditional rights and interests in the ADM lease area and hold, or held, native title over the ADM lease area. The Aboriginal peoples who hold or held native title over the ADM lease area will be identified by the ethnography conducted by the KLC under this MOU and are referred to in this MOU as the Traditional Owners (TOs).
- 1.3 ADM now seeks to negotiate a comprehensive Agreement (the Agreement) with the TOs.
- 1.4 ADM recognises the role and responsibilities of the KLC as the only recognised representative body under the Native Title Act 1993 (NTA) for the Kimberley region.
- 1.5 The KLC will assist, represent and / or facilitate the representation of, the TOs in the negotiation of the Agreement in accordance with its obligations under the NTA.
- 1.6 ADM and the KLC intend that the Agreement be in the form of an Indigenous Land Use Agreement (ILUA) registered under Division 3 of Part 2 of the NTA.
- 1.7 The KLC will be a party to the ILUA in its own right as the representative body for this area.
- 1.8 Both ADM and KLC intend to be bound by this MOU.
- 1.9 ADM and the KLC intend that the principles and procedures governing the relationship between ADM and the TOs in respect of the negotiation of the Agreement be reflected in a Framework Agreement between ADM, the TOs and the KLC.
- 1.10 The KLC is entering into this MOU without prejudice to any existing or potential legal rights of the TOs.

## 2. ETHNOGRAPHY

- 2.1 The KLC will initially consult with local communities and commence a process to determine an ethnography of the ADM lease area.
- 2.2 The ethnography of the ADM lease area (the Traditional Owner Ethnography) will identify the TOs.
- 2.3 The Traditional Owner Ethnography will be the sole responsibility of the KLC.
- 2.4 ADM intends to appoint Dr Peter Sutton to conduct a peer review of the Traditional Owner Ethnography. The peer review will be conducted at two (2) stages: at the point in time at which the process and methodology of the Traditional Owner Ethnography is determined by the KLC but before it is commenced, and upon the conclusion of the Traditional Owner Ethnography. This peer review will be limited to the process and methodology for conducting the Traditional Owner Ethnography. The KLC will assist the peer review by providing to ADM copies of source materials used in the Traditional Owner Ethnography, which will be subject to 2.6 below.
- 2.5 ADM will accept that the Aboriginal peoples identified by the Traditional Owner Ethnography as the TOs and will deal exclusively with them, subject to:
- (a) any concerns identified by the peer review being satisfactorily addressed by the KLC; and
  - (b) the KLC agreeing, subject to its obligations under the NTA, to decline assistance with the lodgement and/or registration of any native title claims over any part of the ADM lease area by any persons not identified as TOs in the Traditional Owner Ethnography; and
  - (c) where the KLC represents any TOs identified in the Traditional Owner Ethnography, the KLC will certify, under section 203BE of the NTA any native title claims over any part of the ADM lease area lodged by those TOs; and
  - (d) agreement between ADM, the TOs and the KLC about the completeness of the TO group identified in the Traditional Owner Ethnography and how any other TOs identified at any time during the negotiation of the Agreement should be dealt with.
- 2.6 Subject to 2.7 and 2.8 below, ADM acknowledges that any ethnographic, cultural or other related information and data created and / or obtained as a result of the process referred in this section is the property of the TOs and cannot be used without the written permission of the TOs or the KLC. Such information will only be provided to ADM on a strictly confidential basis and is to be returned by ADM at the conclusion of the negotiations or at such other time as the TOs or the KLC request in writing.
- 2.7 2.6 does not apply to any information or data that is already in the public domain.
- 2.8 At the conclusion of the Traditional Owner Ethnography, ADM will retain a written report provided by the KLC and comprising a summary of the Traditional Owner Ethnography process and methodology, and a summary of the conclusions of the Traditional Owner Ethnography which it will use only for cultural heritage protection / management and land management and other related matters involving Aboriginal people in the ADM lease area.

**3. NEGOTIATION PRINCIPLES**

- 3.1 Both Parties will conduct the negotiations in good faith and with mutual respect so as to build on the trust and goodwill that has already started to be established between them.
- 3.2 In respect of any decision in the High Court in relation to the native title claim by the Mirning Gajerrong over the ADM lease area, ADM wishes to reach a comprehensive agreement with the TOs.
- 3.3 Both Parties agree that there will be regular community meetings on country to keep the TOs fully informed of the process, nature and progress of the agreement negotiations. The timing of these meetings is set out in Section 5. The agenda for these meetings shall be agreed beforehand by the Parties.
- 3.4 Both Parties intend that a negotiating group be chosen by and formed from the TOs identified in the Traditional Owner Ethnography (Negotiating Group). It is intended that the Negotiating Group will have primary carriage of negotiations with ADM on behalf of the entire TO group.
- 3.5 The KLC agrees to certify any ILUA arising from the negotiations under section 203BE of the NTA.
- 3.6 The KLC agrees to manage the process of having any ILUA arising from this negotiation lodged and registered with the National Native Title Tribunal (NNTT) and do all things necessary to ensure that any ILUA arising from this negotiation is lodged and registered with the NNTT. ADM agrees to assist the KLC in managing the registration process.
- 3.7 ADM may assign the whole or any part of its interest in the ADM lease area on the condition that the assignee enters into a deed of covenant, in which the assignee agrees to be bound by the terms of this MOU, and any agreement entered into by the parties as contemplated under this MOU.

#### 4. ASSISTANCE

- 4.1 The KLC has prepared a budget for the cost of the entire negotiation process, which is set out in the attached schedule (Attachment 1).
- 4.2 ADM has already undertaken to provide assistance to the KLC to conduct the first round of community meetings to the sum of \$54,000, which is in addition to the negotiation budget set out in Attachment 1.
- 4.3 ADM agreed to assist the KLC and the TOs engage in the negotiation process by providing:
- (a) financial assistance; and
  - (b) access to and provision of information concerning the Argyle Diamond Mine.
- 4.4 The KLC has applied to ATSC for funding of the negotiation process. ADM will fund the difference between the KLC's budget for the whole of the negotiation process and ATSC's total contribution to the negotiation costs (Financial Assistance).
- 4.5 ADM will provide the Financial Assistance by paying the KLC the initial imprest sum of \$100,000 as an advance payment at the signing of this MOU. The KLC will seek further payment of the Financial Assistance from ADM to restore the imprest sum by providing to ADM invoices of expenses incurred in undertaking the tasks for each milestone and process outcome set out in Attachment 1. ADM will pay to the KLC the invoiced amounts within thirty (30) days of receipt of the invoice.
- 4.6 ADM's payment will be subject to agreement between the Parties about process steps, process outcomes, timeframes, and the tasks for each milestone and process having been undertaken or concluded. Section 5 provides the Parties with a guide for determining when process steps, outcomes and timeframes have been concluded. If the Parties fail to agree on these matters, then assistance may be sought from an independent auditor, as agreed between the Parties.
- 4.7 The KLC agrees to refund to ADM any money that is provided under 4.5 above but remains unspent at the end of the negotiation process.
- 4.8 ADM and KLC will regularly review the assistance necessary for KLC to progress the Agreement and adjust the amount of the Financial Assistance as agreed. Both Parties agree that at this stage of the process the budget for the KLC's costs is reasonable and thorough, that the KLC has had reasonable time to prepare the budget and any further assistance from ADM will have to be clearly justified.
- 4.9 Both Parties agree that any staff / consultants engaged by the KLC under the KLC attached budget shall be employed for the primary purpose of working on these negotiations and that shall be written into their conditions of employment.
- 4.10 ADM, or the KLC, may, by mutual agreement, seek assistance from other sources to assist the negotiation process.

## 5. STEPS TO THE AGREEMENT

5.1 The Parties agree to work towards the following agreement making process and indicative timeframe:

### 5.1.1 Preparation Phase

September 2001 to July 2002

- Signed MOU between ADM and KLC.
- KLC concluding Traditional Owner Ethnography of ADM lease area.
- ADM providing information about the impact of mining operations and other information to assist negotiations.
- KLC conducting review of the impact of mining operations and preparing information and advice on issues for negotiation in the Agreement.
- ADM conducting peer review of KLC ethnography process and methodology.
- Negotiating Group selected and established by and from the TO group.
- KLC and Negotiating Group have come to a view about the impacts of the Argyle Diamond Mine.
- Negotiating Group, ADM and the KLC to negotiate and sign a Framework Agreement.
- Community meeting to be held once the Negotiating Group is established.

### 5.1.2 Negotiation Phase

July 2002 to November 2002

- Resolution of interim heritage clearance issues.
- Agreement on the list of issues to be included in the Agreement.
- Agreement on who should be parties to the Agreement.
- Agreement in principle on all the key issues.
- Community meeting to be held once there is in principle agreement.

### 5.1.3 Drafting / Documentation Phase

November 2002 to April 2003

- Drafting of Agreement in principle.
- Agreement on a document that will form the basis of consultation and an authorisation process.
- Agreement between ADM, TOs and the KLC on a concluded and final range of issues as the subject of the Agreement.
- Community meeting to be held once there is an agreed draft and prior to the consultation and authorisation process.

- 5.1.4 Consultation / Authorisation Phase April 2003 to June 2003
  - Final consultation and authorisation by TOs, the KLC and ADM.
- 5.1.5 Execution of Agreement June 2003
- 5.1.6 Registration Phase June 2003 to November 2003
  - National Native Title Tribunal (NNTT) to conduct notification and register the ILUA under Part 2 of Div 3 of the NTA.



6. CONTACT BETWEEN THE PARTIES

- 6.1 ADM and the KLC agree to have single points of contact for communication between them.
- 6.2 ADMs point of contact will be Simon Nisbet. The KLCs point of contact will be Bevan Stott. The KLC may appoint a negotiator. Once the KLC has appointed a negotiator, the KLCs point of contact will be that negotiator.
- 6.3 Each Party reserves the right to change, or add to, its points of contact in the negotiations as required.
- 6.4 Each Party may have appropriate advisers (including legal representatives) present at negotiations provided that all Parties receive advance notice of who will be attending negotiations.
- 6.5 Outside experts may be called upon for advice as long as they are prepared to sign a confidentiality agreement agreed by both Parties.
- 6.6 The parties agree to instruct their legal representatives for technical drafting only after agreements have been reached in principle on issues.

## 7. LOCATION AND TIMING OF NEGOTIATIONS

- 7.1 Negotiations shall take place on country and / or such other places as the Parties agree.
- 7.2 A schedule of meetings between the Parties for the next six (6) month period will be prepared and agreed by the Parties within fourteen (14) days of the signing of this MOU or the start of each following six month period.
- 7.3 Parties agree to make all reasonable efforts to give adequate notice if the meeting schedule needs to be varied, including an alternative meeting date.

**8. COOPERATIVE WORKING ARRANGEMENT**

- 8.1 All Parties commit to working together in good faith.
- 8.2 Negotiations should be free and frank, and without prejudice. Both Parties agree that any statements made, understandings reached or interim agreements made in the course of negotiations or communications between the Parties shall not be legally binding upon any Party unless expressly stated to be intended to have legal effect and expressly authorised by the relevant Party.

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamonds Mine Pty Limited and the Kimberley Land  
Council Aboriginal Corporation

Page 10 of 18

## 9. SUBSTANTIVE ISSUES FOR NEGOTIATION

- 9.1 ADM and the KLC intend that the scope of the negotiations in good faith between the Traditional Owners and ADM include, but are not limited to the following:
- (a) recognition of traditional rights and interests and/or native title rights in the ADM lease area;
  - (b) transparent principles and terms of the relations between ADM and the TOs;
  - (c) transparent principles and terms of the relations between ADM and affected communities;
  - (d) consideration for impacts and effect of the Argyle Diamond Mine on traditional rights and interests and/or native title and the TOs;
  - (e) protection of sites of importance to the TOs within the ADM lease area;
  - (f) cultural and heritage protection and management, including interim (ie, prior to end of dry season 2002) work program clearances;
  - (g) environmental and social impact assessment and management;
  - (h) training, employment and business opportunities in the mine operations and mine closure;
  - (i) exit and post mine strategies and arrangements;
  - (j) cross cultural awareness training;
  - (k) use of, access to and enjoyment of ADM lease area by TOs;
  - (l) ADMs long term objectives post mine;
  - (m) the role of government; and
  - (n) assignment of any interests / obligations under the Agreement.
- 9.2 The identification of these broad substantive issues for negotiation by the Parties will not be used by any Parties during the negotiations to limit the scope of discussion under each issue. The inclusion of a substantive issue in this section does not commit any of the Parties to conclude agreement on it.

**10. CONFIDENTIALITY**

- 10.1 Both Parties agree that the negotiations will be conducted in private and they will not discuss any information disclosed during the negotiations with any member of the public unless both Parties agree in writing or unless required by law to make the disclosure.
- 10.2 Both Parties acknowledge that the other Party will be keeping other stakeholders (eg, ATSIC, Local, State and Federal Governments and other industry bodies) informed of the existence of these negotiations and agree that any communication about the agreement process is to be transparent to the other Parties. Both Parties agree to keep each other informed of any communication they have with their stakeholders, and to inform their stakeholders they will be keeping the other Party informed<sup>1</sup>.
- 10.3 All information provided by any Party in the course of the Agreement negotiations remains the property of that Party and cannot be used by any of the other Parties other than for the purpose of the negotiation without the written consent of the Party who provided the information.
- 10.4 Subject to 10.5 below, ADM acknowledges that any ethnographic, cultural or other information and data created and / or obtained from or about the TOs as part of the negotiation is the property of the TOs and cannot be used without the written permission of the TOs or the KLC. ADM is aware that the use of such information or access to such information may be restricted. All such information will be returned by ADM at the conclusion of the negotiations or at such other time as the TOs or the KLC request in writing.
- 10.5 Clause 10 does not apply to any information or data that is already in the public domain.

<sup>1</sup> Communications limited to the existence of the negotiations, not the content.

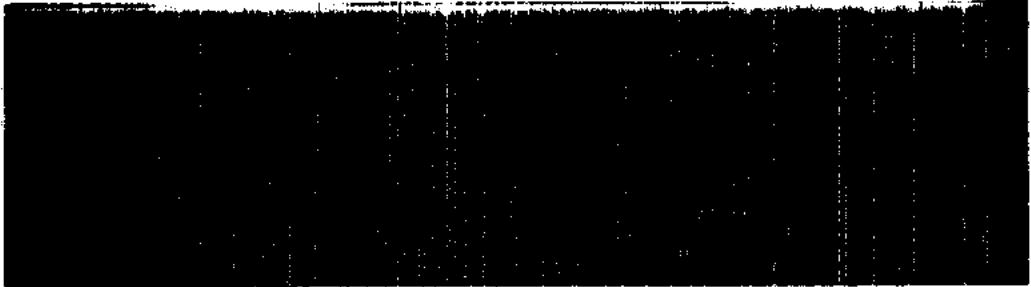
**II. PUBLIC COMMENTS**

11.1 While negotiations are proceeding, any public comments will be agreed and issued jointly by ADM and the KLC, unless required by law or stock exchange rules.

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamonds Mine Pty Limited and the Kimberley Land  
Council Aboriginal Corporation

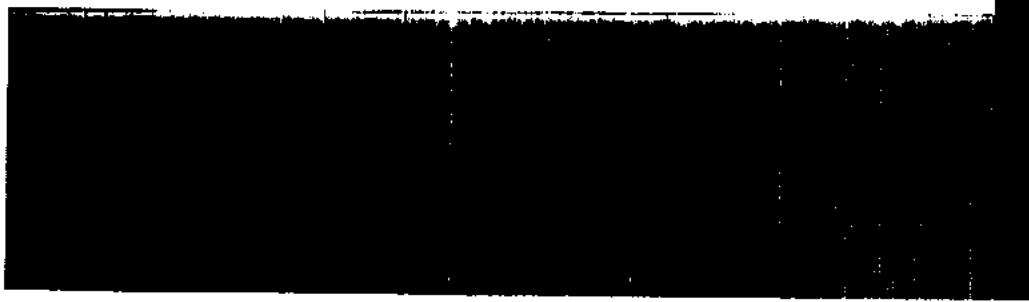


Page 13 of 18



**12. ONGOING RELATIONSHIPS BETWEEN ADM AND THE COMMUNITIES**

12.1 The KLC acknowledges that the ADM Community Relations team has existing programs and relationships with the local communities that will continue during the Agreement negotiations.



**13. TERM OF THE AGREEMENT**

13.1 Unless otherwise agreed, this MOU shall terminate on 1 November 2003.





**14. EXECUTION**

14.1 The Parties signify their intention to be bound by the above agreement.

Executed as an Agreement

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2001.

SIGNED for  
Argyle Diamond Mines Pty Limited by  
its General Manager, Operations, Brenden Hammond,  
in the presence of :

[Signature]  
Witness  
Robert Piper  
Name (please print)

[Signature]  
General Manager, Operations  
B. Hammond  
Brenden Hammond  
General Manager, Operations

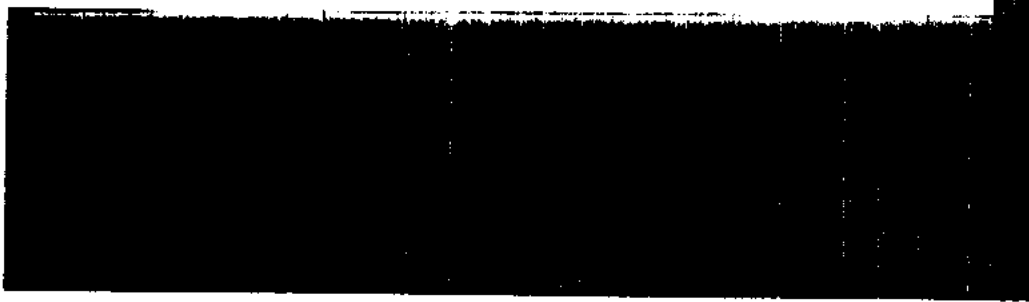
SIGNED for  
Kimberley Land Council Aboriginal Corporation by  
its representative in the presence of :

[Signature]  
Witness  
BEVAN J-STOLT  
Name (please print)

[Signature]  
Representative  
TON BERTH  
Name (please print)

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamonds Mine Pty Limited and the Kimberley Land  
Council Aboriginal Corporation

[Signature]



## ATTACHMENT 1

## KLC BUDGET FOR COST OF ENTIRE NEGOTIATION PROCESS

ACTIVITY / OUTPUT	EXPECTED COMPLETION	ESTIMATED FUNDS ALLOCATION(S)
Traditional Owner Ethnography Native Title and Incorporation Applications lodged, Establish Negotiating Group Including becoming Party to Framework Agreement	July 2002	\$117,910
Preliminary Review of Mining Operations and Impacts and Preparation of Advices to Negotiating Group	March 2002	\$43,120
Negotiation Expertise for Comprehensive Agreement	November 2002	\$126,640
Negotiation Management, Instruction and Community Liaison	October 2003	\$279,800
Project management Executive and Traditional Owner Teams support	October 2003	\$108,660
Heritage and Work Program Clearance Survey. Provisional Sum (Final estimates Subject to Work Program provided by ADM to be surveyed Estimates do not include any Aircraft / Helicopter costs)	October 2002	\$25,300
<b>TOTAL</b>		<b>\$700,630</b>

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamonds Mining Pty Limited and the Kimberley Land  
Council Aboriginal Corporation

Page 17 of 16

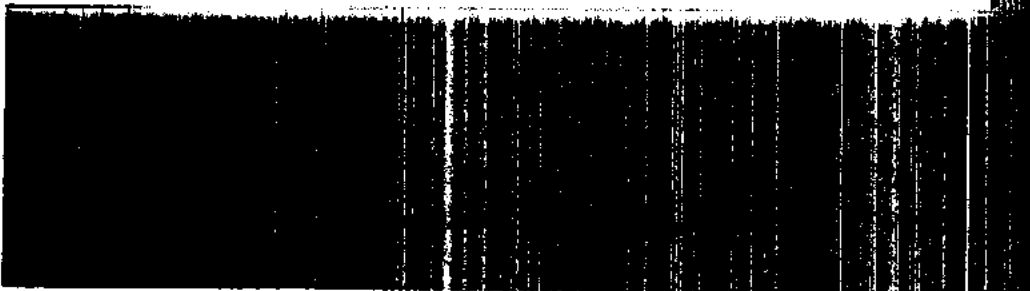
ATTACHMENT 2

LEASES HELD BY ARGYLE DIAMOND MINES PTY LIMITED

- M259SA
- M80/42
- M80/43
- M80/44
- M80/45
- M80/114
  
- L80/1
- L80/11
- L80/24
- L80/26
  
- 3114/8647

MEMORANDUM OF UNDERSTANDING between  
Argyle Diamond Mines Pty Limited and the Kimberley Land  
Council Aboriginal Corporation

Page 16 of 18



# **FRAMEWORK AGREEMENT**

*between*

**Argyle Diamond Mines Pty Limited  
(ABN 52 008 912 418) (ADM)**

*on behalf of*

**AML Nominees Pty Ltd  
Ashton Argyle Holdings Pty Ltd  
Capricorn Diamonds Ltd**

*and*

**Kimberley Land Council Aboriginal Corporation  
(KLC)**

(ABN 96 724 252 047) the Registered Native Title Representative Body  
for the Kimberley Region Pursuant to Section 202 of the  
Native Title Act 1993 (Commonwealth) (NTA)

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## 1. INTRODUCTION

- 1.1 ADM has conducted diamond mining activity and operations within the area of Mineral Lease 259SA and each of the leases listed in Schedule 1, since 1979 under its mining tenements and its rights under the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981* (State Agreement Act). ADM is also the holder of Grazing Lease 3116/8547. ADM proposes to continue those operations into the near future by means of open cut mining. Argyle intends to develop an underground mine upon the expiration of the open pit, subject to capital approval, TO approval, community support and obtaining the necessary Government approvals. These mining operations and activities, ADM's mining tenements, leases and the rights of ADM under the State Agreement Act are referred to in this Framework Agreement interchangeably as the ADM lease area and Argyle Diamonds.
- 1.2 ADM acknowledges that there are Aboriginal People who have traditional rights and interests in the ADM lease area and hold, or held, native title over it. Those Aboriginal People have been identified by ethnography conducted by KLC and are referred to in this Framework Agreement as the Traditional Owners (TOs).
- 1.3 ADM now seeks to negotiate a Comprehensive Agreement (the ILUA) which ADM and KLC intend be in the form of an Indigenous Land Use Agreement registered under Division 3 of Part 2 of the NTA.
- 1.4 ADM and KLC entered into a Memorandum of Understanding (MOU) on 27 September 2001. This agreement is intended to supercede the MOU and assist all of the Parties to work co-operatively together towards finalising the ILUA.
- 1.5 KLC will be a party to the ILUA in its own right as the representative body for this area.
- 1.6 Both ADM and KLC intend this Framework Agreement to be legally binding upon them. It is also intended that this Framework Agreement sets out the process steps to the ILUA, that any change to the process steps are to be agreed upon by the parties and that if the process steps are not followed as agreed then the parties will not achieve the ILUA.
- 1.7 The Parties agree that there will be regular community meetings on Country to keep the TOs and local Aboriginal communities fully informed of the process, nature and progress of Agreement Making towards the ILUA. ADM will be involved in at least part of these meetings. A proposed timetable for those meetings is set out in Schedule 2.

- 1.8 The TO's have established a TO Committee (TO Committee) to assist the Parties with communications, discussions and Agreement Making. It is the intention of the Parties that the TO Committee will meet at the 15/16 July 2003 meeting and ratify the agreement making process set out in this Framework Agreement. Ratification means that the TO Committee members, on their own behalf and on behalf of the TO's agree with the Framework Agreement and will work to the rules in it. It is acknowledged that the TO Committee does not have the authority to bind the TOs to an ILUA.
- 1.9 The Parties acknowledge that once a final draft ILUA has been reached, the TOs will not be bound by it until they have authorised the making of the agreement consistent with section 251A of NTA.
- 1.10 Subject to the provisions of section 203BE(5) of the NTA having been satisfied, KLC agrees to certify any ILUA arising from the Agreement Making process.

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## 2. ETHNOGRAPHY

- 2.1 KLC has engaged two anthropologists (the anthropologists) to provide KLC with a report setting out the ethnography of the ADM lease area.
- 2.2 The ethnography of the ADM lease area (the Traditional Owner Ethnography) has identified the TOs. The anthropologists will provide a Connection Report to KLC to support an application for a Determination of Native Title over the ADM lease area.
- 2.3 The anthropologists will also provide to KLC a Certification Report which will address the requirements of s. 203BE (2) and (5) of the NTA.
- 2.4 ADM has appointed Dr Peter Sutton to conduct a peer review of the Traditional Owner Ethnography. The peer review will be limited to the process and methodology for conducting the Traditional Owner Ethnography. KLC will assist the peer review by providing to ADM copies of such source materials used in the Traditional Owner Ethnography, as requested by Dr Sutton, within 7 days of receipt of such request.
- 2.5 ADM will accept the Aboriginal Peoples identified by the Traditional Owners Ethnography as the TOs and will deal exclusively with them, subject to:
  - (a) any concerns identified by the peer review being satisfactorily addressed by the KLC;
  - (b) KLC agreeing, subject to its obligations under the NTA, to decline assistance with the lodgment and/or registration of any native title claims over any part of the ADM lease area by any persons not identified as TOs in the Traditional Owner Ethnography;
  - (c) where KLC represents any TOs identified in the Traditional Owner Ethnography, KLC will certify, under section 203BE of the NTA a native title claim over any part of the ADM lease to be lodged by those TOs; and
  - (d) agreement between ADM, the TOs and KLC about how any other TOs identified at any time during the Agreement Making process should be dealt with.
- 2.6 Subject to clauses 2.7 and 2.8 below, ADM acknowledges that any ethnographic, cultural or other related information and data created and/or obtained as a result of the process referred to in this section is the property of the TOs and cannot be used without the written permission of

the TOs or KLC. Such information will only be provided to ADM on a strictly confidential basis and is to be returned by ADM at the conclusion of the Agreement Making process or at such other time as the TOs or KLC request in writing.

- 2.7 Clause 2.6 does not apply to any information or data that is already in the public domain.
- 2.8 At the conclusion of the Traditional Owner Ethnography, KLC will provide to ADM and ADM will retain a written report comprising a summary of the Traditional Owner Ethnography process and methodology, and a summary of the conclusions of the Traditional Owner Ethnography which it will use only for cultural heritage protection/management and land management and other related matters involving Aboriginal people in the ADM lease area, unless agreed otherwise in the ILUA.



### 3. AGREEMENT MAKING PRINCIPLES

- 3.1 The Parties will conduct the Agreement Making process towards an ILUA in good faith and with mutual respect so as to build on the trust and goodwill that has already started to be established between them.
- 3.2 All discussions, and communications between the Parties concerning the proposed ILUA will be conducted on a without prejudice basis unless agreed otherwise. All parties agree that any statements made, understandings reached, or communications between the Parties shall not be legally binding upon any Party unless expressly stated to be intended to have legal effect and expressly authorised by the relevant Party.
- 3.3 Notwithstanding the decision of the High Court of 8 August 2002 in *Western Australia v Ward*, ADM wishes to recognise native title where that is possible and to reach a comprehensive agreement with the TOs in relation to their native title and for the whole of the ADM mineral lease area and the Grazing Lease 3116/8547 area.
- 3.4 KLC agrees to manage the process of having any ILUA arising from this Agreement Making process lodged with the National Native Title Tribunal (NNTT) and to do all things necessary to ensure that it is registered with the NNTT. ADM agrees to assist KLC in managing the registration process.
- 3.5 Neither party may assign this agreement without the consent of the other party, which consent must not unreasonably be withheld.
- 3.6 The Agreement Making process shall take place on country and/or such other places as the Parties agree.
- 3.7 A schedule of meetings between the Parties for the period ending December 2003 has been prepared and agreed by the Parties which schedule is annexed as Schedule 2.
- 3.8 The Parties agree to review and update the schedule of meetings at regular review meetings as set out in Schedule 2. The Parties further agree to make all reasonable efforts to give adequate notice if the meeting schedule needs to be varied on short notice, including an alternative meeting date.
- 3.9 The KLC and ADM agree to give the other prior notice of any proposed meetings with State or Commonwealth government personnel to discuss matters relating to the ILUA.

#### 4. TRADITIONAL OWNER DECISION MAKING

- 4.1 KLC has provided to ADM a summary of the decision making process for the TOs in relation to the ADM mineral lease area and the Grazing Lease 3116/8547 area. That summary is set out below. The summary does not purport to set out a detailed or complete explanation, but rather provides a guide for the purpose of ensuring that ADM and KLC are aware of the processes that the TOs must go through to reach a decision. Miriuwung names are used. The Gija names are in brackets.
- 4.2 All interests were created in the *Ngarangani* (Ngarranggarni) (Dreaming) and cannot be taken away or denied. The authority of the *dawawang* (daawan) arises from their primary connections with the creative beings and the relationship between these beings and the land itself.

The *dawang* (daam) that comprises a majority of ADM's lease area is the Mandangala/Tiltuwam (Mandangala/Thilthuwam) *dawang* (daam). In the southern part of the lease a small rectangular portion (of approximately 1 x 3km), straddles the Bow River. In doing so it includes a second *dawang* (daam), that of the Yunurr/Yalangga group.

The *dawang* (daam) of Mandangala/Tiltuwam (Mandangala/Thilthuwam) is surrounded by five other estates. These are the Balaburr, Bilbildjing (Bilbiljing), Dundun, Numulawalyin (Neminuwarlin) and the Yunurr/Yalangga estates. The *dawawang* (daawan) of these adjacent estates have secondary, traditional rights and interests in the estate of Mandangala/Tiltuwam (Mandangala/Thilthuwam).

The members of the six groups (Dundun, Balaburr, Yunurr, Bilbildjing (Bilbiljing), Mandangala/Tiltuwam (Mandangala/Thilthuwam), Numulawalyin (Neminuwarlin)) are in turn part of a broader society that has a shared system of law and custom. This broader society comprises members who occupy areas which extend an undetermined distance beyond the ADM lease area.

The consequence of the shared system of law and custom is that senior Aboriginal persons, *madjang* (majam), who may not be members of one of the six estates named above may, nevertheless, have a measure of responsibility for sites within the Mandangala/Tiltuwam (Mandangala/Thilthuwam) *dawang* (daam). As a consequence, they have a role in the decision making process of that estate. Those individuals also have secondary rights and interests.

Under traditional law and custom a decision that would affect an estate is made by amalgamations of individuals who exhibit specific qualifications.

The decision-making processes regarding both religious and secular matters are based on tradition and deeply held religious beliefs. Under that tradition it is, for example, the responsibility of senior persons to look after sacred sites some of which may be considered inherently dangerous because of events that occurred in the *Ngarangani* (Ngarrangarni).

Responsibility for decision making rests upon a select group of senior persons referred to as *madjang* (majam), a term which may be loosely translated as leader or boss. A combination of the terms *madjang* (majam) and *dawawang* (daawam) refers to a knowledgeable and wise spokesperson of the *dawang* (daam).

All decisions in relation to Mandangala/Tiltuwam (Mandangala/Thilthuwam) *dawang* (daam) must encompass the interests of those who have secondary rights in that estate. However, decisions would then be articulated by the Mandangala/Tiltuwam (Mandangala/Thilthuwam) *madjang* (majam) who 'speak for the country'.

It is most important to note that while the final decision would be articulated by the *madjang* (majam) of Mandangala/Tiltuwam (Mandangala/Thilthuwam), it must encompass (not just consider) the decisions and must sustain the interests of the members of neighbouring estates and all those others who claim secondary interests in the area.

For this reason the process by which decisions are to be made in relation to the ADM lease area would require the participation of all estate groups mentioned above, with the inclusion of those *madjang* (majam) not of these groups and from more distant estates whom senior members of the six estates may nominate from time to time depending on the context.

- 4.3 Decisions made by the TO's in accordance with this decision making process will be communicated to ADM:
- (a) by notice in writing from the KLC, which notice shall communicate the decision and confirm that the decision making process set out in this clause has been followed; or
  - (b) verbally by the TO Committee at Agreement Making Group Meetings, which decision will be recorded in writing in the outcomes of the meeting as required by clause 5.16.

**5. AGREEMENT MAKING GROUP**

5.1 The Parties have established an Agreement Making Group.

5.2 The main purpose of the Agreement Making Group is to:

1. guide the agreement making of the ILUA; and
2. provide a means for consultation on ADM operational issues which arise during the Agreement Making Process.

5.3 The members of the Agreement Making Group are the following people nominated:-

(a) by the TOs

**Mandangala**  
George Dixon  
John Toby  
Evelyn Hall  
Patsy Curtin

**Assistants**  
Jodie Hall-Simon  
James Dixon  
Ted Hall  
Ralph Gerrard  
**Police**  
Button Jones

**No Name**  
Goody Barrett  
Lena Nyadbi  
Madigan Thomas  
Chocolate Thomas

**Assistants**  
Helen Pinday  
Ronnie Ramsey  
John Curtin  
Geraldine Bedford

Two people from each of the following five groups:

**Bilbidjijing**  
Marjorie Brown  
Ruth Ward  
Ben Ward  
David Ward

**Numulawalyim (Neminuwlartin)**  
Peggy Patrick  
Mona Ramsey  
Freddie Timms

**Yunurr**  
Churchill Cann  
Alphonse Parks  
Patrick McGinty  
Mark Nodea  
Dougie McCale  
Antony Yalanga  
Maggie John  
Patrick Cann

**Doon Doon**  
Tiger Moore  
Una Morgan  
Frank Sampi  
Moreton Moore  
Freddie Martin  
Rebecca Sampi  
Dean Morgan  
Marie Morgan  
Kevin Morgan  
Colin Morgan

**Balaburr**  
Nancy Dilyai  
Phyllis Ningamarra  
Jeff Janama  
Cecil Ningamarra  
Annette Janama  
Ryan Janama

- (b) by ADM - Simon Nish  
Fred Murray
- (c) by KLC - Alan Wedderburn  
Michael Neal

- 5.4 While TO's, Argyle and the KLC may change their nominated members of the Agreement Making Group by notice in writing to the others, it is expected that each member will remain a member of the Agreement Making Group until the ILUA has been reached.
- 5.5 The Parties acknowledge that it is important that there be consistency of attendance at Agreement Making Group meetings. Members of the Agreement Making Group must therefore commit to regularly attend Agreement Making Group meetings.

- 5.6 If a member is not available to attend an Agreement Making Group meeting, the party nominating the non-attending member may nominate an alternative person to attend.
- 5.7 Members may invite a reasonable number of advisers and ADM may invite relevant operational ADM staff to attend Agreement Making Group meetings.
- 5.8 The Agreement Making Group may invite Government or other relevant people to attend meetings.
- 5.9 In addition to the roles of the Agreement Making Group set out in clause 5.2 it may, by agreement, consider and make recommendations in relation to such current operations of ADM as are raised for consideration by ADM.
- 5.10 The Agreement Making Group may also provide guidance and direction to the Parties in relation to the development of programs or strategies arising from the EIA and SIA processes in order to address issues arising from those processes.
- 5.11 The Agreement Making Group will meet on a regular basis in accordance with Schedule 2.
- 5.12 ADM and the KLC may establish a Secretariat for the purpose of assisting the Agreement Making Group as directed by it.

The duties of the Secretariat are to:-

- organise Agreement Making Group meetings, prepare agendas at least 7 days in advance of meetings and assist with the distribution of the agendas to the Agreement Making Group;
- assist the liaison with Agreement Making Group members with the aim of ensuring that Agreement Making Group members are well informed and able to participate in discussions in a timely manner;
- assist with the communication of the outcomes of Agreement Making Group meetings as directed by the Agreement Making Group.

The Secretariat will consist of:-

- an ADM Administration Officer; and
- a KLC Administration Officer.

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- 5.13 In addition, each of ADM and KLC will nominate one of their staff to be the main contact person for each of those Parties for meeting arrangements and logistics. In the first instance, ADM nominates Fred Murray and KLC nominates Archie Tanna.
- 5.14 The Parties agree that the KLC will engage interpreters to assist at the Agreement Making Group Meetings and otherwise as required. The interpreters will be engaged from the Kimberley Interpreting Service unless otherwise agreed by the Parties.
- 5.15 The Parties will engage one male and one female facilitator to assist at the Agreement Making Group Meetings. The facilitators are Ruth Wade and Dan O'Dea of the NNTT, unless otherwise agreed by the parties.
- 5.16 Those persons present at the meetings will settle the outcomes of each Agreement Making Group meeting prior to the conclusion of each meeting. The facilitators will confirm the outcomes of the meetings and circulate them as soon as possible after the meetings. Those outcomes will be the formal record of the meeting.
- 5.17 A quorum for the Agreement Making Group will require the attendance at each meeting of at least:-
- 1 ADM member; and
  - 1 KLC member.

In addition, a quorum will only be formed if the TO's present at the meeting confirm that the correct people are at the meeting in order for a meeting to go ahead.

- 5.18 Where a decision is required to be made by the Agreement Making Group, it will be only made with the agreement of all of the members of the Agreement Making Group present at a meeting.
- 5.19 Where agreement cannot be reached, any member may require additional information or further options to be discussed at a subsequent meeting of the Agreement Making Group.

Where agreement cannot be reached after further information has been considered, the Agreement Making Group may refer matters to the Managing Director of Argyle Diamonds ( or his delegate), the Chief Executive Officer of KLC and two TOs nominated by the TO representatives on the Agreement Making Group for advice and direction.

- 5.20 ADM, TO's and the KLC will each provide details at each Agreement Making Meeting of other activities which may impact upon the availability

or ability of the TO's to focus attention on the Agreement Making Process. The TO's will agree at meetings what priority should be given to other activities which may impact on the Agreement Making Process.

- 5.21 The Parties intend that any agreement as to the content of the ILUA will only be made by the Agreement Making Group at Agreement Making Group Meetings. The Parties agree that the Agreement Making Process must be open and transparent and that there will be no negotiations between ADM and the TO's about the terms of the ILUA other than at the Agreement Making Group Meetings. KLC and ADM may continue to negotiate so long as they report the outcomes of those discussions to the Agreement Making Group.
- 5.22 Subject to clause 5.21, the Parties acknowledge the need for informal meetings between ADM and smaller groups of TO's for the purpose of sharing information about the Agreement Making Process and providing general information about mining operations and plans. These meetings will be scheduled by agreement between ADM and the KLC and a KLC representative must be present at these meetings. Agreement as to the scheduling of these meetings will not be unreasonably withheld by either Party.
- 5.23 The members of the TO Committee nominated in clause 5.3 will each be paid \$300 per day for their attendance at the Agreement Making Group Meetings. ADM will pay no more than \$8,100 per day for each Agreement Making Group Meeting to the KLC who will be responsible for distribution of the payments to the individual members of the TO Committee.



## 6. SUBSTANTIVE ISSUES FOR NEGOTIATION

6.1 The Parties intend that the scope of the matters the subject of discussions as part of the Agreement Making process towards an ILUA between the Parties include, but not be limited to the following:-

- (a) recognition of traditional rights and interests and/or native title rights of the TOs in the ADM lease area;
- (b) transparent principles and terms of the relations between ADM and the TOs;
- (c) transparent principles and terms of the relations between ADM and affected communities;
- (d) consideration for past, present and future impacts and effect of the Argyle Diamond Mine on traditional rights and interests and/or native title and the TOs;
- (e) community benefits flowing from the existence of the Argyle Diamond Mine;
- (f) protection of sites of importance to the TOs within the ADM lease area;
- (g) cultural and heritage protection and management, including work program clearances;
- (h) environmental and social impact assessment and management;
- (i) training, employment and business opportunities in the mine operations and mine closure, including possible joint ventures;
- (j) exit and post mine strategies and arrangements;
- (k) cross-cultural awareness training;
- (l) use of, access to and enjoyment of ADM lease area by TOs;
- (m) ADMs long term objectives post mine;
- (n) the role of government;
- (o) assignment of any interests/obligations; and

(p) transfer of the Grazing Lease 3116/8547.

6.2 The identification of these broad substantive issues for negotiation by the Parties will not be used by any Party during the Agreement Making process to limit the scope of discussion under each issue. The inclusion of a substantive issue in this section does not commit any of the Parties to conclude agreement on it.

6.3 The substantive issues will be closed once in-principle agreement has been reached. Parties agree not to raise any substantive issues after that time.

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## 7. ASSISTANCE

7.1 ADM agrees to assist KLC and the TOs engaged in the Agreement Making process by providing;

- (a) financial assistance; and
- (b) access to and provision of information concerning the Argyle Diamond Mine.

7.2 ADM has to date paid the KLC \$664,569 as assistance for the agreement making process. That amount includes the payment of \$223,006 made in March 2003 for expenditure and projected expenditure.

ADM has also paid the following amounts for social impact assessment work that was carried out subject to joint terms of reference agreed to by ADM and the KLC:

Cath Elderton	\$89,405
Bill Pritchard	\$24,725
John Taylor	<u>\$43,042</u>
Total:	\$157,152

7.3 ATSIIC has provided approximately \$350,415 to KLC to assist with the development of the ILUA.

7.4 ADM and KLC have agreed a budget for the further costs of the Agreement Making Process up to the end of December 2003 which is set out in Schedule 4.

7.5 The KLC will submit a request for further assistance for the period January to June 2004.

7.6 The KLC will provide monthly invoices to ADM setting out actual expenditure and outcomes. On receipt of these monthly invoices ADM's further payments will be subject to the KLC attaining certain outcomes as set out in Schedule 3 within the relevant timeframes, and relevant tasks having been undertaken or concluded as per Schedule 3. The Parties agree that the outcomes referred to in Schedule 3 may be varied by agreement in writing.

7.7 The KLC agrees to refund to ADM any money that remains unspent from the payments made in March 2003. The KLC also agrees to refund to

ADM any money that is provided to it by ADM under this clause but remains unspent at the end of the Agreement Making process.

- 7.8 ADM and KLC will regularly review the assistance necessary for KLC to progress the Agreement and adjust the amount of the Financial Assistance as agreed. Any further assistance from ADM will have to be clearly justified. ADM will not unreasonably withhold providing further financial assistance where it is agreed that further or other work is required to complete the ILUA.
- 7.9 The Parties agree that the Project Manager, the male and female liaison officers and the administration officer engaged by KLC for the purpose of the Agreement Making process shall be employed for the primary purpose of working on the Argyle agreement project, which shall be written into their conditions of employment.
- 7.10 ADM and KLC may, by mutual agreement, seek assistance from other sources to assist the Agreement Making process.

## 8 CONFIDENTIALITY

- 8.1 All Parties agree that the Agreement Making process will be conducted in private and they will not discuss any information disclosed during the Agreement Making Process with any member of the public unless all Parties agree in writing or unless required by law to make the disclosure. For the avoidance of doubt information disclosed during the Agreement Making Process may be disclosed to TOs.
- 8.2 All Parties acknowledge that the other Parties will be keeping other stakeholders (eg ATSIC, Local, State and Federal Governments) informed of the existence of the Agreement Making process and agree that any communication about the Agreement Making process is to be transparent to the other Parties. All Parties agree to keep each other informed of any communication they have with their stakeholders, and to inform their stakeholders they will be keeping the other Parties informed. KLC may advise ATSIC including the Wunan Regional Council of the progress but not the content of Agreement Making process, without the further consent of the other Parties.
- 8.3 All information provided by any Party in the course of the Agreement Making process remains the property of that Party and cannot be used by any of the other Parties other than for that purpose without the written consent of the Party who provided the information.
- 8.4 Clause 8 does not apply to any information or data that is already in the public domain at the date of this Framework Agreement.

**9. PUBLIC COMMENTS**

- 9.1 While the Agreement Making process is proceeding, any public comments will be agreed and issued jointly by ADM and KLC, unless required by law or Stock Exchange rules.

**10. TERM OF THE AGREEMENT**

- 10.1 Unless otherwise agreed, this Framework Agreement shall terminate if the ratification and agreement referred to in clause 1.8 is not given or on 30 June 2004 whichever is the earlier.

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**Schedule 1 – ADM Mining Tenements**

**Mineral Lease 259SA**

M80/42

M80/43

M80/44

M80/45

M80/114

L80/24

L80/11

L80/26

L80/1

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Schedule 2 – Meeting Schedule

<b>MEETINGS</b>	<b>DATE</b>
	<b>2003</b>
Traditional Owner Committee – Argyle Meeting	10-11 June
ADM/KLC meeting to review mtg schedule & outcomes schedule	11 June
Tentative - Follow up Community Meetings	Week of 23 June
Traditional Owner Committee – Argyle Meeting	15-16 July
Traditional Owner Committee – Argyle Meeting	26-27 August
ADM/KLC meeting to review mtg schedule & outcomes schedule	28 August
Tentative - Follow up Community Meetings	Week of 1 September
Traditional Owner Committee – Argyle Meeting	23-24 September
Tentative - Follow up Community Meetings	Week of 6 October
Traditional Owner Committee – Argyle Meeting	21-22 October
Traditional Owner Committee – Argyle Meeting	18-19 November

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### Schedule 3 – Outcomes

#### JUNE 2003

Acquittal of the March 2003 payment of \$223,006 and refund ADM any sum unspent from this amount.

Acquittal of the April and May (exploratory decline consultation) agreed budgets and provide ADM with an invoice for actual April/May expenditure.

Water monitoring bores work program clearance final budget

Exploratory decline final budget.

Follow up Community Meetings

In-principle agreement on Grazing Lease transfer and relevant terms of ILUA and Consent determination

#### JULY 2003

Traditional Owner Committee – Argyle Meeting

Traditional owner ratification of the Framework Agreement.

Traditional Owner Committee to define what they are seeking in the benefits package.

#### AUGUST 2003

Traditional Owner Committee – Argyle Meeting

Agreed drafting of Native Title claim preparation and Grazing lease transfer

NNTT ILUA registration delegate appointed

Anthropologists for October Work Program Clearances selected.

In-principles agreement on structure/rules of TO Trust

Development of a story for local Aboriginal people to explain the in principle agreement

#### SEPTEMBER 2003

Traditional Owner Committee – Argyle Meeting

Follow up Community Meetings

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Agreement in principle between TO Committee and Argyle.

Commencement of initial independent audit of implementation plans, costs and resources.

Commencement of KLC / Argyle joint consultation of stakeholders re underground

### OCTOBER 2003

Traditional Owner Committee – Argyle Meeting

Follow up Community Meetings

Work program clearances in a batch.

Drafting /consultation => constant field availability

Consult with National Native Title Tribunal (NNTT) on drafting

Agreement story being distributed and explained from early October

TO Trust established

Agreed plan / resources for TO Trust capacity building and interim management plan / timeframes

Certification report reviewed and finalised

### NOVEMBER 2003

Traditional Owner Committee – Argyle Meeting

Signing ceremony.

ILUA certification by KLC

Lodgement of ILUA with the NNTT

Seek confirmation from the NNTT that nothing further is required for a registration decision or public notification.

### DECEMBER 2003

Liaison with the NNTT as to registration of the ILUA.

Implementation of any ILUA outcomes that KLC is responsible for.

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Schedule 4 – Budget

FRAMEWORK AGREEMENT BUDGET: MAY - DECEMBER 31, 2003

**KIMBERLEY LAND COUNCIL Framework agreement budget to end December 2003**

<b>Negotiation Management</b>			
1	Negotiation Co-ordinator fees including drafting on agreement, trust and PBC and prep of native title claim	161800	
2	Negotiation co-ordinator disbursements	16500	
3	Project Manager salary and on costs	64000	
4	Interim Project Manager	3900	
5	2 X Project Liaison Officer salary and on costs	83000	
6	Administration Assistant	23000	
7	Staff travel and disbursements	29300	
8	Motor Vehicle Leasing Costs	12500	
9	Motor Vehicle Running Costs	4000	
10	Capital Costs (computer/printer, equipment, desks, mobile)	7000	
11	Office and administration costs (including Warmun/kux/broome office rent, supplies, sat phone, power, etc)	12500	
<b>Total</b>		<b>417,500.00</b>	
<b>Traditional Owner Ethnography</b>			
12	Anthropologist additional work - NT claim	12 days x \$850	10200
13	Connection report editing and review	5 days x \$850	4,250
14	Governance and decision making	15 days x \$850	12750
15	Anthropologist Motor Vehicle Exp		3000
16	Anthropologist Travel Costs		5000


<b>Total</b>		<b>35,200.00</b>
<b>Project Management</b>		
17	Meetings Executive meeting 1 x \$8000 Steering committee 10 x \$1500, community meetings 9 x \$2000	22500
18	Signing Meeting	50000
19	Leadership group meetings 2 x \$5000	5000
20	Executive Director and Chairman time 15 x 2000	15000
21	Accommodation and Meals 20 x 200	4000
22	Vehicle hire	0
23	Fares and Charters 10 x 1000	10000
24	Field equipment and supplies	5000
<b>Total</b>		<b>111,500.00</b>
<b>Preliminary Review of Mining Operations</b>		
<b>ESIA work, capacity building and implementation</b>		
25	Economic analysis and presentation, development of package and negotiations	35000
26	General expertise	40000
27	Economic development	
28	interpreters and presentation of information	33500
29	Disbursements for expertise above	20000
<b>Total</b>		<b>128,500.00</b>
<b>Negotiation Expertise for Comprehensive Agreement</b>		
30	Dodson Lane 2 x 8 x 1500	24000
31	Senior Legal Advice re tax, trust arrangements and general advice	20000
<b>Total</b>		<b>44,000.00</b>
<b>Traditional Owner Payments</b>		
32	Payments to TO Committee members	

	81,000.00
<b>Total</b>	<b>81,000.00</b>
	817,700.00
<b>TOTAL</b>	<b><u>817,700.00</u></b>

NOTE: Argyle will resource the drafting of the ILUA by instructing its solicitors to undertake the drafting of the ILUA in accordance with any agreements reached by the Agreement Making Group on the terms of the ILUA

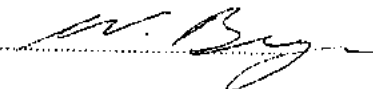
Executed as an agreement

Signed for and on behalf of the )  
ARGYLE DIAMOND MINES )  
PTY LIMITED )  
by its duly Authorised Officer )  
on 16<sup>th</sup> June 2003 )

  
.....  
Alan Donald TIEZEL

In the presence of  .....

Signed for and on behalf of the )  
KIMBERLEY LAND COUNCIL )  
ABORIGINAL CORPORATION )  
by its duly Authorised Officer )  
on 20 June 2003 )

  
.....

In the presence of  .....

030616 Final Framework Agreement

030616 Agreed Framework Agreement v8.doc

# Argyle Participation Agreement

## HEADS OF AGREEMENT

Between

**Argyle Diamonds Ltd and Argyle Diamond Mines Pty Ltd (Argyle)**

**Traditional Owners (TOs)**

and

**Kimberley Land Council Aboriginal Corporation (KLC)**

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### 1 Background

The parties have been working together in an extensive agreement process to reach an Indigenous Land Use Agreement (ILUA) and a Management Plan Agreement.

The purpose of this Heads of Agreement is to record the parties' agreement that the substantive issues in the agreements have been resolved and to set out a process for finishing these agreements.

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### 2 Signing of the ILUA and the Management Plan Agreement

#### 2.1 Execution of the ILUA and the Management Plan Agreement by 24 September 2004

Subject to clauses 2.2 - 2.6, the parties agree that the ILUA in the form of Draft 9, dated 7 July 2004, and the Management Plan Agreement in the form of Draft 11, dated 7 July 2004, reflect the parties' agreement on the substantive issues the subject of the negotiations between the parties, and that they will execute the final form of the ILUA and the Management Plan Agreement on or before 24 September 2004.

#### 2.2 Financial Provisions of the ILUA

The financial arrangements recorded in the ILUA in the form of Draft 9, dated 7 July 2004, and the Management Plan Agreement in the form of Draft 11, dated 7 July 2004 are agreed, subject to the matters below:

*AM*  
*D. J.*

##### (a) Existing payments to the signatories to the Good Neighbour Agreement

The parties confirm that the payments to the signatories of the 1980 Good Neighbour Agreement (in the terms set out in Argyle's letter to the signatories of 1 December 1995) are in addition to the 2% of EBITDA payable by Argyle. The value of indexing these payments and extending them to the descendants of the signatories is part of the 2% EBITDA payment.



**(b) Minimum payments to non-charitable Trust**

The parties agree to the principle that in every year that payments ~~are~~ <sup>might be</sup> made under clause 6.12 of the ILUA, a minimum of \$500,000 is paid into the Special Purposes Trust. The parties will work to find a way to achieve this. This matter must be resolved on or before the date of the next TO meeting in August 2004.

*Am*  
*D*  
*sw*

**2.3 Release against the State**

Argyle requires a full release against the State. The TOs wish to preserve their right to make a compensation claim against the State.

Argyle has suggested a compromise position at clause 10 of Draft 9 of the ILUA. This compromise remains subject to the approval of Rio Tinto.

This matter remains to be resolved.

**2.4 Other matters requiring resolution**

The matters that require resolution before the Indigenous Land Use Agreement and the Management Plan Agreement can be formally executed are set out below.

**(a) ILUA**

- (1) The Malargowem Native Title Claim must be removed from the Agreement Area.
- (2) The distribution, trust and governance arrangements (Clause 6 and Schedules 13 and 14) must be resolved.
- (3) The issue of the circumstances in which Argyle can reduce, suspend or terminate payments must be resolved (Clause 11).
- (4) The genealogies must be updated and finalised.
- (5) The Traditional Owners (TOs) who will execute the ILUA on behalf of the broader traditional owner group must be identified (ILUA generally and Schedule 10).
- (6) The Current Mining Area (Schedule 15) must be agreed.
- (7) The summary of the ethnography must be provided by the KLC and agreed (Schedule 3).
- (8) A list of TOs and the means of TO identification must be provided by the KLC and agreed (Schedule 4).
- (9) The form of TO native title claim must be provided by the KLC and agreed (Schedule 8).
- (10) The form of ILUA certification must be settled and agreed (Schedule 9).
- (11) The description of the native title holders must be provided by the KLC and agreed for the purposes of the native title consent determination (Schedule 12).
- (12) The means of calculating the trust payments must be provided by Argyle and agreed (Schedule 19).

*Am*  
*sw* *R*

- (13) The details of the payments to the Special Purposes Trust and the Charitable Trust to assist with set up and implementation costs must be provided by Argyle and agreed (Schedule 20).
- (14) The individuals who are the recipients of the individual payments under clause 6 must have wills in place (clause 6.2).
- (15) The terms of the agreement with the Gidja People must be provided by the KLC and included in the ILUA (clause 6.28).
- (16) The definition of TOs in the ILUA must be reviewed by Kim Barber and agreed (clause 20).
- (17) When community payments to Mandangala cease.

**(b) Management Plan Agreement**

- (1) The TOs who will execute the Management Plan Agreement on behalf of the broader traditional owner group must be identified.
- (2) The Co-Chairs and Deputy Chairperson of the TO Relationship Committee must be identified (Management Plan Agreement clause 4.21).
- (3) The cap on the amount of Annual Budget that Argyle will provide for the administration of the TO Relationship Committee must be agreed (Management Plan Agreement clause 4.58).
- (4) The members of the TO Relationship Committee must be identified by Argyle and the TOs (Management Plan Agreement Schedule 2).
- (5) The maximum amount of the annual payment that Argyle will contribute in respect of the cost of employing the Executive Officer must be agreed (Management Plan Agreement clause 4.69) and the basis for it set out in Schedule 5.
- (6) The role and reporting line of the Executive Officer must be agreed.
- (7) The identity of the archaeological assistants for the purpose of the Aboriginal Site Protection Management Plan must be provided.
- (8) The mechanism by which Agreed Consultants are removed under the Aboriginal Site Protection Management Plan must be resolved.
- (9) The map of Current Mining Area and map showing Aboriginal Sites must be provided and included (Management Plan 1 Schedules 1 and 2).
- (10) The number of TOs over and under 18 years old participating in the employment and training mine tour and workshop must be agreed (Management Plan 2 clause 8.2(a)-(b)).
- (11) The maximum cost to Argyle of the mine tour and workshop must be agreed (Management Plan 2 clause 8.3).
- (12) The TO Register for the purposes of the Employment and Training Management Plan must be provided (Management Plan 2 Schedule 1).
- (13) The content of the initial Cross Cultural Training program must be settled (Management Plan 3 clause 3.3).
- (14) The Land Access TO List for the purpose of the Land Access Management Plan must be provided (Management Plan 4 clause 4).

- (15) The current operations map for the purposes of the Land Access Management Plan must be provided (Management Plan 4 Schedule 1).
- (16) The maximum cost to Argyle of the Annual Tour must be agreed (Management Plan 5 clause 2.9).
- (17) The parties must identify their respective members of the Business Development Taskforce (Management Plan 7 clauses 3.3 and 3.4).
- (18) The definition of Traditional Owners must be reviewed by Kim Barber and agreed.

**(c) Outcomes of meeting on 31 May – 1 June 2004**

The NNTT signed outcomes of the meeting of the Dawawang Committee and Argyle on 31 May / 1 June 2004 recorded as items 4 – 33 must be resolved.

**(d) Michael Neal's drafting comments of 7 July 2004**

The matters raised in Michael Neal's drafting comments on version 9 of the ILUA and version 11 of the Management Plan Agreement dated 7 July 2004 must be resolved.

**(e) Other drafting issues**

The parties acknowledge that drafting amendments, unrelated to the substance of the parties' commitments recorded in Draft 9 of the ILUA and Draft 11 of the Management Plan Agreement, may also need to be made by agreement of the parties.

**2.5 No further issues of substance**

The parties agree that no further issues of substance will be pursued by the parties without the written agreement of the other parties.

**2.6 Section 251 Native Title Act (NTA)**

The parties acknowledge that once the final draft of the ILUA and the Management Plan Agreement have been agreed, the TOs will not be bound until they have authorised the making of the agreements consistent with section 251 of the NTA.

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**3 Framework Agreement**

The Framework Agreement, signed by Argyle on 16 June 2003 and the KLC on 20 June 2003, is extended from 1 July 2004 until 24 September 2004, or the signing ceremony for the ILUA and Management Plan Agreement, whichever is the sooner.

If any party advises the other parties the ILUA and Management Plan Agreement will not be signed by 24 September 2004, then the Framework Agreement will lapse from the date of giving that advice, unless otherwise agreed.

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**4 Heritage Protection Agreement**

The Heritage Protection Agreement, dated 15 May 2003 and signed on 10 June 2003, is extended from 1 July 2004 until 24 September 2004, or the signing ceremony for the ILUA and Management Plan Agreement, whichever is the sooner.



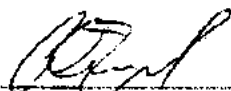
If any party advises the other parties the ILUA and Management Plan Agreement will not be signed by 24 September 2004, then the Heritage Protection Agreement will lapse from the date of giving that advice, unless otherwise agreed.

**5 Backdating of Trust Payments**

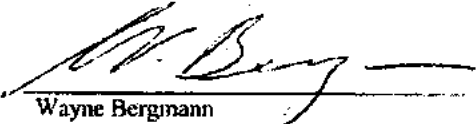
Argyle agrees that if the ILUA and the Management Plan Agreement are fully executed by the parties on or before 24 September 2004, then the Trust Payments referred to in clauses 6.9 to 6.17 of Draft 9 of the ILUA, will be calculated from 1 July 2004 rather than the date of signing of the ILUA.

Dated the 22<sup>nd</sup> of July 2004.

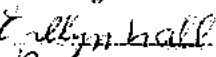
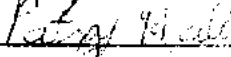

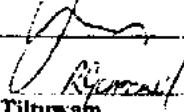
Signed for and on behalf of Argyle Diamond Mines Pty Ltd by Alan Tietzel

  
Alan Tietzel

Signed for and on behalf of the Kimberley Land Council Aboriginal Corporation by Wayne Bergmann

  
Wayne Bergmann

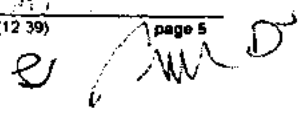
Signed for and on behalf of the Traditional Owners

**Mandangala**  
  
  
  
  
Tiltuwam

CHOCOLATE THOMAS

MADICAM THOMAS



Helen Pinday  
SHIRLEY-RUBIE  
Lisel Mena

Bilbidjing

Maylene Brown  
Lisel Mena

Neminuwarlin  
MAYNARABAY

Bonnie Ramsey

Yunurr

EMURCHILLAWAN

ALPHACASE PARKS

MAGGIE

Nancy N. Lee

Doon Doon

MARTON MAERE

D. Hoop

Kurung

Balahurr

Annette Chunama

Lisel Mena

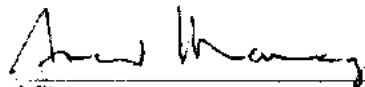
Er / hnr

Heads of Agreement

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Witnessed by:**

Signed for and on behalf of the National  
Native Title Tribunal by Fred Chaney



Fred Chaney

# ARGYLE

## DIAMONDS INFORMATION PROVIDED TO KLC

AS AT 2 August 2004

### Condition Explanations:

CWP- Confidential & Without Prejudice

NC- Not to be Copied without Written Permission from Argyle Diamond Mines

TBR- No copying & to be Returned to Argyle Diamond Mines

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Ethnographic Report, dated October 2000 and November 2000	1	Kim Doohan	KLC M Neal K Barber H Rumley	Previously 21-Jan-02 21-Jan-02 23-Jan-02		CON-003	
"From Digging Sticks to Writing Sticks" Stories of Kija Women, as told to Veronica Ryan	2	Veronica Ryan	KLC M Neal K Barber H Rumley	Aug-01 21-Jan-02 21-Jan-02 by M Neal	Published Work		
Extracts from Dillon and Dixon (eds) "Aborigines and Diamond Mining - the politics of resource development in the East Kimberley, Western Australia" 1990. Chapters 6 and 9	3		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 12-Apr-02	Community Negotiations Workshop Read List	GRC-003	
Good Neighbour Agreement	4		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21Jan-02 12-Apr-02	Community Negotiations Workshop Read List		

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Good Neighbour Program	5		KLC M Neal K Barber H Rumley	08-Feb-02 08-Feb-02 08-Feb-02 12-Apr-02	Community Negotiations Workshop Read List		
Signatories Fund - unsigned letter from Lewis Hawkins, dated 1 December 1995	6	Lewis Hawkins	KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21Jan-02 12-Apr-02	Community Negotiations Workshop Read List		CWP NC
State Agreement Act, comprising: Diamond (Ashton Joint Venture) Agreement Act 1981 Diamond (Ashton Joint Venture) Agreement 1983 Security and Related Activities (Control) Act 1996 Sentencing (Consequential Provisions) Act 1995 relating to the 1981 Act. Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2001	8		M Neal	21-Jan-02		LEG-005	
Mining Act 1978 (Reprinted as at 7 September 2000) No subsequent amendments	9		M Neal	21-Jan-02		LEG-005	
Mining and miscellaneous leases	10		M Neal	15-Feb-02		LEG-005	
Special lease for grazing purposes No. 3116/8547	11		M Neal	21-Jan-02		LEG-005	
Draft Sub lease to Lissadell (subject to conditions)	12			TBA			



Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
MOU - with # 15 below	13		KLC M Neal K Barber H Rumley	27-Sep-01 21-Jan-02 21-Jan-02 12-Apr-02		NEG-001	
Letter of clarification to the MOU - with # 15 below	14		KLC M Neal K Barber H Rumley	27-Sep-01 21-Jan-02 21-Jan-02 12-Apr-02		NEG-001	
Copy of Brendan Hammond Speech	15		KLC M Neal K Barber H Rumley	27-Sep-01 21-Jan-02 21-Jan-02 12-Apr-02		NEG-001	
Community Relations Five Year Plan 2001-2005	16		KLC M Neal K Barber H Rumley	Previously 21-Jan-02 21-Jan-02	Community Relations Dept.		
ADM Social and Environmental Annual Report 2000	17		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 12-Apr-02	Environment Dept.		
ADM Annual Environmental Report September 2001	18		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 12-Apr-02	Environment Dept.		
Organisational Charts: Rio Tinto, Argyle Diamonds and Argyle Operations	19		KLC M Neal K Barber H Rumley	18-Feb-02 18-Feb-02 12-Apr-02 12-Apr-02		COR-001	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Record of registered sites	20		KLC M Neal K Barber H Rumley	TBA			
Record of clearances to date	21		KLC M Neal K Barber H Rumley	TBA			
Map of areas for which clearances will be sought (dated 30/05/02; AMG/ADM66 Zone 52)	22		M Neal A Tanna	3-May-02 3-May-02	Community Relations Offices-ADM	Master Copy Retained	CWP
Overhead photograph of pit, waste dumps, process plant and tailings dam (dated 14/01/2002)	23		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 24-Jan-02	Community Relations Offices-ADM	Master Copy Retained	
Map of ADM lease area - sites/alluvial mining/open pit mining/tailings dumps and dams (dated 21/01/2002; AMG/AGD 66 Zone 52)	24		KLC M Neal K Barber H Rumley A Tanna	23-Jan-02 23-Jan-02 23-Jan-02 28-Jan-02 6-Mar-02	Community Relations Offices-ADM	Master Copy Retained	
Map of ADM lease area - communities, pastoral leases and native title claims (dated 06/12/2001; AMG/AGD 66 Zone 52)	25		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 12-Apr-02	Community Relations Offices-ADM	Master Copy Retained	
Register extracts for Miriuwung Gajerrong #1 and Malarngowern claims	26		KLC M Neal K Barber H Rumley	21-Jan-02 21-Jan-02 21-Jan-02 12-Apr-02		LEG-004	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Argyle Diamonds Timeline	27		KLC M Neal K Barber H Rumley	5-Apr-02 5-Apr-02 5-Apr-02 5-Apr-02	Community Relations Offices-ADM	Master Copy Retained	CWP NC
The Role of Rio Tinto in Regional Economy and Sustainable Development	28	Bruce Harvey Chief Adviser Aboriginal and Community Relations	KLC M Neal K Barber H Rumley	5-Apr-02 5-Apr-02 5-Apr-02 5-Apr-02		STR-001	
Material Safety Data Sheet for Ferrosilicon	29		KLC M Neal K Barber H Rumley	5-Apr-02 5-Apr-02 5-Apr-02 5-Apr-02		COR-001	CWP
Rio Tinto 1998 Annual Report & Accounts- pp 1-23, 26-30, 51-54	30		M Neal A Tanna	3-May-02 3-May-02	Investor Relations Melbourne	Community Negotiations Manager	
Rio Tinto 1999 Annual Report & Accounts- pp 1-13, 15-17, 33-47	31		M Neal A Tanna	3-May-02 3-May-02	Investor Relations Melbourne	Community Negotiations Manager	
Rio Tinto 2000 Annual Report & Financial Statements- pp 1-28, 42-45, 47-48	32		M Neal A Tanna	3-May-02 3-May-02	Investor Relations Melbourne	Community Negotiations Manager	
Rio Tinto 2001 Annual Report & Financial Statements pp 1-28, 42-43, 46	33		M Neal A Tanna	3-May-02 3-May-02	Investor Relations Melbourne	Community Negotiations Manager	
Ashton Mining 1996 Annual Report pp 1-10	34		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Ashton Mining 1997 Annual Report pp 1-10	35		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Ashton Mining 1998 Annual Report pp 1-9	36		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Ashton Mining 1999 Annual Report pp 1-11	37		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 1996 Annual Report	38		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 1997 Annual Report	39		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 1998 Annual Report	40		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 1999 Annual Report	41		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 2000 Annual Report	42		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Western Australian Diamond Trust 2001 Annual Report	43		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Upper Smoke Creek Deposit Environmental Report- Dec 1980	44	Dames Moore &	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Appendix for Above Report (Document No. 44)	45	Dames & Moore	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Proposals for Mining & Recovery of Diamonds from Diamond Bearing Alluvium within the Argyle Mining Area- December 1982	46	C R Coulson	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Diamond Mines Joint Venture Project Briefing	47		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- 1983	48		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Proposals for Mining & Recovery of Diamonds from Kimberlite Ore within the Argyle Mining Area- 1983	49		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- 1984	50		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Triennial Environmental Report- January 1985	51		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Argyle Joint Venture Project Briefing- May 1985	52		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- 1986	53		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Argyle Annual Environmental Report- 1987	54		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Triennial Environmental Report- December 1988	55		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Appendix for Above Report (Document No. 55)	56		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Additional Proposals to Mine & Process Alluvial Diamond Deposits on the Argyle Diamond	57		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Leases- 1989							
Argyle Annual Environmental Report- 1989	58		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Environmental Management Report & Recommendations- Sept. 1990	59	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Vegetation, Flora & Habitats of the Smoke Creek Alluvial Mining Project Area Argyle Diamond Mine	60	Arthur S Weston Ph.D.	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Alluvial Mining Programme Consultative Environmental Review- May 1991	61	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Alluvial Tailings Dam Project Notice of Intent- February 1991	62	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- July 1991	63	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Environmental Review & Management Programme-Argyle Diamond Project- 1982	64	Dames & Moore	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Appendix for Above Report (Document No. 64)	65	Dames & Moore	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Public Environmental Review of Argyle Diamond Mines Joint Venture Ord River Hydro-Electric Project	66		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Triennial Environmental Report- August 1992	67		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Argyle Annual Environmental Report- July 1993	68		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Environmental Review Alluvial Mining Expansion Programme April 1994	69	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Additional Proposal & Environmental Report on the Alluvial Mining Expansion Programme at Argyle Diamond Mines- May 1994	70	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- July 1994	71		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Triennial Environmental Report- July 1995	72	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Response to Agency Comments on the Triennial Report- 1995	72a		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Mines Proposal for Alluvial Tailings Dam- July 1995	73	DC Blandford & Ass. P/L	M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- July 1996	74		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Argyle Annual Environmental Report- July 1997	75		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Limestone Creek Alluvial Mining Proposal Submission to the Minister for Resources Development-February 1998	76		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- September 1998	77		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		
Extended Alluvial Mining- 1999 (Smoke & Limestone Creeks) Referral to the Department of Environmental Protection February 1999	78		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Argyle Annual Environmental Report- August 1999	79		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Extended Alluvial Mining- 2000 (Limestone Creek) Referral to the Department of Environmental Protection March 2000	80		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Proposed Extensions to Alluvial Diamond Mining in Smoke Creek- 2001 Submission to the Minister for Resources Development	81		M Neal A Tanna	3-May-02 3-May-02	Environment Dept.		CWP
Ownership History of Argyle Diamond Mines Joint Venture	82	Mike Erickson	M Neal A Tanna	3-May-02 3-May-02		Community Negotiations Manager	CWP
The RTZ Corporation PLC- Annual Report & Accounts 1994 pp 1-13, 23-26, 30-32	83		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
The RTZ Corporation PLC CRA Limited 1995 Annual Report to Shareholders pp 1-15, 34-37, 41-46	84		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
RTZ-CRA 1996 Annual Report to Shareholders pp 1-8, 28-31	85		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Rio Tinto 1997 Annual Report to Shareholders pp 1-8, 12-15, 32-37	86		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Rio Tinto 1997 Annual Report on Form 20-F pp 1-19, 23-26, 48-50+A42	87		M Neal A Tanna	3-May-02 3-May-02	ASX- Perth	Community Negotiations Manager	
Diavik Diamonds Project Socio-Economic Monitoring Agreement Made Between Diavik & The Government of the Northwest Territories & Aboriginal Signatories &	88		M Neal A Tanna	3-May-02 3-May-02	<a href="http://www.diavik.ca">www.diavik.ca</a>	Community Negotiations Manager	



Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Parties- October 1999							
Diavik Diamonds Environmental Agreement Made Between Her Majesty The Queen in Right of Canada, The Government of the Northwest Territories, Diavik Diamond Mines Inc., Dogrib Treaty 11 Council, Lutsel K'e Dene Band, Yellowknives Dene First Nation, North Slave Metis Alliance & Kitemeot Inuit Association	89		M Neal A Tanna	3-May-02 3-May-02	<a href="http://www.diavik.ca">www.diavik.ca</a>	Community Negotiations Manager	
Indigenous Communities & Australian Business: "From Little Things, Big Things Grow." Report to The Business Council of Australia by The Allen Consulting Group	90		M Neal A Tanna K Barber	10-Apr-02 10-Apr-02 10-Apr-02	Published Document	Community Negotiations Manager	
Argyle Social Impact Assessment Group- Terms of Reference	91		M Neal A Tanna	3-May-02 3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 1- East Kimberley Impact Assessment Project- June 1985	92		M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 2- The East Kimberley Region: Research Guide & Select References- September 1985	93	MC Dillon	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 3- Aborigines & The Argyle Diamond Project- 1983	94	Dr. Christensen W	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 4- Pastoral Resource Use in the Kimberley: A Critical Overview	95	MC Dillon	M Neal	3-May-02	Published Documents	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
East Kimberley Working Paper No. 5- Preliminary Report: Ethnobotany in the Bungles- July 1984	96	Dr. Deborah Bird Rose	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 6- A Preliminary Account of the Ethnobotany of the Kija People of Bungle Bungle Outcamp	97	NH Scarlett	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 7- An Aboriginal Economic Base: Strategies for Remote Communities- August 1985	98	Kim Doohan	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 8- A Preliminary Indication of Some Effects of the Argyle Diamond Mine on Aboriginal Communities in the Region: A Report to the Kimberley Land Council & the National Aboriginal Conference	99	RA Dixon C Elderton S Irvine I Kirkby	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 9- Structural Change in Wyndham	100	MC Dillon	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 10- Inhabited National Parks: Indigenous Peoples in Protected Landscapes- 1986	101	Stan Stevens	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 11- An Assessment of the Social Impact of Argyle Diamond Mines on the East Kimberley Region- May 1986	102	Frank Donovan	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 12- The Health of Kimberley Aborigines: A Personal 15-Year Perspective	103	Michael Gracey Randolph M Spargo	M Neal	3-May-02	Published Documents	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
East Kimberley Working Paper No. 13- Annotated Bibliography on Tourism & Aborigines Prepared for the East Kimberley Impact Assessment Project & the Central Land Council- July 1986	104	Ian White	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 14- Aborigines in the Tourist Industry Aborigines & Tourism in North Australia: Some Suggested Research Approaches	105	MC Dillon Sue Kesteven	M Neal	3-May-02 3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 15- Guidelines for Research into Social Impacts Deriving from Non- Aboriginal Developments on Aboriginal Land	106	Sue Kesteven	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 16- Conservation Properties in North-Western Australia	107	Richard JP Davies	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 17- Social Impact Assessment Bibliography	108	Donna Craig	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 18- The Potential for Reduced Dependency at Aboriginal Communities in the East Kimberley Region	109	JC Alrman	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 19- The Economic Impact on Tourism on the Warmun (Turkey Creek) Community East Kimberley	110	JC Alrman	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 20- The Effect of Public Sector Activity on Aborigines in the East Kimberley Part 1- Public Sector Agencies in the East	111	Audrey Bolger	M Neal	3-May-02	Published Documents	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Kimberley							
East Kimberley Working Paper No. 21- Aboriginal Cattle Stations in the East Kimberley: Communities or Enterprises- April 1988	112	Elsbeth Young	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 22- Aboriginal Community Representative Organisations: Intermediate Cultural Processes in the Kimberley Region, WA	113	Patrick Sullivan	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 23- The Effect of Public Sector Activity on Aborigines in the East Kimberley Part 2- Aboriginal Communities in the Kimberley	114	Audrey Bolger	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 24- Pre-Settlement Intrusion into the East Kimberley	115	Cathie Clement	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 26- Community-Based Illness in Kimberley Aborigines	116	Michael Gracey Randolph M Spargo Stuart Gunzburg	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 27- Community Social Aspect Assessment- A Cumulative Study in the Turkey Creek Area, Western Australia	117	Helen Ross	M Neal	3-May-02	Published Documents	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
East Kimberley Working Paper No. 28- Impact Stories of the East Kimberley	118	Helen Ross (Editor) Eileen Bray (Translator)	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 29- Historical Notes Relevant to Impact Stories of the East Kimberleys	119	Cathie Clement	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 30- The Legal Framework Affecting Aboriginal People in the East Kimberley	120	Ben Boer	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 31- The Development of Social Impact Assessment in Australia & Overseas & the Role of Indigenous Peoples- May 1989	121	Donna Craig	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
East Kimberley Working Paper No. 32- Argyle Social Impact Group (ASIG): Issues for Review 1989	122	H Ross J Johnson	M Neal	3-May-02	Published Documents	Community Negotiations Manager	
Review of the Argyle Social Impact Group- Draft	123		M Neal A Tanna	3-May-02 3-May-02	Community Relations Files	Community Negotiations Manager	
The Importance & Power of Indigenous Self Governance- Evidence from the United States * <a href="http://www.reconciliationaustralia.org/act_governance_speeches.html">http://www.reconciliationaustralia.org/act_governance_speeches.html</a>	125	Professor Stephen Cornell	M Neal A Tanna K Barber H Rumley	3-May-02 3-May-02 3-May-02 3-May-02	Internet Site See Document Name*	COR-001	
Govenance & Economic Development- A Harvard Project on American Indigenous Economic Development ** <a href="http://www.reconciliationaustralia.org/act_governance_speeches.html">http://www.reconciliationaustralia.org/act_governance_speeches.html</a>	126	Professor Stephen Cornell	M Neal A Tanna K Barber H Rumley	3-May-02 3-May-02 3-May-02 3-May-02	Internet Site See Document Name**	COR-001	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Current Community Relations Projects-	130		M Neal A Tanna	3-May-02 3-May-02	Community Relations Files	Community Negotiations Manager	CWP NC
CRA Limited- 1985 Report to Shareholders	131		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1985 Statutory Report & Accounts	132		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1986 Report to Shareholders	133		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1986 Statutory Report & Accounts	134		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1987 Report to Shareholders	135		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1987 Statutory Report & Accounts	136		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1988 Report to Shareholders	137		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1988 Statutory Report & Accounts	138		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1989 Report to Shareholders	139		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
CRA Limited- 1989 Statutory Report & Accounts	140		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1990 Report to Shareholders	141		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1990 Statutory Report & Accounts	142		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1991 Report to Shareholders	143		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1991 Statutory Report & Accounts	144		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1992 Report to Shareholders	145		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1992 Statutory Report & Accounts	146		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1993 Report to Shareholders	147		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
CRA Limited- 1993 Statutory Report & Accounts	148		M Neal A Tanna	29-May-02 29-May-02	Investor Relations Melbourne	Community Negotiations Manager	
Rio Tinto WA Future Fund- Working Together for a Sustainable Future	149		M Neal A Tanna	29-May-02 29-May-02	Published Documents	Community Negotiations Manager	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Rio Tinto WA Future Fund- Working Together for a Sustainable Future Sharing the Views	150		M Neal A Tanna	29-May-02 29-May-02	Published Documents	Community Negotiations Manager	
Project Annual Royalty payments (Actual) for period 1982 - 2001	151		M Neal A Tanna	29-May-02 29-May-02	M. Mitchell	Community Negotiations Manager	CWP NC
Project Annual Royalty payments (2002 terms) for period 1982 - 2001	152		M Neal A Tanna	29-May-02 29-May-02	M. Mitchell	Community Negotiations Manager	CWP NC
Annual Royalty Return of Joint Venturer Capricorn Diamonds Limited for the period 01/01/01 to 31/12/01 (Note: Capricorn Diamonds holds 56.8% of the joint venture. 2001 project royalty payment should be read accordingly.)	153		M Neal A Tanna	29-May-02 29-May-02	M. Mitchell	Community Negotiations Manager	CWP NC
Archival material outlining historical Community Relations Department activities	154		M Neal A Tanna	29-May-02 29-May-02	Community Relations Files	Community Negotiations Manager	CWP NC
Draft: Aboriginal Agreements Summary of Initiatives/Benefits	155		M Neal A Tanna	31-May-02 31-May-02	David Morgan	Community Negotiations Manager	CWP NC
Map x 1: Argyle Lease: Aboriginal Sites / Alluvial Mining areas DB 040602 1 : 25,000 topo	156		M Neal M Neal A Tanna	12-Jun-02 13-Jun-02 18-Jun-02		Community Negotiations Manager	
Map x 1: Argyle Lease: Aboriginal Sites / Alluvial Mining areas DB 040602 1 : 50,000 aerial photo	157		M Neal M Neal A Tanna	12-Jun-02 13-Jun-02 18-Jun-02		Community Negotiations Manager	
4 x The Archaeology of the Argyle Diamond Project Draft - June 2002	158		M Neal	13-Jun-02	Stephen Corsini	Community Negotiations Manager	



Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Environmental Impact Assessment (Part 1V Division 1) Administrative Procedures 2002	159		M Neal	21-Jun-02		UND 01	
Aboriginal Expenditure Report 1980 - 30/6/88	160	N Butcher	C Elderton	18-Mar-03	ASIG - Archive box	Participation Agreement & Underground Approvals Manager	
Map x 1: Aerial photo of Argyle and Wesley Springs proposed living area. Drawn: Pinpoint Cartographics; Dwg No: adm-02-001a.dgn; Date: 28-2-03; Scale: 1:30 000 at A3	161	Pinpoint Cartographics	C Elderton	18-Mar-03		COR-001	
Map x 2: Regional Location. Drawn: Pinpoint Cartographics; Dwg No: adm-02-002.dgn; Date: 11-3-03; Scale: 1: 1 000 000 at A3	162	Pinpoint Cartographics	C Elderton	18-Mar-03		COR-001	
Map x 2: Locality Map. Drawn: Pinpoint Cartographics; Dwg No: adm-02-003.dgn; Date: 11-3-03; Scale: 1: 400 000 at A3	163	Pinpoint Cartographics	C Elderton	18-Mar-03		COR-001	
Submission by Kimberley Land Council and East Kimberley Aboriginal Communities regarding the review of Argyle Social Impact Group	164	C Pierluigi, KLC	L Weatherhead M Neal A Tanna C Elderton C O'Faircheallaigh	26-Mar-03		COR-001	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
3 x spread sheets (xls & pdf) Financial Information: <b>Historical Financial Data 1983 -2002:</b> Categories - Ownership; Employment; Expenditure on local Aboriginal Communities; Local content; Operating and capital costs data; Production data; Other financials. <b>Current Business Plan (2003 - 2007):</b> Employment statistics; Expenditure on local Aboriginal Communities. <b>Current Business Plan plus Potential Underground Development 2003 - 2020):</b> Employment statistics; Expenditure on local Aboriginal Communities.	165	Simon Trott	L Weatherhead M Neal C O'Faircheallaigh	11-Apr-03		COR-001 STR-006.01	NC CWP
1 x CD (covered by Confidentiality Deed) Schedule 1 pdf file & excel file: 1. Historical information for period 1983 -2020; 2. Projections for the period 2003 - 2007 (a) Operating and capital costs data, (b) production data, (c) other financials; 3. Projections for the period 2003 - 2020 costs (a) Operating and capital costs data, (b) production data, (c) other financials Narrative pdf file - Argyle Diamonds Historical and Future Production and Financial Information	166	Simon Trott	C O'Faircheallaigh	11/04/2003 Returned 6 July 2004		STR-006.01	NC CWP TBR
1 copy report: Environmental Hydrogeology of the Argyle Diamond Mine, December 1995	167	Dames & Moore	Alan Wedderburn	1-May-03		COR-001	
1 copy report: Argyle Diamond Mine Assessment of Potential Seepage to Underground Operations March 2002	168	Mackie Environmental Research	Alan Wedderburn	1-May-03		COR-001	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
1 x CD containing pdf file Argyle-Decline-Hydro: Argyle Diamond Mine Review of Hydro-geological Factors and Impact of Proposed Exploratory Decline April 2003	169	Mackie Environmental Research	Alan Wedderburn	1-May-03		Participation Agreement & Underground Approvals Manager	
10 VHS copies of the Exploratory Decline animation sequence	170		Alan Wedderburn	6-May-03			
1 CD-Rom copy of the Exploratory Decline animation sequence	171		Alan Wedderburn	6-May-03		Participation Agreement & Underground Approvals Manager	
1 copy of March 1993 report: Open Pit Dewatering - AK1 Groundwater Investigations and Preliminary Design for Argyle Diamond Mine Pty Ltd	172	Dames and Moore	Alan Wedderburn	6-May-03		COR-001	
4 x A3 copies: 2002 Depressurisation Impacts - Hardrock Aquifers, 2002	173	Mackie Environmental Research	Alan Wedderburn	6-May-03		Participation Agreement & Underground Approvals - Perth and Site	
4 x A3 copies: Depressurisation Impacts from Underground Mining - Hardrock Aquifers, 2002	174	Mackie Environmental Research	Alan Wedderburn	6-May-03		Participation Agreement & Underground Approvals - Perth and Site	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
4 x A3 copies: Schematic Diagram of Groundwater Tables, March 2003	175	Pinpoint Cartographics	Alan Wedderburn	6-May-03		Participation Agreement & Underground Approvals - Perth and Site	
4 x A3 copies: Schematic Diagram of Surface and Groundwater Flows, March 2003	176	Pinpoint Cartographics	Alan Wedderburn	6-May-03		Participation Agreement & Underground Approvals - Perth and Site	
1 x copy: Schematic Diagram of Surface and Groundwater Flows	177	Pinpoint Cartographics	Daniel Vachon	28-Mar-03		Participation Agreement & Underground Approvals - Perth and Site	
4 x AO size copies: Glenhill and Argyle Diamond Mine Leases" Dwg No ppc-02-015.dgn	178	Pinpoint Cartographics	Allan Wedderburn	8-May-03		Participation Agreement & Underground Approvals - Perth and Site	
3 x copies of the draft Proposal for the Exploratory Decline document	179	Cathy Gupanis	Allan Wedderburn	17-May-03		Participation Agreement & Underground Approvals - Perth	
10 x VHS copies of Argyle Diamond Exploratory Decline animation with simple English narration	180		Allan Wedderburn	17-May-03		Participation Agreement & Underground Approvals - Perth	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
1 x copy of: <i>Preliminary notes to assist in the identification of those Aboriginal people with "Bona fide interests" in the ADM lease area and surround - October 2000</i> prepared by Kim Doochan and Joh Bornman of Mintupela Pty Ltd for ADM Community Relations Division	181	Mintupela Pty Ltd	Elizabeth Lacey (Solicitor)	30-May-03		Participation Agreement & Underground Approvals - Perth	
1 x CD containing amended financial data adjusted for adverse movement in \$A exchange rate	182	Rod Watkins	Ciaran O'Faircheallaigh	19/06/2003 Returned 6 July 2004		Participation Agreement & Underground Approvals - Perth	NC CWP TBR
1 x CD containing confidential financial information - revised figures	183	Jo White	Ciaran O'Faircheallaigh	24/07/2003 Returned 6 July 2004		Participation Agreement & Underground Approvals - Perth	NC CWP TBR
1 x CD containing confidential financial information - revised figures	184	Jo White	Ciaran O'Faircheallaigh	by hand 26 Aug 03 Returned 6 July 2004		Participation Agreement & Underground Approvals - Perth	NC CWP TBR
2 x stamped confidentiality deed	185		Allan Wedderburn Ciaran O'Faircheallaigh	by hand 26/08/2003		Participation Agreement & Underground Approvals - Perth	
2 x The Native Title Land Tenure Proposal at the Argyle Diamond Mine dated 21 August (proposal to State Govt re Grazing Lease	186	Freehills	Allan Wedderburn	by hand 26/08/2003		Participation Agreement & Underground Approvals - Perth	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
transfer							
1 x ltr of offer to Woolah Aboriginal Corporation dated 6 July 1981 1 x ltr of offer to Warmun Community dated 6 July 1981 1 x acceptance ltr from Woolah dated 18 July 1981 1 x acceptance ltr from Warmun Community dated 18 August 1981 1 x copy of presentation "Argyle Diamond Mine 1979 - 2003; Summary of Key Events"	187	Argyle Argyle Chair, Woolah Chair, Warmun K Doohan & M Langton	Allan Wedderburn	2/09/2003		Participation Agreement & Underground Approvals - Perth	
2 x Proposed Decommissioning Plans - Alluvial Tailings Dam - ATD5	188	Argyle Diamond Mine	Allan Wedderburn	By hand 30/09/2003		Participation Agreement & Underground Approvals - Perth	
1 x CD containing additional confidential financial information	189	Erica Haddon	Ciaran O'Faircheallaigh	By courier 7/11/2003 Returned 6 July 2004		Participation Agreement & Underground Approvals	NC CWP TBR
Hard copies of additional financial data	190	Jo White	CO'F	By hand 21/11/2003 Returned 6 July 2004		Participation Agreement & Underground Approvals	NC CWP TBR
1 x CD containing Life of Mine animation in English and Kriol	191	Argyle Diamonds	Allan Wedderburn	Mailed 9/2/2004		Participation Agreement	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
4 copies of Aboriginal Heritage Review Prepared for Argyle Diamond Mine May 2003 (excluding mini CD containing source material)	192	Freehills	Allan Wedderburn	By hand 3/3/04		Participation Agreement	
Financial Information - Scenarios for February TO meetings	193	Jo White	Allan Wedderburn	25/02/2004		Participation Agreement	
Communication Tools - Posters and Scripts -for February Community Meeting	194	Uni-U	Allan Wedderburn	25/02/2004		Participation Agreement	
Additional confidential financial information - Argyle Diamonds Statement of Financial Performance 2003 to 2020 at exchange rates of USD 0.80, 0.70, 0.60	195	Argyle Diamonds	Ciaran O'Faircheallaigh	by hand 25/2/04 Returned 6 July 2004		Participation Agreement	NC CWP TBR
Further Confidential Financial Information - revised offer scenarios at USD:AUD 80, 70 and 60 cents for 2004 to 2020 with the calculation of EBITDA based on stripping costs as capax and waterfall charts showing where \$100 goes at USD:AUD 70 and 60 cents.	196	Argyle Diamonds	Ciaran O'Faircheallaigh	Mailed 22/3/04 Returned 6 July 2004		Participation Agreement	NC CWP TBR
Further Confidential Financial Information - revised offer scenarios at USD:AUD 80, 70 and 60 cents for 2004 to 2020 with the calculation of EBITDA based on stripping costs as capax.	197	Argyle Diamonds	Allan Wedderburn	Mailed 22/3/04		Participation Agreement	
Argyle State Agreement Area 2002 Work Program Amendment updated 16 September 2002 (GMR & SGG), Work Program Clearance Report of 26 September 2002 and lists of participants.	198		Allan Wedderburn	by hand 23/3/04		Participation Agreement	
4 x 10 Maps for the Current Operations Approval 5-8 June 2004	199		Allan Wedderburn	Couriered 21/5/04		Participation Agreement	

Document	Doc't Number		Recipients	Date Sent	Source	Copy Retained	Conditions
Argyle Diamond Mine Participation Agreement: Management Plan Agreement Draft 11 dated 23/06/04 with green tabs for KLC to complete	200		Wayne Bergmann	by hand 24/06/04		Participation Agreement	
Argyle Diamond Mine Participation Agreement: Indigenous Land Use Agreement Draft 9 dated 23/06/04 with green tabs for KLC to complete	201		Wayne Bergmann	by hand 24/06/04		Participation Agreement	
Wesley and Devil Devil Springs Water Monitoring Monthly Report for March / April 2004 - Ecowise Environmental	202		Allan Wedderburn	email 08/05/04		Participation Agreement	



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## Schedule 2 - Agreement Area

*This schedule shows the area where this agreement runs. The agreement runs over all of Argyle's mining leases except for one small piece near the lake. The agreement also runs over Argyle's grazing lease. There is a map showing the agreement area at the bottom of the schedule.*

The Agreement Area as at the Commencement Date comprises the area of land and waters in:

- (a) the Grazing Lease;
- (b) Mining Lease 259SA granted under the Mining Act pursuant to the Diamond Act;
- (c) Mining Leases 80/42, 80/43, 80/44, 80/45 and 80/114 granted under the Mining Act; and
- (d) Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 granted under the Mining Act;

For the avoidance of doubt the agreement area includes the land comprised within LGE H/603415 and Reserve 41271, as set out in the map included in this schedule, but does not include Reserve 46647 or that portion of Mining Lease 80/42 in relation to which native title was determined to exist in *State of Western Australia v Ward* (WAG6001/1995).



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### **Schedule 3 - Management Plans for the purposes of clause 3**

*If Argyle wants to look for more diamonds or dig up diamonds in new areas it has to follow the rules in some of the management plans. This Schedule says which management plans Argyle must follow if it wants to look for more diamonds or dig in new areas.*

**Management Plan 1 – Aboriginal Site Protection**

**Management Plan 8 – Devil Devil Springs**



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## Schedule 4 - Historical Arrangements

*This schedule shows all the old agreements between Argyle, Traditional Owners and Communities. It shows the Good Neighbour Agreement. It has the letters between Argyle, Woolah and Warmun community about money. It shows the letters about Signatories money. It shows the letter about that Decline tunnel.*

*The end of this schedule shows all of the money that Argyle had paid under these agreements.*

*We have put this in our new agreement so everybody can know what happened and there are no secrets.*

Document 1

COPY

Appendix ii

"Good Neighbour" Agreement - July 1980

AN AGREEMENT made the 26<sup>th</sup> day of JULY 1980

BETWEEN

CRA Exploration Pty. Limited as Manager for and on behalf of the Ashton Joint Venture ("the Company")

AND

John Toby, George Dixon, Evelyn Hall and Peggy Patrick ("the Signatories"), members of the Gidja and Mirriwung tribes of the Kimberley region

WHEREAS

- A. The Company, pursuant to the provisions of the Mining Act 1904 of Western Australia, is the holder of Mineral and Dredging Claims over Smoke Creek near Lake Argyle. The extent of the Mineral and Dredging Claims is shown on the attached plan. For the purposes of this Agreement this area and the area of the Company's present interest which extends to an area one kilometre around the Mineral and Dredging Claims is referred to as "the Company's tenements".
- B. Within the area of the Company's tenements are located sites identified by the Western Australian Museum with the following registration numbers - K1083 (Barramundi Hole), K1098 (Kilkaynim/Kunumburuntj), K1100 (Devil Devil Spring), and K1128 (Canteen Hole).
- C. The Signatories John Toby, George Dixon, and Evelyn Hall, according to aboriginal custom, have the primary traditional interest and affinity with the area of the sites and the Signatory Peggy Patrick is recognised by John Toby, George Dixon, and Evelyn Hall as also having traditional interest with site K1098.

- D. The Company's activities in the area of the Company's tenements will have a disturbing effect on areas of traditional interest to the Signatories but the Signatories have agreed to these activities because they are anxious to ensure that they provide for their future and that of their community and their descendants by developing facilities on Glen Hill Station and the Company has agreed to provide financial and other assistance in the development of those facilities.
- E. The Signatories have approached the Company with a view to establishing and maintaining cordial and friendly relationships and to avoid the possibility of frictions that might occur through misunderstanding on both sides.
- F. The Company and the Signatories recognise that at Glen Hill on 22 July 1980, a meeting comprising the persons listed in the First Schedule acknowledged the right of the Signatories to enter into this Agreement.

NOW THEREFORE IT IS AGREED as follows

1. The Signatories acknowledge that the Company is interested in continuing an exploration and mining programme within the Company's tenements. The Signatories agree to the conduct of these activities including exploration and mining programmes being carried out generally within the Company's tenements and, in particular, on and adjacent to those sites designated by the Museum as sites K1083, K1098, K1100, and K1128.



2. The Signatories agree that, if requested to do so by the Company, they will indicate to the Western Australian Museum and to interested Governmental authorities that they have no objection to the Company's continuing exploration activities within the Company's tenements nor to any possible subsequent mining development that may be undertaken within the Company's tenements by the Company at a later date.
3. The Company and Signatories acknowledge that the proximity of the Company's tenements to areas of traditional interest to the Signatories warrant the establishment of regular communication between them and to this effect both parties agree that they will establish such communication on a regular basis.
4. The Company undertakes to commence and complete the works listed in the Second Schedule within a period of 12 months from the date of this Agreement. The total cost of the works will be approximately \$200,000.

In relation to those works listed in the Second Schedule which will be performed on Glen Hill Station, the Company agrees to first discuss details of the proposed work and the possibilities of residents of the Glen Hill community being involved in their implementation. The Company will endeavour, where practicable, to involve residents in the work, it being understood nevertheless that the Company has an obligation to complete the work within the programme and by the date set out above.

5. Subject to the Company first being free to commence exploration and mining programmes within the area of the Company's tenements, the Company agrees that during 1981, and in each year after 1981, the Company will provide assistance to the community resident on Glen Hill Station for capital works, equipment, and livestock improvements to the value of \$100,000 in real terms.

Provided that if at any time because of the action of any third party the Company's ability to operate within the Company's tenements is restricted in whole or in part, or is prevented or curtailed, the Company's obligation to provide assistance under this clause may be abated or adjusted as the Company shall reasonably and in good faith determine.

6. The actual sum expended in any year pursuant to clause 5 shall be adjusted to take account of inflation comparing the Index Number as at 31 December 1979 with the Index Number as at 31 December in the year prior to the proposed year of expenditure. Index Number means the Index Number prescribed in the Consumer Price Index (All Groups) Perth.
7. The Company undertakes to ensure that if for any reason it should cease to be involved in exploring or mining for diamonds within the Company's tenements any successor Company to it which is presently a related Company or which becomes a related Company shall become a party to the Agreement with the Signatories in terms identical to the present Agreement: to the effect that there shall be no interruption in the continuity of the present Agreement.

8. Subject to the proviso in clause 5, this Agreement shall continue for the term of the Company's existing Mineral and Dredging Claims or any tenements substituted therefor and any renewal thereof. The Company undertakes to ensure that if the Mineral and Dredging Claims or any tenements substituted therefor (including an extension thereof) shall be transferred to any third party the transferee shall enter into an agreement in terms identical to the unexpired portion of this Agreement. In addition, if none of the Signatories or members of the Gidja or Mirriwung tribes shall continue to reside at Glen Hill Station this Agreement will terminate in effect.
9. Provided the activities of the Company shall not be commercially or operationally disadvantaged, the Company shall use its best endeavours to provide employment for suitably qualified residents of Glen Hill Station.
10. All costs associated with the preparation of this Agreement, including all legal and solicitors fees, and the costs of all travel shall be borne by the Company.
11. The Company and the Signatories both agree that they will do all such things as are necessary and relevant for the proper performance of their respective obligations as are recorded in this Agreement.

IN WITNESS WHEREOF the parties hereto have signed this Agreement on the day and in the year hereinbefore mentioned.

M.A. O'Leary  
for and on behalf of  
C.R.A. Exploration Pty.  
Limited

*M.A. O'Leary*

Witness M. Hunt (Solicitor General)

F.E. Hughes  
for and on behalf of  
C.R.A. Exploration Pty.  
Limited

*F.E. Hughes*

Witness M. Hunt (Solicitor General)

John Toby

*JOHN TOBY*

Witness *[Signature]*

George Dixon

*George Dixon*

Witness *M. Hunt*

Evelyn Hall

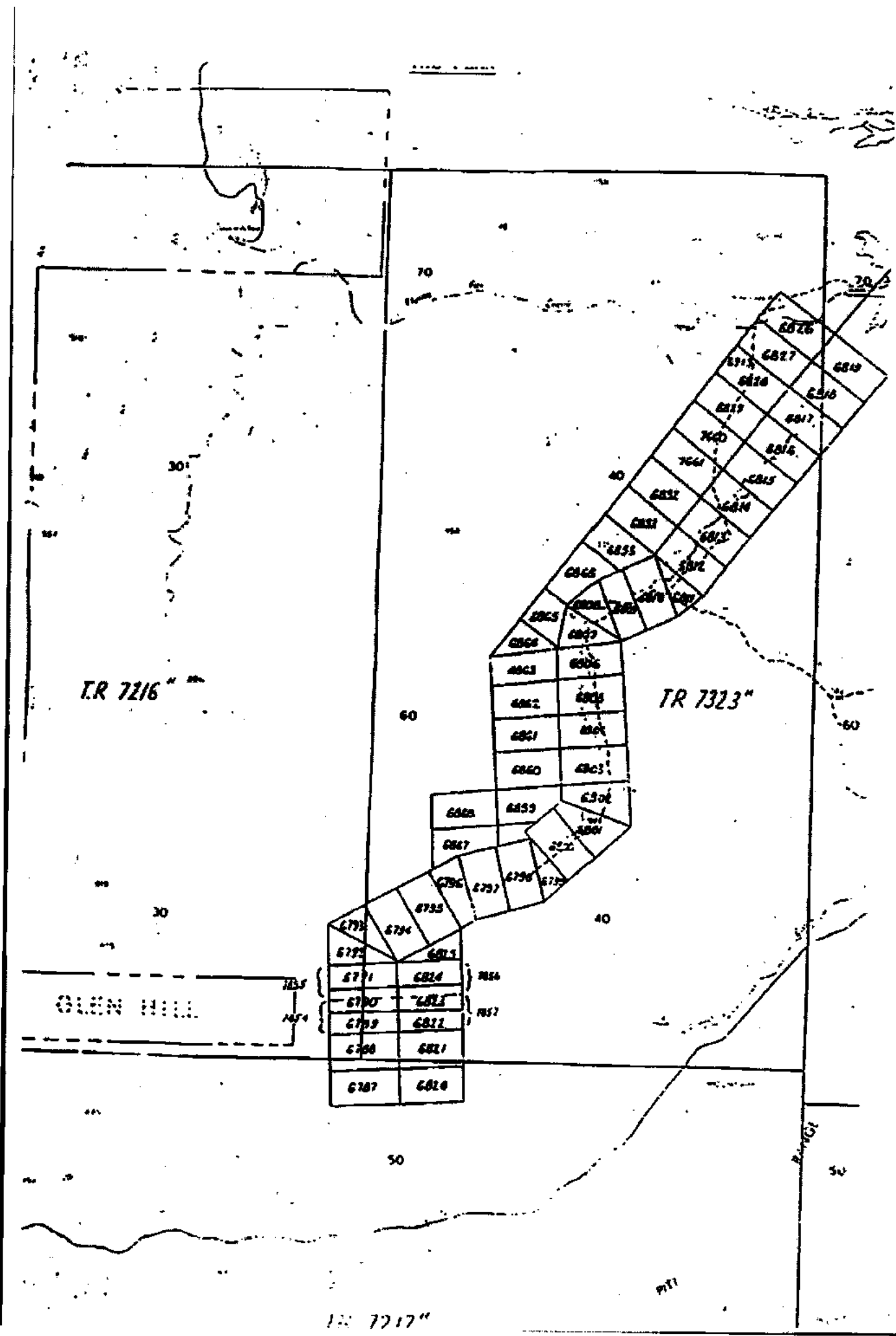
*Evelyn Hall*

Witness *M. Hunt*

Peggy Patrick

*Peggy*

Witness *M. Hunt*



TR 7216

TR 7323

GLEN HILL

TR 7217

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SECOND SCHEDULE

1. Install approximately 20 kilometres of fencing at locations designated by the Signatories in the vicinity of the north-east extremity of Glen Hill Station.
  2. Provide improved accommodation at Glen Hill including septic tanks, showers, and ablutions to a total cost of 575,000.
  3. Provide a water bore sufficient to supply water to the residents of Glen Hill Station, including drilling the bore, and supplying the windmill and pump.
  4. Provide the materials and welding equipment for the residents of Glen Hill to erect stockyards.
  5. Upgrade the access road to Glen Hill Station from the Great Northern Highway through Dunham River Station subject to the relevant consents being obtained by the signatories.
  - \* 6. Supply three four-wheel drive vehicles for use on Glen Hill Station.
    - to be available within 2 months of the Agreement
  - \* 7. Supply one truck suitable for carrying stock.
    - to be available as early as possible.
- \* The three four-wheel drive vehicles and the truck to be registered in the names of such persons as the Signatories shall advise. The Company shall make the vehicles available with the first twelve months vehicle licence and compulsory third party

insurance costs fully paid. The Signatories shall be responsible for all subsequent licencing and compulsory third party insurance costs and all other costs associated with the operation and maintenance of the vehicles including routine maintenance, fuel, and repairs. The Company shall not be responsible for the replacement of any of the vehicles if they should be lost, damaged, or destroyed.

8. Supply an administration building in the vicinity of Glen Hill homestead.
9. Provide a station type generator for the provision of power to the accommodation and administration facilities.



## C.R.A. EXPLORATION-ASHTON PROJECT

A division of C.R.A. Exploration Pty Limited, incorporated in New South Wales, being a company controlled or managed by members of the Ashton Joint Venture  
Tenement Properties Limited, 337, Australia Pty Limited, Northern Mining Corporation, C.R.A. Exploration Pty Limited, and Ashton Mining N.L.,  
respective units thereof in the proportions of 2/11, 2/11, 2/11, and 2/11 respectively.

Telephone 322 1100  
Private Bag No. 11  
Post Office  
West Perth, 6005  
Western Australia  
Telex No. AAS0214

12 King's Park Road  
West Perth, 6005  
Western Australia

300/2/3

6 July 1981

The Chairman  
Woolah Aboriginal Corporation  
Dunham River Station  
KUNUNURRA WA 6743

Dear Mr Brockman,

During our meetings with your community and legal representative at Turkey Creek over the past three months, we have been examining ways of helping your community, assisting in your relationship with the Mandangala Community and of maintaining good relations between us.

We have spoken at length with the Mandangala people and yourselves about maintaining assets on the station and assistance that we could give you to help with developing the property. At our last meeting with you at Turkey Creek on Tuesday, 23 June, you accepted our offer of immediate ongoing assistance to provide capital works for the Woolah Community pastoral operations.

This letter is to confirm that the Ashton Joint Venture will provide capital works to the value of \$40,000 in 1981 and in each following year for your community at Dunham River. This amount will be indexed to cover inflation, and is in addition to our previously committed assistance. The continuing assistance is provided under the Ashton Joint Venture's good neighbour programme, the aim of which is to foster harmonious relations with our neighbouring communities. This assistance will be provided for so long as the Ashton Joint Venture remains free to conduct its mining operations throughout its Argyle tenements.

The provision of these capital works will be on the basis of the Ashton Joint Venture arranging for direct payment for all materials and works. The actual works will be carried out after discussion with your Council to establish an annual works programme.

In addition to this assistance, as agreed at our last meeting, ongoing talks will continue with your community to ensure that good relations are maintained.

I would appreciate your confirming that you are happy that this letter sets out your understanding of what was discussed at the meeting on 22 June.

Yours sincerely,



M. A. O'Leary  
General Manager

*Handwritten signature*

18th July 1981

The General Manager  
Ashton Joint Ventures  
Private Mail Bag No 11  
Post Office  
West Perth., W.A., 6005

The Chairman,  
Woolah Community  
P.O. Box 2  
Kununurra.

Dear Mr O'Leary,

I refer to your letter of the 6th July 1981.

Thank you for your offer of immediate on-going capital works to the annual value of \$40,000 with inflation adjustments for our community here at Doon Doon Station.

The Community accepts this gesture on the part of the Joint Venture with gratitude.

We look forward to discussing with you in due course proposals for the works programme

We understand and accept that this ~~is~~ gesture on the part of the Ashton Joint Venture is provided under your good neighbour programme and that the Community and C.R.A. Exploration- Ashton Joint Venture shall continue to have further on-going discussions in order to fully resolve the basis for the future economic, environmental, social and cultural relations between the parties.

Yours sincerely,

**PUDEN BROCKMAN**  
Pudden Brockman  
Chairman,  
Woolah Community.

# C.R.A. EXPLORATION-ASHTON PROJECT

*Warmun file*

Telephone 322 1488  
Private Bag No. 11  
Parramatta  
New South Wales 2150  
Western Australia  
Telex No. AAG224

12 King's Park Road  
West Perth, 6005  
Western Australia

300/2/2

6 July 1981

The Chairman  
Warmun Community  
PMB  
KUNUNURRA WA 6743

Dear Mr Nyalgas,

Over the past three months of discussions between your community, your legal representative and the Ashton Joint Venture, we have been examining ways of assisting your community. The discussions have covered many areas so far and during our future meetings we hope to establish ways of further developing our good working relationship.

At our last meeting on Tuesday, 22 June, you accepted our offer of immediate ongoing capital works assistance at Turkey Creek. This letter is to confirm that the Ashton Joint Venture is prepared to provide capital works worth \$100,000 each year for your community at Turkey Creek, commencing this year. This amount will be indexed to cover inflation. The assistance is provided under the Ashton Joint Venture's good neighbour programme which is aimed at fostering harmonious relations with our neighbouring communities. This assistance will be provided for so long as the Ashton Joint Venture remains free to conduct its mining operations throughout its Argyle tenements.

The provision of the capital works will be on the basis of the Ashton Joint Venture arranging for direct payment of all material and works. The actual works will be carried out after discussions with your community to establish an annual works programme.

In addition to this assistance, as agreed at our last meeting, ongoing talks will continue with your community to ensure good relations are maintained.

I would appreciate your confirming that you are happy that this letter sets out your understanding of what was discussed at the meeting on 22 June.

Yours sincerely,

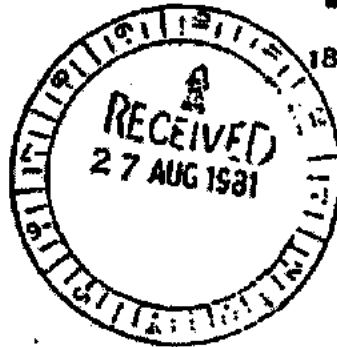
*M A O'Leary*  
M A O'Leary  
General Manager  
Ashton Joint Venture

cc: Mr Phillip Vincent

Warmun Community,  
P.M.B.  
Kununurra,  
W.A. 6743.

18th August, 1981.

The General Manager,  
Ashton Joint Venture,  
Private Bag No.11,  
Post Office,  
West Perth, W.A. 6005.



Dear Sir,

I refer to your letter of the 6th July, 1981.

Thank you for your offer of immediate on-going capital works to the annual value of \$100,000 with inflation adjustments for our Community here at Turkey Creek.

The Community accepts this gesture on the part of the Joint Venture with gratitude.

In due course our Community will inform you of capital works needed by our Community.

We understand and accept that this gesture on the part of the Ashton Joint Venture is provided under your good neighbour program and that the Community and C.R.A. Exploration-Ashton Joint Venture shall continue to have further on-going discussions in order to fully resolve the basis for the future economic, environmental, social and cultural relationships between the parties.

Yours faithfully,

BOB NYALCAS

Bob Nyalcas,  
Chairman,  
Warmun Community.

Document 5

REF. LCH:LCH:AD03722:NHCF

1 December, 1995

Copies also to Peggy Patrick  
Evelyn Hall + George Dixon

John Toby  
C/- Mandangala Aboriginal Corporation

Dear John

**RE : Additional Funding**

We are pleased to advise that we propose to pay the Mandangala Aboriginal Corporation the sum of \$100,000 on the following conditions:

- a Payment is at Argyle's discretion for the life of Argyle's operations.
- b The corporation is to ensure that John Toby, George Dixon, Evelyn Hall and Peggy Patrick ("the Signatories") obtain real benefit from such additional funding and the funding will be applied in such a manner as the Signatories may, in their absolute discretion, direct.
- c In the event of disagreement by the Signatories then each Signatory shall have the right to direct spending to the value of \$25,000.
- d In the event of the death of a Signatory, payment will be reduced by \$25,000.
- e This money does not form part of the "Good Neighbour Policy" funding.

I trust that this proposal is satisfactory and that the additional funding will be of real benefit to each of you.

Yours sincerely,

Lewis Hawkins  
Superintendent Community Relations

UC002.1.3.1.

## Payments by Argyle under the Historical Arrangements

Year	Good Neighbour Agreement	Good Neighbour Programme - Woolah	Good Neighbour Programme - Warmun
1980	\$457,000		
1981	\$113,000	\$30,000	\$99,000
1982	\$174,000	\$49,000	\$125,000
1983	\$178,000	\$59,000	\$121,000
1984	\$152,000	\$50,000	\$131,000
1985	\$199,000	\$50,000	\$73,000
1986	\$119,000	\$10,000	\$190,000
1987	\$179,245	\$64,896	\$162,239
1988	\$192,872	\$69,829	\$174,573
1989	\$207,966	\$75,294	\$188,235
1990	\$222,222	\$80,455	\$201,139
1991	\$225,577	\$81,670	\$204,174
1992	\$226,205	\$81,898	\$204,744
1993	\$230,608	\$83,491	\$208,729
1994	\$166,907	\$89,213	\$191,533
1995	\$164,393	\$66,168	\$41,046
1996	\$209,676	\$119,789	\$270,898
1997	\$444,040	\$143,941	\$327,048
1998	\$260,536	\$51,000	\$286,077
1999	\$340,545	\$91,155	\$398,235
2000	\$196,068	\$100,196	\$167,108
2001	\$284,545	\$105,178	\$268,359
2002	\$270,702	\$108,281	\$277,345
2003	\$300,000	\$111,258	\$288,578
2004	\$309,300	\$116,610	\$295,726
<b>Total</b>	<b>\$5,823,407</b>	<b>\$1,888,322</b>	<b>\$4,839,060</b>

28 May 2003

«Title» «FirstName» «LastName»  
«JobTitle»  
«Company»  
«Address1»  
«City» «State» «PostalCode»

Dear «Title» «LastName»

**Argyle Diamond's initial offer to Traditional Owners for the new agreement.**

I am the General Manager for Community Relations. Brendan Hammond introduced me to you at the big meeting in March and I again met some of you when the Rio Tinto Board from London came to the mine in April.

At the last big meeting you told Argyle that as Traditional Owners you want to be sure that there will be a strong agreement that benefits everyone before you can make a decision about the exploratory decline. (This has also been called the goanna tunnel). Argyle also wants a good agreement that provides respect and benefits to Traditional Owners.

To demonstrate Argyle's commitment to a strong agreement that benefits everyone, Argyle offers the following to be part of the new agreement, whether the underground mine goes ahead or not. It is also very important that Argyle addresses your questions about water and we have been working hard with the KLC to do this.

**I. Transfer of grazing lease**

Argyle has a mining lease and a grazing lease. That grazing lease used to be part of the original station before the mine started. As part of the new agreement, Argyle will transfer the grazing lease to Traditional Owners. Argyle has sent letters to the KLC on 1 November 2002 and 31 March 2003 explaining how this might work. We will give you more information about this at the next big meeting.

The grazing lease will be transferred regardless of whether Traditional Owners give permission for the decline or underground mining to go ahead. We will jointly need to

approach the State Government to get agreement for the transfer of the grazing lease because Government approval is required for the grazing lease to be transferred to you.

**2. Exploratory decline bonus**

It is very important for the future of Argyle that the exploratory decline is finished on time to make sure that Argyle does not run out of diamonds and money before the underground mine is ready, and to make sure that the underground mine is made safe for everyone. If we are not able to achieve this together then it is probable that Argyle will close down sometime between 2007 and 2009.

If Argyle can finish the exploratory decline on time, that will benefit Argyle's plans for an underground mine, which will mean that Argyle will continue to operate until at least 2018. Argyle believes that if Traditional Owners support Argyle building the exploratory decline on time then Traditional Owners should receive some benefit for that work getting done on time.

Argyle is asking that Traditional Owners give their support for the whole time it takes to build the decline. The most important first step in getting the exploratory decline built on time is the permission of the Traditional Owners to go ahead. If we cannot start the exploratory decline soon then we cannot finish the job on time. At the moment our plans are for the permission by Traditional owners to be given by 27 June 2003 in order for the exploratory decline to be completed by 31 March 2005.

This principle is the same as Argyle paying a contractor for completing the job on time. If we are together able to achieve completion on this date of 31 March 2005 then Argyle will pay the Traditional Owners \$500,000.

If the decline is delayed, but not because of anything the Traditional Owners do, Argyle will still pay the \$500,000.

This payment will be made to a trust when the exploratory decline is completed. It is up to you how this payment is best put to use. This payment will be made even if the underground mine does not go ahead.

The exploratory decline payment will be part of the total benefits package in the new agreement.

Argyle hopes that these commitments show that Argyle is serious about wanting a strong agreement that will benefit both Traditional Owners and Argyle.



We look forward to hearing your ideas about these offers and what you think should be in a strong agreement that benefits everyone.

Attached to this letter is a list of all the people this letter has been sent to.

Yours sincerely

Alan Tietzel  
**General Manager**  
Organisation & Communities

**Attachment:**  
List of people to whom this letter has been sent.

**ARGYLE DIAMOND'S INITIAL OFFER TO TRADITIONAL OWNERS FOR THE  
NEW AGREEMENT.**

List of persons to whom Alan Tietzel's letter of Argyle Diamond's initial offer to Traditional Owners for the new agreement, dated 28 May 2003, has been sent.

**Daawam/Dawawang Committee Members**

**Mandangala**

**Committee Members**

George Dixon  
John Toby  
Evelyn Hall  
Patsy Curtin  
Button Jones

**Assistants**

Jodie Hall  
James Dixon

**No Name**

**Committee Members**

Goody Barrett  
Lena Nyadbi  
Chocolate Thomas  
Madigan Thomas

**Assistants**

Helen Pinday  
Ronnie Ramsey  
Shirley Bray

**Daawam/Dawawang**

**Bilbildjing**

Marjorie Ward  
Ruth Ward  
Ben Ward  
Hookie Ward

**Numulawalyim**

Peggy Patrick  
Mona Ramsey  
Freddie Timms

**Yuuarr**

Churchill Cann  
Alphonse Parks  
Patrick McGinty  
Mark Nodca  
Dougie MacAle  
David ?

**Doon Doon**

Tiger Moore  
Una Morgan  
Frank Sampi  
Moreton Moore  
Freddie Martin  
Rebecca Sampi  
Dean Morgan  
Maria Morgan  
Kevin Morgan  
Colin Morgan

**Balaburr**

Nancy Dilyai  
Phyllis Ningamarra  
Jeff Janama  
Cecil Ningamarra  
Annette Janama  
Ryan Janama

**Kimberley Land Council**

Tom Birch, Chairman, Kimberley Land Council  
Frank Davey, Deputy Chairman, Kimberley Land Council  
John Watson, Special Advisor, Kimberley Land Council  
Wayne Bergmann, Executive Director, Kimberley Land Council  
Allan Wedderburn, Project Manager, Kimberley Land Council



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## Schedule 5 - TO Claim

*This agreement says that Argyle will help Traditional Owners get full strength Native Title over the Grazing lease area. Traditional Owners have to put in a claim for Native Title over that area to start this off. This schedule shows the application form that Traditional Owners have to put in to the court to make their claim.*

Form of application for a determination of native title by the TOs

**FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY**

<b>Federal Court Office Use</b>	
File Number:	_____
Date Filed:	_____
Registry:	_____
Judge Allocated:	_____
Review Hearing Date:	_____

Paragraph 5(1)(a)
<b>Form 1</b>
<i>Native Title Act 1993</i>
<b>Native Title Determination Application Claimant Application</b>

---

Filed By:  
Kimberley Land Council  
PO Box 2145  
Broome  
WA 6725

Tele: 08 9193 6199  
Fax: 08 9193 6279  
Ref: Michael Neal

*Native Title Act 1993*  
**Native Title Determination Application  
Claimant Application**

*Note 1 This form is to be used for an application mentioned in subsection 61 (1) of the Act for a determination of native title in relation to an area for which there is no approved determination of native title.*

*Note 2 Section 62 of the Act requires this application to be accompanied by an affidavit sworn by the applicant. Please refer to back of application form.*

**NAME OF APPLICANT(S)**

Ms  
Given Name: Evelyn  
Surname: Hall  
Aboriginal name (if any):

Ms  
Given Name: Patsy  
Surname: Hall  
Aboriginal name (if any):

Mr  
Given Name: George  
Surname: Dixon  
Aboriginal name (if any):

Ms  
Given Name: Geraldine  
Surname: Bedford  
Aboriginal name (if any):

Mr  
Given Name: Ted  
Surname: Hall  
Aboriginal name (if any):

Ms  
Given Name: Goody  
Surname: Barrett  
Aboriginal name (if any):

Mr  
Given Name: Chocolate  
Surname: Thomas  
Aboriginal name (if any):

Ms  
Given Name: Lena  
Surname: Nyadbi  
Aboriginal name (if any):

Mr  
Given Name: Madigan  
Surname: Thomas  
Aboriginal name (if any):

Mr  
Given Name: Churchill  
Surname: Cann  
Aboriginal name (if any):

Ms  
Given Name: Nancy  
Surname: Nodia  
Aboriginal name (if any):

Ms  
Given Name: Peggy  
Surname: Patrick  
Aboriginal name (if any):

Ms  
Given Name: Mona  
Surname: Ramsay  
Aboriginal name (if any):

**PART A**

**DETAILS OF THE CLAIM**

**1** The applicant applies for a determination of native title under subsection 61(1) of the *Native Title Act 1993*.

**2** **AUTHORISATION**

*Capacity in which the applicant claims to be entitled to make the application, eg: a person authorised by the native title claim group to make the native title determination application: see Act, s 61 (1).*

The applicant is entitled to make this application as:  
Persons authorized by the Native Title Claim Group to make the Native Title Determination Application.



3

The schedules to this application contain the following information:

**SCHEDULE A** NATIVE TITLE CLAIM GROUP [see Act, s 61]

The names (including Aboriginal names) of the persons (the *native title claim group*) on whose behalf the application is made or a sufficiently clear description of the persons so that it can be ascertained whether any particular person is 1 of those persons.

The claim is bought on behalf of:

Those Aboriginal People who hold in common the body of traditional laws and customs governing the area the subject of the claim.

Those people are:

(a) Descendants of the following people:

Jungurangan  
Old Kitty  
Kneevil/Nybil  
Djulgangurl  
Watjali/Wunawatjil  
Munbi  
Djimbilainy  
Imaruinh  
Wubalminy  
Wadibarl,  
Dilmarir  
Wiyuga

and

(b) Persons adopted by those descendants in accordance with their traditional laws and customs.

*More information can be provided and labelled as "Attachment A"*

**SCHEDULE B IDENTIFICATION OF BOUNDARIES [see Act, s 62]**

*Note: This information must be included, as well as the map mentioned in SCHEDULE C*

Information identifying the boundaries of:

- a) the area covered by the application; and
- b) any areas within those boundaries that are not covered by the application.

The area covered by this application ("the claim area") comprises the land and waters in Lease for Grazing Purposes [ ] but does not include:

1. Land the subject of a public work.
2. Any land or waters that are affected by a previous exclusive possession act, as that term is defined in s23B of the *Native Title Act 1993 (Cth)*.
3. Minerals as defined in the *Mining Act 1904 (WA)* or in the *Mining Act 1978 (WA)* or petroleum as defined in the *Petroleum Act 1936 (WA)* and the *Petroleum Act 1967 (WA)*.
4. Lake Argyle over which native title has already been recognized.

The external and internal boundaries of the claim are as set out in the map attached ("Attachment C") and can be defined by the description set out in Attachment B.

*More information can be provided and labelled as "Attachment B"*

**SCHEDULE C MAPS [See Act, s 62]**

A map showing the boundaries of the area covered by the application is attached ("Attachment C").

*More information can be provided and labelled as "Attachment C"*

**SCHEDULE D SEARCHES [See Act, s 62]**

Details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application.

The Applicant has not carried out any searches. The Applicant believes that any searches that have been carried out in the area covered by the application are in the possession of the National Native Title Tribunal at the date of the application.

*More information can be provided and labelled as "Attachment D"*

**SCHEDULE E****DESCRIPTION OF NATIVE TITLE RIGHTS AND INTERESTS [See Act, s 62]**

The description must not consist only of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law.

A description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests).

**The Nature and Extent of Native Title Rights**

1. Subject to paragraphs 2 and 3, the native title rights and interests which exist in the area covered by the application which may be exercised in accordance with traditional laws and customs is the right of possession, occupation, use and enjoyment of the land and waters to the exclusion of all others.
2. Notwithstanding anything in this determination there are no native title rights and interests in or in relation to:
  - a. Minerals as defined in the *Mining Act 1904 (WA)* or in the *Mining Act 1978 (WA)* as in force at the date of this determination; or
  - b. Petroleum as defined in the *Petroleum Act 1936 (WA)* and the *Petroleum Act 1967 (WA)* as in force at the date of this determination.
3. There are no exclusive native title rights in or to flowing or subterranean water in the area covered by the application.

*More information can be provided and labelled as "Attachment E"*

**SCHEDULE F****GENERAL DESCRIPTION OF NATIVE TITLE RIGHTS AND INTERESTS CLAIMED [See Act, s 62]**

A general description of the native title rights and interests claimed and, in particular, the factual basis on which it is asserted that:

- (a) the native title claim group has, and the predecessors of those persons had, an association with the area; and
- (b) there exist traditional laws and customs that give rise to the claimed native title; and
- (c) the native title claim group has continued to hold the native title in accordance with those traditional laws and customs.

The native title rights and interests are those of and flowing from the right to possession, occupation, use and enjoyment of the land pursuant to the traditional laws and customs of the claim group based upon the following facts:

- (1) The native title claim group and their ancestors have, since the assertion of British Sovereignty possessed, occupied, used and enjoyed the claim area and have an association with it; and
- (2) Such possession, occupation, use and enjoyment has been pursuant to and possessed under the laws and customs of the claim group, including traditional laws and customs that rights and interests in land and waters vest in members of the native title claim group on the basis of:
  - (a) descent from ancestors connected to the area;
  - (b) conception in the area;
  - (c) birth in the area;
  - (d) traditional religious knowledge of the area;
  - (e) traditional knowledge of the geography of the area;
  - (f) traditional knowledge of the resources of the area;
  - (g) knowledge of traditional ceremonies of the area.
- (3) Such traditional law and custom has been passed by traditional teaching, through the generations preceding the present generations to the present generations of persons comprising the native title claim group;
- (4) The native title claim group continues to acknowledge and observe those traditional laws and customs;
- (5) The native title claim group by those laws and customs have a continuing connection with the land in respect of which the claim is made.

*More information can be provided and labelled as "Attachment F"*

**SCHEDULE G      ACTIVITIES [See Act, s 62]**

Details of any activities in relation to the land or waters currently being carried out by the native title claim group.

Members of the native title claim group have continuously carried out activities on the land and waters within the area of the claim and have possessed, occupied, used and enjoyed the area, including by way of:

- camping and living and building structures;
- moving freely about and having access to the claim area;
- hunting and gathering and fishing
- taking and using the resources of the area, including forest products, water, minerals and other resources from the land and waters;
- manufacturing tools and weapons from the resources of the land and waters;
- disposing of the products of the land and waters or manufactured from the products of the land and waters by trade or exchange;
- managing, conserving and caring for the land and waters and controlling access to the land and waters;
- conducting and taking part in ceremonies;
- visiting and protecting sites;
- passing on the knowledge of the country and of the traditional law and custom;

in accordance with custom and tradition.

*More information can be provided and labelled as "Attachment G"*

**SCHEDULE H      DETAILS OF ANY OTHER APPLICATIONS [See Act, s 62]**

Details of any other applications to the High Court, Federal Court, or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title.

Nil.

*More information can be provided and labelled as "Attachment H"*

**SCHEDULE I      DETAILS OF ANY SECTION 29 NOTICES [See Act, s 62]**

Details of any notices under section 29 of the Act (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area.

Nil.

*More information can be provided and labelled as "Attachment I"*

**SCHEDULE J DRAFT ORDER [See Act, s 62]**

A draft of the order to be sought if the application is unopposed is as follows:

Please see Attachment J.

*More information can be provided and labelled as "Attachment J"*

**SCHEDULE K NATIVE TITLE REPRESENTATIVE BODIES [See Act, s 62]**

The name of each representative Aboriginal/Torres Strait Islander body for the area covered by the application are:

Kimberley Land Council

*More information can be provided and labelled as "Attachment K"*

**SCHEDULE L TENURE AND LAND USE ISSUES [see Act, ss 47, 47A, 47B and 61A]**

For the area covered by the application, details of:

- a) any area for which a pastoral lease is held by or on behalf of the members of the native title claim group; and
- b) any area leased, held or reserved for the benefit of Aboriginal peoples or Torres Strait Islanders that is occupied by or on behalf of the members of the native title claim group; and
- c) any vacant Crown land occupied by the members of the native title claim group; and
- d) any area mentioned in paragraph (a), (b) or (c) over which the extinguishment of native title is required by section 47, 47A or 47B of the Act to be disregarded

For the area covered by the application, details of:

- a) Argyle Diamonds Limited ACN 36 009 102 621 is the Trustee of the Lease for Grazing Purposes [ ] held on trust for the benefit of the Native Title Claim Group.
- b) not applicable
- c) not applicable
- d) The Applicants claim the benefit of section 47 in respect of the area mentioned in (a) above which represents the total area covered by the claim.

*More information can be provided and labelled as "Attachment L"*

**The following items are not required, but will be relevant when the Native Title Registrar considers the claim for registration under section 190A of the Act.**

**SCHEDULE M TRADITIONAL PHYSICAL CONNECTION [See Act, s 62]**

Details of any traditional physical connection with any of the land or waters covered by the application by any member of the native title claim group.

The native title claim group continue to use and occupy the claim area on a regular basis, including:

- (a) Hunting, Fishing and Gathering in the claim area;
- (b) Visiting sites of significance in the claim area;
- (c) Being involved with management of the claim area.

*More information can be provided and labelled as "Attachment M"*

**SCHEDULE N PREVENTION OF ACCESS [See Act, s 62]**

Details of the circumstances in which any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application.

Not applicable.

*More information can be provided and labelled as "Attachment N"*

**SCHEDULE O MEMBERSHIP OF ANY OTHER NATIVE TITLE GROUPS [see Act, s 190C]**

Details of the membership of the applicant or any member of the native title claim group in a native title claim group for any other application that has been made in relation to the whole or part of the area covered by this application.

Nil.

*More information can be provided and labelled as "Attachment O"*

**SCHEDULE P CLAIMS FOR EXCLUSIVE POSSESSION OF OFFSHORE PLACES**  
*[see Act, s 190B]*

Details of any claim by the native title claim group of exclusive possession of all or part of an offshore place.

This application does not cover any offshore areas.

*More information can be provided and labelled as "Attachment P"*

**SCHEDULE Q CLAIMS TO ANY RESOURCES OWNED BY THE CROWN** *[see Act, s 190B]*

Details of any claim by the native title claim group of ownership of minerals, petroleum or gas wholly owned by the Crown.

To the extent that any minerals, petroleum or gas within the area of the claim are wholly owned by the Crown they are not claimed by the applicants.

*More information can be provided and labelled as "Attachment Q"*



**SCHEDULE R**

**CERTIFICATION OR AUTHORISATION** [see Act, s 190C]

(1)

The application has been certified by the Kimberly Land Council and the certificate is Attachment R.

(2)

*Note* For the meaning of **authorize**, see the Act, s 251B

If the application has not been certified by each representative Aboriginal/Torres Strait Islander body:

- a) a statement that the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and
- b) the grounds on which the Registrar should consider that the above statement is correct.

*More information can be provided and labelled as "Attachment R"*

**SCHEDULE S**      **AMENDED APPLICATIONS** [See Act, s 64]

If the application is an amended application, details of the difference between this application and the original application.

Not applicable.

*More information can be provided and labelled as "Attachment S"*

**SCHEDULE T**      **ANY OTHER RELEVANT INFORMATION** [See Act, s 62]

Any other relevant information that the applicant wants to provide.

Nil.

*More information can be provided and labelled as "Attachment S"*

Signature of the applicant or applicant's solicitor

Date

**PART B**

**FILING AND SERVICE**

**IF THE APPLICANT IS REPRESENTED:**

APPLICANT'S REPRESENTATIVE

This application is filed by:  
Ian Irving  
Kimberley Land Council

ADDRESS FOR SERVICE

Whose address for service is: PO Box 2145

Suburb

BROOME

State/Territory

WA

Postcode

6725

E-mail

Telephone (during the day)

(08) 9193 6199 (07) 4032 0344

Facsimile

(08) 9193 6279

This application is filed for

Evelyn Hall, Patsy Hall, George Dixon, Geraldine Bedford, Ted Hall, Goody Barrett, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Churchill Cann, Nancy Nodia, Peggy Patrick, Mona Ramsay

Applicant's address

As above.

Suburb

State/Territory

Postcode

**IF APPLICANT IS UNREPRESENTED:**

APPLICANT'S NAME

*Note: This should include first name, surname & Aboriginal name (if any)*

This application is filed by:  
Mr/Mrs/Ms:  
Given Name:  
Surname:  
Aboriginal name (if any):

ADDRESS FOR SERVICE

Suburb

State/Territory

Postcode

Telephone (during the day)

Facsimile

Applicant's address

Suburb

State/Territory

Postcode

Telephone (during the day)

Facsimile (if any)

**AFFIDAVIT**

Full name(s) of Applicant(s)

Usual address(es) of Applicant(s)

Usual occupation(s)

Section 62 of the Act requires this application to be accompanied by an affidavit sworn by the applicant:

- (a) that the applicant believes that the native title rights and interest claimed by the native title group have not been extinguished in relation to any part of the area covered by the application; and
- (b) that the applicant believes that none of the area covered by the application is also covered by an entry in the National Native Title Register; and
- (c) that the applicant believes that all of the statements made in the application are true; and
- (d) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising on relation to it; and
- (e) stating the basis on which the applicant is authorised as mentioned in paragraph (d).

Place and State of Swearing/Affirming  Date

Signature(s) of Applicant(s)  
*(other signatures may be written below)*

**BEFORE ME:**  
Signature of witness

Qualification of witness

**Note:** \* Each person who is an applicant must swear or affirm the affidavit in the presence of a qualified witness. A qualified witness includes a court officer, solicitor, Justice of the Peace, or a Commissioner for Affidavits.

***"Attachment B"***

**External Boundary Description**

**AREA 1**

All that portion of land which is hatched in [...] on the attached map (attachment "C"), being the land, the waters and the flowing and subterranean waters contained within the boundaries of the Lease for Grazing Purposes [ ] (including the land and waters contained within that portion of Mining Lease M259SA which is within the boundaries of the Grazing Lease)

(Also provide geographical co ordinates)

## Draft Determination of Native Title

### THE COURT ORDERS BY CONSENT THAT:

- (1) There be a determination of native title in the terms set out below (**the determination**), the determination to take effect immediately upon the making of a determination under section 57(2) of the *Native Title Act* 1993 (Cth) in accordance with orders (3) and (4):
- (2) Upon the determination taking effect, native title is not ~~[OR is]~~ held in trust but is held by the common law holders of native title being the persons referred to in paragraph 3 of the determination.
- (3) Within twelve months of the date of this order, the Applicants are to file and serve a notice nominating a prescribed body corporate to:
  - (a) be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act* 1993 (Cth); and
  - (b) perform the functions mentioned in section 57(3) of the *Native Title Act* 1993 (Cth) after becoming a registered native title body corporate.
- (4) In the event that there is no nomination within the time specified in accordance with order (3) or such later time as this Court may order, the matter is to be listed for further directions.

~~[OR in the alternative to (3) and (4) if the PBC has been established]~~

- (3) The ~~[NAME OF PBC]~~ is to:
  - (a) ~~be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act* 1993 (Cth); and~~
  - (b) ~~perform the functions mentioned in section 57(3) of the *Native Title Act* 1993 (Cth) after becoming a registered native title body corporate.~~

### AND THE COURT DECLARES THAT:

- (6) The application is not finalised, within the meaning of section 190(4)(e) *Native Title Act* 1993 (Cth), in respect of the land and waters the subject of the determination, until a prescribed body corporate has been determined, in accordance with section 57(2) *Native Title Act* 1993 (Cth), to perform the functions mentioned in subsection 57(3) of that Act.

### **The Court Notes:**

- A. On [DATE] Evelyn Hall, Patsy Hall, George Dixon, Geraldine Bedford, Ted Hall, Goody Barrett, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Churchill Cann, Nancy Nodia, Peggy Patrick and Mona Ramsay (**the Applicants**) lodged an application for a determination of native title on behalf of certain Gidja and Miriuwung peoples (**the application**). The area covered by the application is approximately [Area] square kilometres of land and waters in the north east of the State of Western Australia (**Claim Area**).
- B. The parties have reached an agreement as to the terms of a determination of native title to be made in relation to the land and waters of the whole of the Claim Area (**Determination Area**). The Determination Area is described in Schedule 1.
- C. No [OR A] nomination pursuant to section 56(2) of the *Native Title Act* 1993 (Cth) in regard to the holding of native title in trust has been made.
- D. The parties have further agreed to apply to the Federal Court for a consent order for a determination that native title exists in relation to the Claim Area.
- E. Section 47 of the *Native Title Act* 1993 (Cth) applies to the land and waters of the Determination Area in that when the application was made a pastoral lease was held over the area by a trustee, on trust for one or more of the persons who made the application.

**BEING SATISFIED** that the determination of native title in the terms sought by the parties is within the power of the Court, and it appearing to the Court to be appropriate to do so, and by consent:

**THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

**Existence of native title**

1. The Determination Area is the land and waters described in Schedule 1.
2. Native title exists in the Determination Area.

**Native title holders**

3. The native title is held by the people described in Schedule 2, in the Determination Area.

**The nature and extent of native title rights**

4. Subject to paragraphs 5, 6 and 7, the native title rights and interests which exist in the Determination Area which may be exercised in accordance with traditional laws and customs is the right of possession, occupation, use and enjoyment of the land and waters to the exclusion of all others.
5. Notwithstanding anything in this determination there are no native title rights and interests in or in relation to:
  - (a) minerals as defined in the *Mining Act* 1904 (WA) or in the *Mining Act* 1978 (WA) as in force at the date of this determination; or
  - (b) petroleum as defined in the *Petroleum Act* 1936 (WA) and the *Petroleum Act* 1967 (WA) as in force at the date of this determination.
6. There are no exclusive native title rights in or to flowing or subterranean water in the Determination Area.
7. The native title rights and interests are subject to and exercisable in accordance with the laws of the State and the Commonwealth, including the common law.

**The nature and extent of any other interests**

8. The nature and extent of other rights and interests in relation to the Determination Area are the following, as they exist as at the date of the determination:
  - (a) the interests of the holder of the lease listed in Schedule 3; and
  - (b) the interests of the holders of the mining tenements listed in Schedule 3.



### **Relationship between native title rights and other interests**

9. The relationship between the native title rights and interests in the Determination Area and the other rights and interests referred to in paragraph 8 (**other interests**) is that:
- (a) the determination does not affect the validity of the other interests;
  - (b) in relation to the other interests to the extent that the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency during the currency of those other interests. If those other interests are later removed or otherwise cease to operate, either wholly or partly, the native title rights and interests will again have full effect, wholly or partly as the case may be; and
  - (c) in relation to the other interests the doing of any activity required or permitted to be done by or under the other interests, prevail over the native title rights and interests and any exercise of the native title rights and interest, but do not extinguish them, and the existence and exercise of the native title rights and interests does not prevent the doing of the activity.

## SCHEDULE 1

The Determination Area is the area delineated on the attached plan, being the land and waters contained within the boundaries of the Special Lease No 3116/8547 [or the replacement lease granted under s79 LAA in accordance with the ILUA] (including the land and waters contained within that portion of Mining Lease M259SA which is within the boundaries of the lease) [Check coordinates when replacement lease granted and exclude Reserve 46647]

### Grazing SW corner 03.06.04 (5)

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438869.1300,8152181.7300  
438834.8400,8152169.6100  
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**Grazing hole 1 03.06.04 (4)**  
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435569.9500,8152469.1700  
435571.8700,8152452.6500  
435552.5100,8152450.3900  
435505.4600,8152478.1300  
435504.0300,8152486.8000  
**Grazing main 03.06.04 (4)**  
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440830.6400,8141328.3800

441345.2700,8142499.4700



## SCHEDULE 2

The descendants of Jungurangan, Old Kitty, Kneevil/Nybil, Djulmangurl, Watjali/Wunawatjil, Munbi, Djimbilainy, Imaruinh, Wubalminy, Wadibarl, Dilmarir and Wiyuga

### SCHEDULE 3

- (1) Special Lease 3116/8547 granted under the Land Act 1933 pursuant to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 [or replacement lease granted under s79 LAA in accordance with the ILUA] (the **Grazing Lease**);
- (2) Mining Lease M259SA (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978 pursuant to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981;
- (3) Mining Lease M80/114 (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978; and
- (4) Miscellaneous Licence L80/1 (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978.

"Attachment R"

**CERTIFICATION**

1. **Statement of opinion pursuant to section 203BE(2) *Native Title Act 1993* (NTA)**
  - a. In the matter of the current Application, the Kimberley Land Council Aboriginal Corporation (KLC) pursuant to section 203BE(1)(a) of the NTA certifies in accordance with section 203BE(2) that it is of the opinion that:
    - (i) the applicant has the authority to make the application and to deal with matters arising to it, on behalf of all other persons in the native title claim group;
    - (ii) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group; and
    - (iii) the requirements of section 203BE(2)(a) and (b) of the NTA have been satisfied.
2. **Reasons for opinion pursuant to section 203BE(2)(a) and (b)**
  - a. The KLC through its staff and contracted consultants has undertaken extensive research and community consultation with a view to ensuring that all persons who hold or may hold native title in relation to the land and waters in the area covered by the application ("the native title holders") have been identified. In summary only, those persons are members of the following estates (dawang): Mandangala/Tiltuwam, Balaburr, Bilbildjing, Dundun, Neminuwarlin and the Yunurr/ Yalangga.
  - b. In addition, contracted consultants of the KLC prepared a comprehensive Certification Report in which they identified the native title holders, described the relevant decision making process in detail, and set out details of relevant meetings, and confirmed that the native title holders followed the relevant decision making process in authorizing the making of the application.
  - c. The KLC organized meetings including those held at Second Gorge on 6 September 2004, at Warmun on 8 September 2004 and at Kununurra on 10 September 2004. Notice of those meetings was distributed widely. The meetings were well attended including by many people from each of the relevant dawang set out above. Details about those meetings, including who attended them, is included in the Certification Report. At those meetings, the native title holders authorized the making of the agreement in accordance with their traditional decision making process.

Certified by Wayne Bergmann, Executive Director, Kimberley land Council Aboriginal Corporation

.....on.....September 2004  
Wayne Bergmann



## Schedule 6 - KLC Certification

*In this agreement, the KLC has to promise that all the right Traditional Owners have been found. The KLC has to promise that all these Traditional Owners want to make this agreement. This schedule shows this promise from the KLC.*

### 1 Certification

The KLC is of the opinion that the requirements of s203BE(5)(a) and (b) of the NTA, namely that:

- (a) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to the land and waters in the area covered by this agreement have been identified; and
- (b) all the persons so identified have authorised the making of the agreement, have been met.

### 2 Reasons for Certification:

The KLC holds the opinion in Item 1 for the following reasons:

- (a) The KLC through its staff and contracted consultants has undertaken extensive research and community consultation in the preparation for the negotiations for the agreement, with a view to ensuring that all person who hold or may hold native title in relation to the land and waters in the area covered by the agreement ("the native title holders") have been identified;
- (b) In addition, contracted consultants to the KLC prepared a comprehensive report in which they identified the native title holders. In summary only, those persons are members of the following estates (dawang): Mandangala/Tiltuwam, Balaburr, Bilbidjing, Dundun, Neminuwarlin and the Yunurr/Yalangga.
- (c) The KLC through its staff and contracted consultants has attended a series of meetings with the native title holders and has confirmed that there is a single process of decision making that, under the traditional laws and customs of the native title holders, must be complied with in relation to authorising things such as making the agreement. That process is set out in detail in the Certification Report authored by Kim Barber, Hilary Rumley and Michael Neal dated September 2004 ("the Certification Report") which forms part of these reasons for certification, and is **enclosed**;
- (d) The Certification Report sets out details of, amongst other things:
  - the native title holders;
  - the relevant decision making process; and
  - meetings at which the relevant people effected the decision making process; and
- (e) The KLC organised meetings held at Second Gorge on 6 September 2004, at Warmun on 8 September 2004 and at Kununurra on 10 September 2004. Notice of those meetings was distributed widely. The meetings were well attended, including by many people from each of the relevant dawang set out above. Details about those meetings, including who attending them, is included in the Certification Report. At those meetings, the native title holders authorised the making of the agreement in accordance with their traditional decision making process.

Certified by Wayne Bergmann, Executive Director, Kimberley Land Council Aboriginal Corporation

..... on ..... September 2004  
Wayne Bergmann

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## Schedule 7 - ILUA – Registration Application

*This schedule shows the application form to make this agreement into an ILUA.*

**AREA AGREEMENT – APPLICATION FORM**

**Application for registration of an  
indigenous land use agreement (ILUA)**

**Area agreement**

Application form and information to accompany application

This form may be used to apply for the registration of an area agreement.



AREA AGREEMENT – APPLICATION FORM

Application for registration of an area agreement pursuant to ss.24CA to 24CL of the *Native Title Act 1993 (Cth)* (the Act), r.7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (the Regulations) and r.9(2) of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (the PBC Regulations).

**SHORT NAME OF AGREEMENT**

Argyle Diamond Mine  
Participation Agreement

**APPLICATION FOR REGISTRATION**

The name of the party applying for registration is:

Name:

Argyle Diamonds Limited (ABN 36 009 102 621) and Argyle Diamond Mines Pty Limited

Contact address:

2 Kings Park Road

Suburb/Town:

West Perth

State:

WA

Postcode:

6005

Telephone:

08 9482 1166

Fax:

08 9482 1161

E-mail:

**Is the agreement certified or authorised?**

**Certified**

[Note: If the agreement is certified, a copy of the certification must accompany this application.]

**Authorised:**

If the agreement is authorised, the authorisation requirements of s.24CG(3)(b) of the Act must be met.

Have all reasonable efforts (including consulting all representative bodies for the area) been made to identify all holders and potential holders of native title? Yes  No

Have all those identified authorised the making of the agreement? Yes  No

Please briefly set out the grounds on which the Registrar should be satisfied that the requirements are met.

\_\_\_\_\_  
Signature of party applying for registration or party's solicitor

\_\_\_\_\_  
Date

AREA AGREEMENT – APPLICATION FORM

**FILING AND SERVICE**

**IF THE APPLICANT IS REPRESENTED**

APPLICANT'S REPRESENTATIVE

ADDRESS FOR SERVICE

Suburb/Town  State/Territory  Postcode

Telephone (during the day)  Fax (if any)

This application is filed on behalf of:

Applicant's address

Suburb/Town  State/Territory  Postcode

**IF THE APPLICANT IS UNREPRESENTED**

NAME:

ADDRESS FOR SERVICE

Suburb/Town  State/Territory  Postcode:

E-mail address

Telephone (during the day):  Fax (if any)

AREA AGREEMENT – APPLICATION FORM

<b>PART A</b>	<p><b>NAME OF PARTIES TO THE AGREEMENT</b>                  Note: This information will be included in public notification of the agreement</p>		
Name:	Argyle Diamonds Limited (ABN 36 009 102 621) and Argyle Diamond Mines Pty Limited (ABN 52 008 912 418)		
Contact Address:	2 Kings Park Road		
Suburb/Town:	West Perth	State:	WA
		Postcode:	6005
Telephone:	08 9482 1166	Fax:	08 9482 1161
Name:	<p>George Dixon, Evelyn Hall and Patsy Hall on their own behalf, and on behalf of the Mandangala/Tiltuwam estate group comprised of the Toby, Dixon, Hall and Curtin families, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Goody Barrett, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Larry Thomas and Norman Thomas on their own behalf, and on behalf of the Mandangala/Tiltuwam estate group comprised of the Thomas and Barrett families, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Churchill Cann, Nancy Nodea and Maggie John on their own behalf, and on behalf of the Yunurr/Yalangga estate group, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Peggy Patrick, Mona Ramsay, Ronnie Ramsey,, Fred Timms and Clancy Patrick on their own behalf, and on behalf of the Neminuwarlin estate group, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Nancy Dilyai, Phyllis Ningamarra and Jeff Janama on their own behalf, and on behalf of the Balaburr estate group, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Ben Ward, Ruth Ward and Marjorie Brown on their own behalf, and on behalf of the Bilbidjing estate group, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p> <p>Una Morgan, Frank Sampi, Morton Moore, Tiger Moore and Charlie Martin on their own behalf, and on behalf of the Dundun estate group, and on behalf of all other Miriwung, Gidga, Wularr and Malgnin people who have Traditional Rights in the Agreement Area</p>		

	Contact Address:	C/- The Kimberley Land Council Aboriginal Corporation 36 Pembroke Street				
	Suburb/Town:	Broome	State:	WA	Postcode:	6725
	Telephone:	08 9193 6199	Fax:	08 9193 6279		
	Name:	The Kimberley Land Council Aboriginal Corporation				
	Contact Address:	36 Pembroke Street				
	Suburb/Town:	Broome	State:	WA	Postcode:	6725
	Telephone:	08 9193 6199	Fax:	08 9193 6279		

AREA AGREEMENT – APPLICATION FORM

**PART A**  
**(continued)**

**NATIVE TITLE GROUP**

Please answer **either** subpart (i) or subpart (ii)

***Where there are registered native title claimants and/or native title bodies corporate for any part of the agreement area:***

- (a) If there are registered native title claimants for any of the land or waters in the area, are **all** such registered native title claimants parties to the agreement?  
Yes  No
- (b) If there are registered native title bodies corporate for any of the land or waters in the area, are **all** such registered native title bodies corporate parties to the agreement?  
Yes  No
- (c) If there is any non-claimed/non-determined part of the area, where there is neither a registered native title claimant nor a registered native title body corporate, are **one or more** of the following parties to the agreement?
- any person who claims to hold native title in relation to the non-claimed/non-determined part?  
Yes  No
  - any representative body for the non-claimed/non-determined part?  
Yes  No

**OR**

**(ii) *Where there are no registered native title claimants and no registered native title bodies corporate for any part of the agreement area:***

If there are **no** registered native title claimants and **no** registered native bodies corporate for any of the land or waters in the area, are **one or more** of the following parties to the agreement:

- (a) any person who claims to hold native title in relation to land or waters in the area?  
Yes  No
- (b) any representative body for the area?  
Yes  No

AREA AGREEMENT – APPLICATION FORM

**PART A**  
(continued)

**REGISTERED NATIVE TITLE BODY CORPORATE**

Is there a registered native title body (or bodies) corporate for the whole area?

- Yes If the answer is 'yes', an area agreement must not be made (refer to "Area Agreement – Notes to Assist Applicants")
- No If the answer is 'no', go on to Part B

**PART B**

**REPRESENTATIVE ABORIGINAL/TORRES STRAIT ISLANDER BODIES FOR THE AREA**

State which of the parties, if any, are representative bodies.

Kimberley Land Council Aboriginal Corporation

**PART C**

**GOVERNMENT PARTIES**

Are any of the following parties to the agreement:

Commonwealth Government Yes  No

Territory Government Yes  No

Which **government(s)** is/are party to the agreement?

Are any of the following parties to the agreement:

Commonwealth Government authority Yes  No

State Government Authority Yes  No

Territory Government authority Yes  No

Local Government authority Yes  No

Which **authority(s)** is/are party to the agreement?

AREA AGREEMENT – APPLICATION FORM

**PART D**

**TIMEFRAME**

Does the agreement specify a period during which it will operate?

Yes  No

If yes, please specify that period:

From the execution of the agreement until the closure of the Argyle Diamond Mine.

**PART E**

**CONSENT TO FUTURE ACTS**

Does the agreement cover consent to the doing of a particular future act or class of acts?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

Clauses 3.5 to 3.7 and clauses 7.3 and 7.6.

**PART F**

**ACTS EXCLUDED FROM RIGHT TO NEGOTIATE**

Is it intended that the right to negotiate provisions of the Native Title Act not apply to any of the future acts included in the agreement?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

Clause 3.7 and clause 7.6

AREA AGREEMENT – APPLICATION FORM

**PART G**

**AREAS OVER WHICH NATIVE TITLE IS SURRENDERED**

Does the agreement provide that a surrender of native title to government is intended to **extinguish** native title rights and interests?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

Does the agreement provide that surrender of native title to government is intended to **have extinguished** native title rights and interests?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

**PART H**

**VALIDATION OF FUTURE ACTS**

Does the agreement provide for the validating of a future act or class of acts that have already been done?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

Does the agreement provide for the validating, **subject to conditions**, of a particular future act or class of acts that have already been done?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.



**PART I**

**INTERMEDIATE PERIOD ACTS AFFECTED**

Does the agreement provide for changing the effects on native title of an intermediate period act or class of acts?

Yes  No

If yes, give the location in the agreement of each statement that provides for this.

**REPRESENTATIVE ABORIGINAL/TORRES STRAIT ISLANDER BODIES**

Are there any representative bodies for any of the area covered by the agreement?

Yes  No

If yes, is any representative body for any of the area a party to the agreement?

Yes  No

If there is a representative body (or bodies) and none is a party to the agreement, attach a statement (labelled 'Attachment J') from a party who is a member of the native title group setting out the following information:

Which representative body (or bodies) was informed?

When were they informed?

Which member of the native title group informed the representative body (or bodies).

If the notice was in writing, please include a copy of the notice.

## **Privacy Notice**

We will use the information you provide to process your application for registration of an area agreement. Section 24CG of the Native Title Act authorises the National Native Title Tribunal to collect information for applications for registration of an area agreement. We will disclose some of the information you give us in a public notice and to other parties specified by the Native Title Act. The details of a successful application will be entered on the Register of Indigenous Land Use Agreements and will be available for public inspection. If there is a challenge to a decision by the Registrar or a request under another law of the Commonwealth, we may need to disclose your information to a court or to another Commonwealth agency or other persons as required or authorised by law.

AREA AGREEMENT – INFORMATION TO ACCOMPANY APPLICATION

**The application must be accompanied by the following documents**

**Documents to be attached pursuant to the Act, r.7(2) of the Regulations and r.9(2) of the PBC Regulations.**

- |  |  |
|--|--|
| <p>s.24CG(2)</p>   | <ul style="list-style-type: none"><li>• a copy of the agreement;</li></ul>   |
| <p>r.7(2)(a)</p>   | <ul style="list-style-type: none"><li>• a copy of <b>each</b> determination of native title, for the area covered by the agreement, for each party to the agreement that is a registered native title body corporate;</li></ul>  |
| <p>r.7(2)(b)</p>   | <ul style="list-style-type: none"><li>• a statement by <b>each</b> party to the agreement, signed by or for the party, that the party agrees to the application being made;</li></ul>  |
| <p>r.7(2)(c)</p>   | <ul style="list-style-type: none"><li>• a copy of an extract from the Register of Native Title Claims giving details of <b>each</b> party to the agreement that is a registered native title claimant;</li></ul>   |
| <p>r.7(2)(d)<br/>&amp; r.5</p>                             | <ul style="list-style-type: none"><li>• <b>a complete description of the area, ie:</b><br/>a written description of the area that enables identification of the internal and external boundaries of the area;<br/><b>and</b><br/>a map of the area showing geographic coordinates.</li></ul>   |
| <p>r.7(2)(e)<br/>&amp; r.5</p>                             | <ul style="list-style-type: none"><li>• a complete description (ie. a written description and a map showing geographic coordinates) of any areas where the surrender of native title is intended to extinguish native title rights and interests;</li></ul>  |
| <p>r.7(2)(g)<br/>r.9(2) of the<br/>PBC<br/>Regulations</p> | <ul style="list-style-type: none"><li>• if:<ul style="list-style-type: none"><li>(i) a registered native title body corporate is a party to the agreement; and</li><li>(ii) the agreement gives effect to a native title decision (ie. a decision to surrender native title rights and interests in relation to the land or waters; or to do or agree to do any other act that would affect the native title rights or interests of common law native title holders); and</li><li>(iii) for any part of the affected area, there is a representative body that is not a party to the agreement, or no representative body for the area;</li></ul></li><li>• a document as mentioned in r.9(2) of the PBC Regulations that relates to the decision. This document must certify that the common law native title holders have been consulted above, and have consented to, the proposed native title decision.</li></ul> |



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## Schedule 8 - Map of Designated Areas

*This schedule shows a map of the Designated Areas. This is the area where Argyle can stop anybody and search them to make sure people are not stealing diamonds. The Designated Areas are part of the Current Mining Area.*



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## Schedule 9 - Consent Determination

*This agreement says that Argyle will help Traditional Owners get full strength Native Title over the Grazing Lease area. After Traditional Owners put in a claim, the Federal Court has to make a decision about native title over the agreement area. This schedule shows what we want the Court to say.*

### Draft Determination of Native Title

#### THE COURT ORDERS BY CONSENT THAT:

- (1) There be a determination of native title in the terms set out below (**the determination**), the determination to take effect immediately upon the making of a determination under section 57(2) of the *Native Title Act* 1993 (Cth) in accordance with orders (3) and (4):
- (2) Upon the determination taking effect, native title is not [OR is] held in trust but is held by the common law holders of native title being the persons referred to in paragraph 3 of the determination.
- (3) Within twelve months of the date of this order, the Applicants are to file and serve a notice nominating a prescribed body corporate to:
  - (a) be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act* 1993 (Cth); and
  - (b) perform the functions mentioned in section 57(3) of the *Native Title Act* 1993 (Cth) after becoming a registered native title body corporate.
- (4) In the event that there is no nomination within the time specified in accordance with order (3) or such later time as this Court may order, the matter is to be listed for further directions.

[OR in the alternative to (3) and (4) if the PBC has been established]

- (3) The [NAME OF PBC] is to:
  - (a) be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act* 1993 (Cth); and
  - (b) perform the functions mentioned in section 57(3) of the *Native Title Act* 1993 (Cth) after becoming a registered native title body corporate.

#### AND THE COURT DECLARES THAT:

- (6) The application is not finalised, within the meaning of section 190(4)(e) *Native Title Act* 1993 (Cth), in respect of the land and waters the subject of the determination, until a prescribed body corporate has been determined, in accordance with section 57(2) *Native Title Act* 1993 (Cth), to perform the functions mentioned in subsection 57(3) of that Act.

**The Court Notes:**

- A. On [DATE] Evelyn Hall, Patsy Hall, George Dixon, Geraldine Bedford, Ted Hall, Goody Barrett, Chocolate Thomas, Lena Nyadbi, Madigan Thomas, Churchill Cann, Nancy Nodea, Peggy Patrick and Mona Ramsay (**the Applicants**) lodged an application for a determination of native title on behalf of certain Gidja and Miriuwung peoples (**the application**). The area covered by the application is approximately [Area] square kilometres of land and waters in the north east of the State of Western Australia (**Claim Area**).
- B. The parties have reached an agreement as to the terms of a determination of native title to be made in relation to the land and waters of the whole of the Claim Area (**Determination Area**). The Determination Area is described in Schedule 1.
- C. No [OR A] nomination pursuant to section 56(2) of the *Native Title Act* 1993 (Cth) in regard to the holding of native title in trust has been made.
- D. The parties have further agreed to apply to the Federal Court for a consent order for a determination that native title exists in relation to the Claim Area.
- E. Section 47 of the *Native Title Act* 1993 (Cth) applies to the land and waters of the Determination Area in that when the application was made a pastoral lease was held over the area by a trustee, on trust for one or more of the persons who made the application.



**BEING SATISFIED** that the determination of native title in the terms sought by the parties is within the power of the Court, and it appearing to the Court to be appropriate to do so, and by consent:

**THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

**Existence of native title**

1. The Determination Area is the land and waters described in Schedule 1.
2. Native title exists in the Determination Area.

**Native title holders**

3. The native title is held by the people described in Schedule 2, in the Determination Area.

**The nature and extent of native title rights**

4. Subject to paragraphs 5, 6 and 7, the native title rights and interests which exist in the Determination Area which may be exercised in accordance with traditional laws and customs is the right of possession, occupation, use and enjoyment of the land and waters to the exclusion of all others.
5. Notwithstanding anything in this determination there are no native title rights and interests in or in relation to:
  - (a) minerals as defined in the *Mining Act* 1904 (WA) or in the *Mining Act* 1978 (WA) as in force at the date of this determination; or
  - (b) petroleum as defined in the *Petroleum Act* 1936 (WA) and the *Petroleum Act* 1967 (WA) as in force at the date of this determination.
6. There are no exclusive native title rights in or to flowing or subterranean water in the Determination Area.
7. The native title rights and interests are subject to and exercisable in accordance with the laws of the State and the Commonwealth, including the common law.

**The nature and extent of any other interests**

8. The nature and extent of other rights and interests in relation to the Determination Area are the following, as they exist as at the date of the determination:
  - (a) the interests of the holder of the lease listed in Schedule 3; and
  - (b) the interests of the holders of the mining tenements listed in Schedule 3.

### **Relationship between native title rights and other interests**

9. The relationship between the native title rights and interests in the Determination Area and the other rights and interests referred to in paragraph 8 (**other interests**) is that:
- (a) the determination does not affect the validity of the other interests;
  - (b) in relation to the other interests to the extent that the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency during the currency of those other interests. If those other interests are later removed or otherwise cease to operate, either wholly or partly, the native title rights and interests will again have full effect, wholly or partly as the case may be; and
  - (c) in relation to the other interests the doing of any activity required or permitted to be done by or under the other interests, prevail over the native title rights and interests and any exercise of the native title rights and interest, but do not extinguish them, and the existence and exercise of the native title rights and interests does not prevent the doing of the activity.

## SCHEDULE 1

The Determination Area is the area delineated on the attached plan, being the land and waters contained within the boundaries of the Special Lease No 3116/8547 [or the replacement lease granted under s79 LAA in accordance with the ILUA] (including the land and waters contained within that portion of Mining Lease M259SA which is within the boundaries of the lease)

**[Check coordinates when replacement lease granted and exclude Reserve 46647]**

### **Grazing SW corner 03.06.04 (5)**

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**Grazing Hole2 03.06.04**

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**Grazing hole 1 03.06.04 (4)**

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**Grazing main 03.06.04 (4)**

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## **SCHEDULE 2**

The descendants of Jungurangan, Old Kitty, Kneevil/Nybil, Djulmangurl, Watjali/Wunawatjil, Munbi, Djimbilainy, Imaruinh, Wubalminy, Wadibarl, Dilmarir and Wiyuga

### SCHEDULE 3

- (1) Special Lease 3116/8547 granted under the Land Act 1933 pursuant to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 [or replacement lease granted under s79 LAA in accordance with the ILUA] (the **Grazing Lease**);
- (2) Mining Lease M259SA (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978 pursuant to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981;
- (3) Mining Lease M80/114 (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978; and
- (4) Miscellaneous Licence L80/1 (to the extent only that it overlaps the Grazing Lease) granted under the Mining Act 1978.



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## Schedule 10 - Charitable Trust Deed

*Under this agreement, Argyle will put money into two Trusts for Traditional Owners. One is called the Charitable Trust and the other one is called the Special Purposes Trust. This schedule is a copy of the Charitable Trust.*

# Argyle Charitable Trust

## Freehills

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Correspondent Offices JAKARTA KUALA LUMPUR

Liability limited by the Solicitors' Limitation of Liability Scheme, approved under the  
Professional Standards Act 1994 (NSW)

Reference Ken Jagger

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## This deed of trust

is made on 2004 between the following parties:

1. **Argyle Diamonds Limited**  
ABN 36 009 102 621  
of [address]  
(Argyle)
  
2. **[Trustee]**  
ACN  
of [address]  
(Trustee)

### Recitals

- A. In accordance with the terms of the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement dated [ ] between Argyle, the TOs and Kimberly Land Council, Argyle wishes to establish a fund for certain public charitable purposes.
  
- B. Argyle has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.

### This deed witnesses

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## 1 Name

The Trust is to be known as the **Argyle Charitable Trust**.

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## 2 Definitions and interpretation

### 2.1 Definitions

In this deed:

**Agreement Area** has the same meaning as in the ILUA.

**Argyle Interests** has the same meaning as in the ILUA;

**Argyle Special Purposes Trust Deed** means the trust dated [ ] between Argyle as founder and [ ] as trustee;

**Advisory Committee** means a committee established under clause 12;

**Board or Board of Directors** means the board of directors of the Trustee from time to time;

**Cessation of Production Operations** means the point in time when the mining and processing of ore within the Agreement Area has permanently ceased and Argyle notifies the TOs in writing of that fact;

**Charitable Purposes** means the purposes outlined in Schedule 1;

**Consumer Price Index** means the index published by the Australian Bureau of Statistics as the Consumer Price Index for Perth for all groups or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician;

**Current Mining Area** has the same meaning as in the ILUA;

**Decline Bonus** has the same meaning as in the ILUA;

**Decline Bonus Money** means that portion of the Decline Bonus that may be paid to the Trust in accordance with clause 6.29(a) and 6.30(a) of the ILUA;

**Decline Bonus Letter** has the same meaning as in the ILUA;

**Distribution Policy** means the Distribution Policy set out in Schedule 4;

**Eligible Charity** means a fund, authority or institution that is charitable at law;

**Estate Group and Estate Groups** means the groups defined as such in Schedule 2;

**Estate Group Nominees** means the persons nominated by the Estate Groups in accordance with Schedule 2;

**Ethnography** has the same meaning as in the ILUA;

**Executive Officer** has the same meaning as in the Management Plan Agreement;

**Financial Records** has the meaning defined in section 9 of the Corporations Act 2001;

**Financial Year** means the period from the date of this deed to the following 30 June and then each period of 12 months ending on 30 June in each year, or any other period that the Trustee decides from time to time;

**Grazing Lease** has the same meaning as in the ILUA;

**ILUA** means the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement;

**Indigenous Person** means a person who, as decided by the Trustee, is at a particular time a member of:

- (a) the Miriuwung and Gidga peoples living on the Lands; and
- (b) the local Aboriginal communities living on the Lands

including TOs and members of the Estate Groups;

**Investment Policy** means the Investment Policy set out in Schedule 5;

**Lands** means the East Kimberley region in Western Australia;

**Law and Culture Money** means the sum of \$3,200,000.00 being held by Argyle on trust for the TOs plus any income accumulated thereon;

**Management Plan Agreement** means the Argyle Diamond Mine Participation Agreement – Management Plan Agreement;

**Mining Operations** has the same meaning as in the ILUA;

**Miriuwung and Gidga Partnership Fund** is that part of the Trust Fund maintained in accordance with clause 5.2 and applied for the purposes set out in Part 1 of the Distribution Policy;



**Phase 1** means the period ending 30 June 2009;

**Phase 2** means the period from the end of Phase 1 and until the Cessation of Production Operations;

**Phase 3** means the period from the end of Phase 2 and until the winding up of the Trust;

**Settled Sum** means \$100.00;

**Special Purposes Trust** means the Argyle Special Purposes Trust established under the Argyle Special Purposes Trust Deed;

**Specified Income** means income of the Trust other than donations, gifts, non-government or government grants, and other voluntary transfers of property to the Trust;

**Sub-Fund Capital** has the meaning given in clause 4.4(a);

**Sustainability Fund** is that part of the Trust Fund maintained in accordance with clause 5.3 and applied for the purposes set out in Part 2 of the Distribution Policy;

**TOs** has the same meaning as in the ILUA;

**TO Relationship Committee** has the same meaning as in the ILUA;

**TO Representatives** has the same meaning as in the ILUA;

**Traditional Rights** has the same meaning as in the ILUA;

**Trust** means the trust established under this deed;

**Trustee** means the person named in this deed as the Trustee and any other trustee for the time being of the Trust whether original, additional or substituted; and

**Trust Fund** means:

- (a) the Settled Sum;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- (c) all accretions to the Trust Fund;
- (d) all accumulations of income; and
- (e) the money, investments and property from time to time representing the above or into which they are converted,

and includes any part of the Trust Fund.

## 2.2 Interpretation

In this deed unless the context requires otherwise:

the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;

- (a) a reference to this deed means this deed as originally executed and as from time to time lawfully amended, varied or added to; and
- (b) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it.

## **2.3 Headings**

Headings are used for convenience only and do not affect the interpretation of this deed.

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## **3 Declaration of trust**

- (a) Argyle and the Trustee declare that the Trustee will hold the Trust Fund and the income from the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.
  - (b) With the consent of the Trustee, other money and assets may be paid or transferred to, vested in and accepted by the Trustee as an addition to the Trust Fund and to be held by the Trustee as part of the Trust Fund.
- 

## **4 Purposes**

### **4.1 Application of income and capital**

- (a) Subject to clause 5, the Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Financial Year on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund, for the purpose of providing money, property or benefits to or for Eligible Charities, or for the establishment of Eligible Charities, or for Charitable Purposes, as the Trustee decides.
- (b) No part of the Trust Fund or the income may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or other profit distribution, to the Trustee or any of its members or directors. However, this clause 4.1(b) does not prohibit making a payment permitted by clause 15.

### **4.2 Factors Trustee may consider**

In exercising its discretions under clause 4.1, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee with authority to make the recommendations; and
- (b) the provisions and objects, so far as they are consistent with the purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
  - (1) the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
  - (2) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's discretions and powers under this deed.

#### **4.3 Policies and rules**

- (a) For the purpose of paying or applying the income or capital, the Trustee may, subject to the agreement in writing of Argyle and the TO Representatives:
  - (1) formulate policies;
  - (2) make rules in connection with a policy; and
  - (3) revoke or amend a policy or rules and formulate others.
- (b) Despite paragraph (a)(3):
  - (1) the Distribution Policy referred to in clause 5 may not be revoked or amended by the Trustee; and
  - (2) the Investment Policy referred to in clause 5 may not be revoked or amended by the Trustee.

#### **4.4 Sub-Fund Capital**

Where:

- (a) money, investments or other assets (**Sub-Fund Capital**) are proposed to be transferred to or otherwise vested in the Trustee and the proposed donor, testator or other benefactor requests that the Trustee pay or apply the income or capital or both of the Sub-Fund Capital to or for one or more Eligible Charities or for the establishment of one or more Eligible Charities or for Charitable Purposes:
  - (1) as outlined by the donor, testator or other benefactor; or
  - (2) as the Trustee decides; and
- (b) the Trustee is willing to accede to that request,

the Trustee may advise the proposed donor, testator or other benefactor that the Trustee will, when the Sub-Fund Capital is transferred to or otherwise vested in it hold the Sub-Fund Capital in accordance with that request.

#### **4.5 Management accounts for Sub-Fund Capital**

The Sub-Fund Capital transferred to or otherwise vested in the Trustee under clause 4.4 forms part of the Trust Fund but, for the purposes of identification only, the Trustee may maintain separate management accounts in respect of that Sub-Fund Capital, its income, and payments or applications of its income or capital.

#### **4.6 Naming management accounts**

The Trustee may name any management accounts maintained under clause 4.5 as the Trustee thinks fit and, without limitation, may name particular management accounts in recognition of the donor, testator or other benefactor.

#### **4.7 Trustee may accumulate income**

Despite clause 4.1, the Trustee may in any Financial Year accumulate and retain as part of the Trust Fund so much of the income and capital of the Trust Fund as it thinks fit.

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## **5 Argyle monies**

### **5.1 Annual contributions**

Pursuant to clauses 6.9 to 6.13 of the ILUA, Argyle will make contributions to the Trust. The Trustee must allocate each Argyle contribution as follows:

- (a) during Phase 1:
  - (1) 14% to the Miriuwung and Gidga Partnership Fund referred to in clause 5.2(a); and
  - (2) 86% to the Sustainability Fund referred to in clause 5.3(a); and
- (b) during Phase 2 and Phase 3, 100% to the Sustainability Fund referred to in clause 5.3(a).

### **5.2 Miriuwung and Gidga Partnership Fund**

- (a) For the purposes of clause 4.5, the Trustee must establish and maintain separate management accounts, in respect of the contributions to the Trust by Argyle that are allocated to the Miriuwung and Gidga Partnership Fund.
- (b) The Trustee must invest the contributions by Argyle that are allocated to the Miriuwung and Gidga Partnership Fund in accordance with the Investment Policy.
- (c) The capital and all income of the Miriuwung and Gidga Partnership Fund may only be paid out by the Trustee in accordance with the Distribution Policy.

### **5.3 Sustainability Fund**

- (a) For the purposes of clause 4.5, the Trustee must establish and maintain separate management accounts in respect of the contributions to the Trust by Argyle that are allocated to the Sustainability Fund.
- (b) In Phase 1 and Phase 2:
  - (1) the Trustee must accumulate and retain as part of the Trust Fund the capital and all income of the Sustainability Fund;
  - (2) that part of the Trust Fund referred to in paragraph (1) must be invested in accordance with the Investment Policy; and
  - (3) no beneficiary, including the Estate Groups, shall be entitled to call for any part of the Trust Fund referred to in paragraph (1) to be paid out.
- (c) In Phase 3:
  - (1) the Trustee may in any Financial Year distribute all the income of the Sustainability Fund;
  - (2) the income of the Sustainability Fund may only be paid out by the Trustee in accordance with the Distribution Policy;
  - (3) for the avoidance of doubt, the capital of the Sustainability Fund as at the commencement of Phase 3 may not be distributed by the Trustee; and

- (4) no beneficiary, including the Estate Groups, shall be entitled to call for any part of the capital of the Trust Fund referred to in paragraph (3), to be paid out.

#### **5.4 Decline Bonus**

- (a) Pursuant to clauses 6.28 to 6.30 of the ILUA, if the Decline Bonus becomes due and payable in accordance with the terms of the Decline Bonus Letter, Argyle will pay the Decline Bonus Money to the Trust.
- (b) The Trustee must deal with the Decline Bonus Money as follows:
  - (1) the Decline Bonus Money must be allocated to the Sustainability Fund;
  - (2) the Trustee must invest the Decline Bonus Money in accordance with the Investment Policy; and
  - (3) the Decline Bonus Money and any income derived from the investment of the Decline Bonus Money may only be paid out by the Trustee in accordance with the Distribution Policy.

#### **5.5 Law and Culture Money**

- (a) The TOs have instructed Argyle to pay the Law and Culture Money to the Trust.
- (b) The Trustee must deal with the Law and Culture Money as follows:
  - (1) the Law and Culture Money must be maintained by the Trustee in two management accounts in equal proportions as Sub-Fund Capital to be known as:
    - (A) “Aboriginal Men’s Law and Culture”; and
    - (B) “Aboriginal Women’s Law and Culture”;
  - (2) the Trustee must maintain a separate management account for each of the “Aboriginal Men’s Law and Culture” and “Aboriginal Women’s Law and Culture” Sub-Fund Capital, including any income and payments or applications of the income;
  - (3) the Trustee must only invest the Law and Culture Money in traditional low to medium risk investments;
  - (4) the Law and Culture Money is not available for distribution by the Trustee;
  - (5) the income of the “Aboriginal Men’s Law and Culture” Sub-Fund Capital in each Financial Year may only be paid out by the Trustee for the purposes of the conduct and promotion of Aboriginal men’s law and culture; and
  - (6) the income of the “Aboriginal Women’s Law and Culture” Sub-Fund Capital in each Financial Year may only be paid out by the Trustee for the purposes of the conduct and promotion of Aboriginal women’s law and culture.

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## **6 Trustee's powers**

### **6.1 Investment**

Except as otherwise provided in this deed, the Trustee must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.

### **6.2 Other powers**

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
  - (1) perform any administrative act; and
  - (2) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;

- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (n) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit;
- (o) fetter or otherwise limit the exercise of its powers or discretions; and
- (p) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **6.3 Powers are supplementary**

The powers and discretions in clause 6.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

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## **7 Concerning the governance of the Trust**

### **7.1 Formal structure**

- (a) The Trustee must be a company limited by guarantee whose Board of Directors at a particular time comprises:
  - (1) each Estate Group Nominee holding office at that time; and
  - (2) two individuals independent of the Estate Groups and Argyle being one male director and one female director, who:
    - (A) until the expiration of two years from the date of this deed, are nominated by Argyle; and
    - (B) after that period, are nominated by all of the Estate Group Nominees holding office at the particular time with the approval of Argyle.
- (b) The individuals independent of the Estate Groups and Argyle as referred to in clause 7.1(a)(2) must be appointed having regard to their expertise and skills and in accordance with criteria decided by the Trustee.
- (c) The initial criteria for the purposes of clause 7.1(b) are set out in Schedule 3. The initial independent directors are:

- (1) [name] – expert in finance; and
- (2) [name] – expert in [insert field].
- (d) Where practicable, the two independent directors should be the same persons who are the directors of the Special Purposes Trust.
- (e) If the requirement in clause 7.1 is at any time not met, the Trustee must not exercise any discretion or power until the requirement is met or except:
  - (1) to protect the Trust Fund;
  - (2) with the approval of Argyle; or
  - (3) in the case of urgency.

## **7.2 Appointment and removal of independent directors**

Subject to the agreement in writing of the TO Representatives, Argyle may:

- (a) by deed:
  - (1) remove from office any director or directors for the time being of the Board of Directors; and
  - (2) appoint a new director or directors in place of any director or directors so removed; and
- (b) exercise all statutory powers of appointing new directors of the Board of Directors.

## **7.3 Resolutions of the board**

- (a) Subject to clause 7.3(c), no resolution of the Board of Directors is effective for the purposes of this Trust unless:
  - (1) notice of not less than seven days or such other time as is otherwise agreed and recorded in the minutes of the resolution has been given to all members of the Board: and
  - (2) subject to clause 7.3(b), the majority of the members of the Board, present and voting at a meeting of the Board to consider the resolution, vote in favour of the resolution.
- (b) For the purposes of clause 7.3(a)(2), the majority must consist of at least:
  - (1) the two independent directors;
  - (2) three of the four directors nominated by:
    - (A) the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families; and
    - (B) the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families; and
  - (3) two of the five directors nominated by the Bilbidjing Estate Group, the Neminuwarlin Estate Group, the Yunurr/Yalangga Estate Group, the Dundun Estate Group and the Balaburr Estate Group.
- (c) A resolution in respect of the distribution of the income of the Law and Culture Money as provided for in clauses 5.5(b)(5) and 5.5(b)(6):



- (1) may only be considered and voted upon by the male directors in respect of the distribution of the income of the “Aboriginal Men’s Law and Culture” management account;
- (2) may only be considered and voted upon by the female directors in respect of the distribution of the income of the “Aboriginal Women’s Law and Culture” management account; and
- (3) is effective if at least 50% of the directors entitled to consider and vote upon the resolution in accordance with paragraphs (1) and (2) vote in favour of the resolution.

#### **7.4 Chairman**

Notwithstanding any other provision in the constitution of the Trustee:

- (a) the chairman of the Board of Directors must be an Estate Group Nominee elected by the other members of the Board for a term of one year; and
- (b) a new chairman must be elected on an annual basis. The outgoing chairman is eligible for re-election.

#### **7.5 Meetings**

- (a) Meetings of the Board of Directors may be attended by Indigenous Persons but:
  - (1) an Indigenous Person may only speak at a meeting if agreed by the chairman;
  - (2) unless the chairman agrees, not more than 20 Indigenous Persons in addition to the Board members may attend a meeting; and
  - (3) if a matter of confidentiality or sensitivity, as decided by the chairman, is to be discussed at the meeting, Indigenous Persons may not attend the meeting during that discussion.
- (b) Meetings of the Board of Directors may be attended by a representative of Argyle but they may only speak at a meeting if agreed by the chairman.
- (c) Meetings of the Board of Directors are to be held at the times and in the manner decided by the Board having regard to the desirability of effectively consulting with Indigenous Persons and communicating the activities and operations of the Trust to Indigenous Persons.

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## **8 Liability for breaches of trust**

The Trustee, where purporting to act in the exercise of the trusts and powers of this deed, and any officer, agent or employee of the Trustee purporting to exercise powers under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability,

unless the loss or liability is attributable to:

- (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
- (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

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## **9 Indemnity of Trustee from Trust Fund**

The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
  - (1) entering into this deed or any deed amending this deed;
  - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (3) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 9(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

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## **10 Appointment and removal of Trustee**

Subject to the agreement in writing of Argyle and the TO Representatives, Argyle may:

- (a) by deed:
  - (1) remove from office any trustee or trustees for the time being of this Trust; and
  - (2) appoint a new trustee or trustees in place of any trustee or trustees so removed or in addition to any existing trustee or trustees; and
- (b) exercise all statutory powers of appointing new or additional trustees of the Trust.

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## **11 Books of account and receipts**

### **11.1 Trustee to keep accounts**

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust and of all dealings connected with the Trust.

## **11.2 Financial statements**

- (a) As soon as practicable after the end of each financial year the Trustee must prepare or cause to be prepared financial statements, including where appropriate, the separate management accounts, showing the financial position of the Trust Fund in respect of that financial year.
- (b) The financial statements must be audited by a person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act 2001.
- (c) If so required by Argyle or any of the TO Representatives, the Trustee must provide to Argyle or to the TO Representatives copies of the audited financial statements and all other Financial Records of the Trust.

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## **12 Advisory Committees**

- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each Advisory Committee will be decided by the Trustee.
- (d) The primary purpose of the Advisory Committee is to advise the Trustee on how payments or applications of income and capital should be made under clause 4.
- (e) The Trustee may specify:
  - (1) the manner in which proceedings of each Advisory Committee are to be conducted;
  - (2) the matters which the Advisory Committee must have regard to in carrying out its functions; and
  - (3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

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## **13 Patrons**

The Trustee may appoint persons as patrons of the Trust.

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## **14 Amending this deed**

### **14.1 Generally**

Subject to clause 14.2, the Trustee may, subject to the agreement in writing of Argyle and the TO Representatives, by deed revoke, add to or vary any of the provisions of this deed, so long as no part of the Trust Fund or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts.

## **14.2 No amendment to clauses 4.3 and 5**

Except with the written consent of Argyle, the Trustee may not make any amendment to:

- (a) clauses 4.3 and 5; or
- (b) this clause 14 so as to permit this deed to be amended in a manner prohibited by clause 14.2(a).

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## **15 Trustee's remuneration**

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any financial year must not exceed an amount equal to the maximum commission chargeable by trustee companies under the Trustee Companies Act 1987 (WA) in respect of that financial year.

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## **16 Director's remuneration**

The directors for the time being of the Board of Directors will be paid until 31 December 2008 partially out of the further payments made by Argyle to the Trustee as a contribution to the costs of establishment and implementation of the Trust in accordance with clauses 6.25 to 6.27 of the ILUA, to the extent that the Trustee's remuneration referred to in clause 15 is insufficient to meet the directors' remuneration.

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## **17 Administration costs and Executive Officer**

### **17.1 Administration**

Argyle and the Trustee:

- (a) agree that for the purposes of clause 4.66 of the Management Plan Agreement, the Executive Officer will be employed by the Trustee;
- (b) acknowledge that pursuant to clause 4.68 of the Management Plan Agreement, the cost of employing the Executive Officer will be borne jointly by Argyle and the TOs and that Argyle will make annual payments to the Trustee as a contribution to the costs of employing the Executive Officer;
- (c) acknowledge that pursuant to clauses 6.25 to 6.27 of the ILUA, Argyle will make annual payments in the period 2004 to 2008 to the Trustee as a contribution to the administration costs of the Trust and the cost of employing the Executive Officer;
- (d) agree that the annual payments referred to in paragraphs (b) and (c) do not form part of the Trust Fund;

- (e) agree that subject to clause 16, the Trustee will apply these annual payments made by Argyle, only to the costs of the administration of the Trust and the costs of employing the Executive Officer;
- (f) acknowledge that to the extent that the Executive Officer participates in the operation, maintenance and administration of the Trust (including assisting beneficiaries), the Trustee may be indemnified out of the Trust Fund in accordance with clause 9; and
- (g) if at the end of a calendar year monies provided by Argyle under clauses 4.68 of the Management Plan Agreement or under clauses 6.25 to 6.27 of the ILUA have not been duly committed, such monies must be refunded to Argyle.

## **17.2 Review**

The Trustee will conduct a review of the costs of the administration of the Trust and the costs of the Executive Officer as soon as practicable after 1 July 2008 and annually thereafter. The aim of the review is to ensure that the costs of the administration of the Trust are reasonable considering:

- (a) the quantum of the Trust Fund being administered; and
- (b) the work required to ensure proper and adequate administration of the Trust Fund.

## **17.3 Executive Officer**

The Executive Officer employed by the Trustee will report to the Chairman of the Board of Directors as required by the Board of Directors but at least quarterly, and take direction from the Board of Directors as a whole through the Chairman.

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# **18 General**

## **18.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of income or capital from the Trust Fund under this deed is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

## **18.2 Trustee's discretion**

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

## **18.3 Personal interest of Trustee**

The Trustee and any person who is a director or member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 6.1) even though the Trustee, or any person who is a director or member of the Trustee:

- (a) has or may have a direct or personal interest or conflict of fiduciary duty in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

#### **18.4 Delegation of powers**

- (a) The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this deed. The execution or exercise of any of the trusts or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.
- (b) The Trustee may employ and pay a solicitor, accountant, broker or an employee or any other person to transact any business or to do any act required or permitted to be done under or in connection with the administration and management of the Trust.

#### **18.5 Trustee's decisions**

- (a) The Trustee may decide:
  - (1) whether any money or receipt is to be considered as capital or income;
  - (2) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
  - (3) all questions and matters of doubt arising in the execution of the trusts of this deed.
- (b) In making a decision for the purpose of the definition of Indigenous Person in clause 2.1 and for the purpose of the definitions of Estate Groups in Schedule 2:
  - (1) the Trustee may consult with the TO Relationship Committee and obtain any necessary advice;
  - (2) the Trustee may resolve conclusively all questions of fact or interpretation;
  - (3) a decision of the Trustee may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary;
  - (4) the Trustee need not give any reason or justification in respect of a decision; and
  - (5) the Trustee may change a decision made by it previously and may, for example, revoke a decision that a particular individual is or is not an Indigenous Person or a member of an Estate Group.
- (c) Every decision, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all

persons interested in the Trust is conclusive and binds all persons interested under this deed.

### **18.6 Report to TO Relationship Committee**

The Trustee must provide a quarterly report in writing to the TO Relationship Committee which:

- (a) summarises the activities and financial position of the Trust; and
- (b) provides details of all distributions made in that quarter.

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## **19 Winding up**

If, on the winding up of the Trust, any property remains after the satisfaction of all its debts and liabilities, the Trustee must give and transfer the property to or for one or more funds, authorities or institutions which are charitable at law as the Trustee decides.

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## **20 Governing law**

The laws of Western Australia govern this deed.

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### **Executed as a deed:**

**The common seal of  
Argyle Diamonds Limited**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
[Trustee]**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)



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## **Schedule 1**

### **Charitable Purposes (clause 2.1)**

#### **Purposes**

The benefiting of Indigenous Persons by:

- (a) providing grants, scholarships, bursaries and other assistance (financial or otherwise) for their education, including vocational training and economic and enterprise training;
- (b) providing grants and other assistance (financial or otherwise) for community development;
- (c) providing grants and other assistance (financial or otherwise) for the conduct and promotion of their art, law and culture;
- (d) providing grants and other assistance (financial or otherwise) for the relief of, alleviation of, or prevention of, poverty, disadvantage, sickness or affliction; and
- (e) providing grants and other assistance (financial or otherwise) for the protection and enhancement of the natural environment of the Lands or a part of them.

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## Schedule 2

### Estate Groups (clause 2.1)

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#### 1 Definitions

In this deed:

- (a) the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families means the members of that Estate Group identified in the Ethnography and who are identified as Miriuwung and have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (b) the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families means the members of that Estate Group identified in the Ethnography and who are identified as Gidja and have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (c) the Yunurr/Yalangga Estate Group means the members of that Estate Group identified in the Ethnography and who are identified as Miriuwung, Gidja and/or Malgnin and who have primary Traditional Rights in the southern most portion of Mining Lease 259SA and secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80/44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26;
- (d) the Neminuwarlin Estate Group means the members of that Estate Group identified in the Ethnography and who have primary Traditional Rights in that portion of the Grazing Lease to the south west of Mining Lease 259SA in the vicinity of Bow River and secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26;
- (e) the Balaburr Estate Group, the Bilbidjing Estate Group and the Dundun Estate Group means the members of those Estate Groups identified in the Ethnography and who have secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26.

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#### 2 Estate Group Nominees

- (a) The Estate Groups are entitled to nominate up to nine individuals to hold office as Estate Group Nominees under this Trust as follows:

- (1) The initial Estate Group Nominees of the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families are listed in paragraph (b)(1). Following the expiration of two years from the date of this deed, two other individuals may be nominated by the initial Estate Group Nominees as the replacement nominees of the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families for the purposes of this Trust. Thereafter, two other individuals may be nominated from time to time by the existing Estate Group Nominees as the replacement nominees of the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families for the purposes of this Trust.
  - (2) The initial Estate Group Nominees of the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families are listed in paragraph (b)(2). Following the expiration of two years from the date of this deed, two other individuals may be nominated by the initial Estate Group Nominees as the replacement nominees of the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families for the purposes of this Trust. Thereafter, two other individuals may be nominated from time to time by the existing Estate Group Nominees as the replacement nominees of the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families for the purposes of this Trust.
  - (3) The initial Estate Group Nominees of each of the Bilbidjing Estate Group, Neminuwarlin Estate Group, Yunurr/Yalangga Estate Group, Dundun Estate Group, and Balaburr Estate Group are listed in paragraph (b)(3). Following the expiration of two years from the date of this deed, one other individual may be nominated by each of the initial Estate Group Nominees as their replacement nominee for the purposes of this Trust. Thereafter, one other individual may be nominated from time to time by each of the existing Estate Group Nominees as the respective replacement nominees of the Bilbidjing Estate Group, Neminuwarlin Estate Group, Yunurr/Yalangga Estate Group, Dundun Estate Group, and Balaburr Estate Group for the purposes of this Trust.
- (b) For the first two years from the date of this deed, the Estate Group Nominees are:
- (1) the Mandangala/Tiltuwam Estate Group comprising the Toby, Dixon, Hall and Curtin families – Evelyn Hall and Ted Hall;
  - (2) the Mandangala/Tiltuwam Estate Group comprising the Thomas and Barrett families – Helen Pinday and Michael Smith; and
  - (3)
    - (A) the Bilbidjing Estate Group – Marjorie Brown;
    - (B) the Neminuwarlin Estate Group – Ronnie Ramsey;
    - (C) the Yunurr/Yalangga Estate Group – Patrick McGinty;
    - (D) the Dundun Estate Group – Maria Morgan; and

(E) the Balaburr Estate Group – Ben Ward.

- (c) Nominations made under paragraph (a) must be made by written notice to the Trustee given by the Estate Group Nominee or Nominees on behalf of the relevant Estate Group as a whole.
- (d) Subject to paragraph (e), the Estate Group or Estate Groups may by written notice given by the Executive Officer, remove the individual or individuals nominated by its existing Estate Group Nominees at any time.
- (e) An individual may not be removed as an Estate Group Nominee under paragraph (d) unless:
  - (1) he or she has held office as a director of the Board for a period of not less than 6 months since his or her last appointment to the Board; or
  - (2) not less than 5 of the other directors (including both independent directors) agree.

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## **Schedule 3**

### **Selection criteria – independent directors (clause 7.1(c))**

1. One of the independent directors must be an expert in finance.
2. One of the independent directors must be an expert in community development including health, education, employment and training, or indigenous arts and culture.

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## Schedule 4

### Distribution Policy (clause 5)

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#### 1 Miriuwung and Gidga Partnership Fund

##### 1.1 Eligible projects

- (a) The purpose of the Miriuwung and Gidga Partnership Fund is to provide funds for community projects that also attract government, non-government and/or philanthropic contributions for the purposes of developing the communities of Indigenous Persons (**Eligible Project**).
- (b) To avoid any doubt, a community project does not qualify as an Eligible Project unless the project also attracts government, non-government and/or philanthropic contributions.

##### 1.2 Application

- (a) A director, on behalf of an Indigenous Person or a group of Indigenous Persons, may apply to receive assistance from the Miriuwung and Gidga Partnership Fund in respect of a particular community project.
- (b) In each application, details of any other government, non-government and/or philanthropic contributions must be provided.
- (c) The Trustee must review every application made under paragraph (a) and determine:
  - (1) whether the application relates to an Eligible Project; and
  - (2) the priority of the application, in relation to other current applications, in accordance with clause 1.3 of this policy.

##### 1.3 Priorities

- (a) The Trustee must ascertain the value of the capital and all income of the Miriuwung and Gidga Partnership Fund as at 1 July each year.
- (b) If the value in paragraph (a) is insufficient to provide assistance to all Eligible Projects in one financial year, the Trustee may decide in its absolute discretion to defer the provision of assistance to some projects to the subsequent financial year(s).

##### 1.4 Distribution

The capital and all income of the Miriuwung and Gidga Partnership Fund may be distributed quarterly by the Trustee.

---

## **2 Sustainability Fund**

### **2.1 Purpose of the Sustainability Fund**

The purpose of the Sustainability Fund is to provide future generations of Indigenous Persons with a significant capital base. Accordingly this Distribution Policy ensures that the capital base is developed by requiring the Trustee to maintain the capital of the Sustainability Fund until the end of Phase 3.

### **2.2 Phase 1 and Phase 2**

In Phase 1 and Phase 2, the capital and income of the Sustainability Fund is not available for distribution.

### **2.3 Phase 3**

In Phase 3:

- (a) all the income of the Sustainability Fund may be distributed by the Trustee; and
- (b) the capital of the Sustainability Fund is not available for distribution.

---

## Schedule 5

### Investment Policy

(clause 5)

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#### 1 Miriuwung and Gidga Partnership Fund

The Trustee must retain the capital and all income of the Miriuwung and Gidga Partnership Fund in an interest bearing bank account pending distribution under the Distribution Policy.

---

#### 2 Sustainability Fund

- (a) In Phase 1, the Trustee may only invest the capital and all income of the Sustainability Fund in traditional low to medium risk investments.
- (b) In Phase 2 and 3, the Trustee may invest the capital and all income of the Sustainability Fund in low, medium and high risk investments, provided that not more than 25% of the total amount available for investment may be allocated to high risk investments.
- (c) A high risk investments means the funding of local projects, and activities proposed by Indigenous Persons, including lending to local business ventures and infrastructure developments where:
  - (1) the Trustee is satisfied that at least the capital base of the investment will be preserved; and
  - (2) without limiting paragraph (c)(1), the estimated return on the high risk investment is at least equal to the Consumer Price Index.
- (d) For the purposes of determining the risk category of a particular investment, subject to paragraph (c), the Trustee may obtain and rely on the advice of a suitably qualified investment adviser.



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## **Schedule 11 - Special Purposes Trust Deed**

*Under this agreement, Argyle will put money into two Trusts for Traditional Owners. One is called the Charitable Trust and the other one is called the Special Purposes Trust. This schedule is a copy of the Special Purposes Trust.*

# Argyle Special Purposes Trust

## Freehills

250 St Georges Terrace Perth 6000 Australia  
Telephone +61 8 9211 7777 Facsimile + 61 8 92117878  
[www.freehills.com](http://www.freehills.com)

SYDNEY MELBOURNE PERTH BRISBANE HANOI HO CHI MINH CITY SINGAPORE  
Correspondent Offices JAKARTA KUALA LUMPUR

Liability limited by the Solicitors' Limitation of Liability Scheme, approved under the  
Professional Standards Act 1994 (NSW)

Reference Ken Jagger

---

## This trust deed

is made on

2004 between the following parties:

1. **Argyle Diamonds Limited**  
ABN 36 009 102 621  
of 2 Kings Park Road, West Perth, Western Australia  
(Argyle)
2. **[Trustee]**  
ACN  
of [address]  
(Trustee)

### Recitals

- A. In accordance with the terms of the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement dated [ ] between Argyle, the TOs and Kimberly Land Council, Argyle wishes to establish a fund for the purposes outlined below.
- B. Argyle has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.

## This deed witnesses

---

### 1 Name

This trust will be known as the **Argyle Special Purposes Trust**.

---

### 2 Definitions and interpretation

In this deed:

**Argyle Charitable Trust deed** means the trust deed dated [ ] between Argyle as founder and [ ] as trustee;

**Beneficiaries** means the members of each Estate Group;

**Board or Board of Directors** means the board of directors of the Trustee from time to time;

**Charitable Purpose** has the same meaning as in the Argyle Charitable Trust deed;

**Charitable Trust** means the Argyle Charitable Trust established under the Argyle Charitable Trust deed;

**Estate Group and Estate Groups** means the groups defined as such in Schedule 1;

**Ethnography** has the same meaning as in the ILUA;

**financial year** means the period from the date of this deed to 30 June 2005 and then each period of twelve months ending on 30 June in each year or such other period that the Trustee decides;

**Financial Records** has the meaning defined in section 9 of the Corporations Act 2001;

**Grazing Lease** has the same meaning as in the ILUA;

**ILUA** means the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement;

**Individual Payments** means the annual payments that Argyle has agreed to make for the benefit of certain individuals pursuant to clauses 6.1 to 6.8 of the ILUA;

**month** means calendar month;

**person** includes company, corporation, firm or body of persons;

**proportionate interests** means the proportions stated in clause 5;

**Settled Sum** means \$100.00;

**TO Relationship Committee** has the same meaning as in the ILUA;

**TO Representatives** has the same meaning as in the ILUA;

**Traditional Rights** has the same meaning as in the ILUA;

**Trust** means the trust evidenced by this deed;

**Trustee** means the trustee for the time being of the Trust, whether original, additional or substituted;

**Trust Fund** means all the property held by the Trustee upon the trusts of this deed including:

- (a) the Settled Sum;
- (b) all amounts and property paid or transferred to vested in and accepted by the Trustee as additions to the Trust Fund and the money and investments for the time being representing them;
- (c) all additions or accretions to the Trust Fund howsoever arising in respect of or in connection with any property forming part of the Trust Fund or from any other sources whatsoever; and
- (d) all accumulations of the income of the Trust;

**Vesting Date** being the first to occur of the following dates, namely:

- (a) the last 30 June before the expiration of the period of 79 years from the date of this deed; and
- (b) an earlier date appointed by the Trustee as the Vesting Date.

## 2.2 Interpretation

In this deed unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;

- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended; and
- (c) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision, any subordinate legislation made under that legislation, and any previous enactment of that legislation of provision.

### **2.3 Headings**

Headings are used for convenience only and do not affect the interpretation of this deed.

---

## **3 The Trust Fund**

- (a) Argyle and the Trustee declare that the Trustee must hold the Trust Fund and the income from the Trust Fund upon the trusts and in accordance with the provisions in this deed.
- (b) With the consent of the Trustee, other money and assets may be paid or transferred to, vested in and accepted by the Trustee as an addition to the Trust Fund and to be held by the Trustee as part of the Trust Fund.

---

## **4 The trusts of the Trust Fund**

- (a) The Trustee must hold the Trust Fund upon trust for the Beneficiaries on the basis specified in this deed.
- (b) A Beneficiary is not entitled, other than as expressly provided, to:
  - (1) interfere with or to question the exercise or non-exercise by the Trustee of its rights and powers;
  - (2) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or
  - (3) require the transfer to it of any of the assets of the Trust Fund.
- (c) The Beneficiaries have an interest in the Trust Fund as conferred by this deed but do not have any interest in any particular part of the Trust Fund or any investment made by the Trustee.

---

## **5 Beneficiaries**

The Beneficiaries at a particular time and their proportionate interests are:

- (a) The members at that time of the Mandangala/Tiltuwam Estate Group, comprised of the Toby, Dixon, Hall and Curtin families, as defined in Schedule 1, with a proportionate interest of 25%.
- (b) The members at that time of the Mandangala/Tiltuwam Estate Group, comprised of the Thomas and Barret families, as defined in Schedule 1, with a proportionate interest of 25%.

- (c) The members at that time of the Bilbidjing Estate Group, as defined in Schedule 1, with a proportionate interest of 10%.
- (d) The members at that time of the Neminuwarlin Estate Group, as defined in Schedule 1, with a proportionate interest of 10%.
- (e) The members at that time of the Yunurr//Yalangga Estate Group, as defined in Schedule 1, with a proportionate interest of 10%.
- (f) The members at that time of the Dundun Estate Group, as defined in Schedule 1, with a proportionate interest of 10%.
- (g) The members at that time of the Balaburr Estate Group, as defined in Schedule 1, with a proportionate interest of 10%.

---

## **6 Distribution of net income**

### **6.1 Conditional entitlements**

- (a) Subject to clauses 6.2, 6.3 and 9, the Trustee must in each financial year apply the whole of the net income of the Trust Fund of that financial year for the benefit of the members of each of the Estate Groups in accordance with the proportionate interest of the members of that Estate Group.
- (b) The application for the benefit of the members of a Estate Group is to be made in the manner, and for the benefit of, such one or more of the members of the Estate Group, as the Trustee decides in accordance with any rules or policies formulated or made under clause 8.
- (c) The application may be made on such conditions as the Trustee decides.
- (d) The initial conditions for the purposes of clause 6.1(c) are outlined in Schedule 2.

### **6.2 Accumulation of income if condition not satisfied**

Where an application of income has not been made in a financial year because a condition imposed under clause 6.1(c) has not been met, the income is to be accumulated by the Trustee as an accretion to the Trust Fund.

### **6.3 Accumulation of income if Trustee decides**

Despite clause 6.1(a) the Trustee may accumulate all or any part of the income arisen or arising during that financial year and the accumulation must be dealt with as an accretion to the Trust Fund.

### **6.4 Interim applications of income**

Despite the foregoing the Trustee may make an interim application of income at the times the Trustee decides during any financial year for the benefit of the Beneficiaries in the same manner outlined above.

---

## **7 Distribution of capital**

At any time or times, the Trustee may apply out of the capital of the Trust Fund any sum or make any distribution in specie for the benefit of the Beneficiaries in accordance with their respective proportionate shares and in accordance with any rules or policies formulated or made under clause 8.

---

## **8 Policies and rules**

- (a) For the purpose of applying the net income or capital, the Trustee may, subject to the agreement in writing of Argyle and the TO Representatives:
  - (1) formulate policies;
  - (2) make rules in connection with a policy; and
  - (3) revoke or amend a policy or rule and formulate others.
- (b) Without limiting the discretion of the Trustee under clause 8(a), the Trustee may make rules or policies to the effect that applications are to benefit the Beneficiaries in the following ways:
  - (1) employment and training;
  - (2) health;
  - (3) education:
    - (A) programmes to increase school attendance;
    - (B) programmes to increase school success; and
    - (C) enhancing access to education outcomes at all levels,
  - (4) business development;
  - (5) culture;
  - (6) community development;
  - (7) sporting and physical fitness programmes; and
  - (8) governance training and capacity building.
- (c) The initial rules for the purposes of clause 8(b) are outlined in Schedule 3.

---

## **9 Individual Payments**

- (a) The Trustee must maintain separate management accounts in respect of the Individual Payments received from Argyle.
- (b) Despite any other provision of this deed, upon receipt of the Individual Payments from Argyle, the Trustee must, by the due dates for payment set out in the ILUA, distribute the Individual Payments:
  - (1) to the individuals named in clause 6.1 of the ILUA or their beneficiaries in accordance with clauses 6.6 and 6.7 of the ILUA; and

- (2) in the proportions and on the terms set out in clauses 6.3 to 6.7 of the ILUA.

---

## 10 Trustee

### 10.1 Formal structure

- (a) The Trustee must be a company limited by guarantee whose Board of Directors at a particular time comprises two independent directors being one male director and one female director, with:

- (1) one independent director being an expert in finance; and
- (2) the other independent director being an expert in community development including health, education, employment and training, or indigenous arts and culture.

The initial independent directors are:

- (3) [name] – expert in finance; and
- (4) [name] – expert in [insert field].

- (b) Where practicable, the two independent directors should be the same persons who are the independent directors of the Charitable Trust.

- (c) If the requirement in paragraph (a) is at any time not met, the Trustee must not exercise any discretion or power until the requirement is met or except:

- (1) to protect the Trust Fund;
- (2) with the approval of Argyle; or
- (3) in the case of urgency.

### 10.2 Appointment and removal of directors

Subject to the agreement in writing of the TO Representatives, Argyle may:

- (a) by deed:

- (1) remove from office any director or directors for the time being of the Board of Directors; and
- (2) appoint a new director or directors in place of any director or directors so removed; and

- (b) exercise all statutory powers of appointing new directors of the Board of Directors.

### 10.3 Resolutions of the board

No resolution of the Board of Directors is effective for the purposes of this Trust unless:

- (a) notice of not less than seven days has been given to all members of the Board;
- (b) all members of the Board are present and voting at a meeting of the Board to consider the resolution; and



- (c) the members of the Board unanimously vote in favour of the resolution.

#### **10.4 Chairman**

Notwithstanding any other provision in the constitution of the Trustee:

- (a) the chairman of the Board of Directors must be elected by the other members of the Board for a term of one year; and
- (b) a new chairman must be elected on an annual basis. The outgoing chairman is eligible for re-election.

#### **10.5 Meetings**

- (b) Meetings of the Board of Directors may be attended by the Beneficiaries but:
  - (1) a Beneficiary may only speak at a meeting if agreed by the chairman;
  - (2) unless the chairman agrees, not more than 20 Beneficiaries in addition to the Board members may attend a meeting; and
  - (3) if a matter of confidentiality or sensitivity, as decided by the chairman, is to be discussed at the meeting, Beneficiaries may not attend the meeting during that discussion.
- (b) Meetings of the Board of Directors may be attended by a representative of Argyle but they may only speak at a meeting if agreed by the chairman.
- (c) Meetings of the Board of Directors are to be held at the times decided by the Board having regard to the desirability of effectively consulting with the Beneficiaries and communicating the activities and operations of the Trust to the Beneficiaries.

---

### **11 Termination**

- (a) The Trust will continue until the Vesting Date.
- (b) Despite any other provisions of this deed, no variation of this deed will be effective to create trusts or discretionary powers which would or might operate after the Vesting Date other than trusts for the immediate disposition of the trust property on the Vesting Date.
- (c) Upon the Trust terminating, the Trustee must:
  - (1) sell all the assets and investments comprising the Trust Fund;
  - (2) retain provision for all costs, charges, expenses, claims, taxes and other liabilities of the Trust; and
  - (3) as soon as is practical apply the cash available in the Trust Fund to the Beneficiaries in accordance with their respective proportionate shares.

---

## 12 Trustee's powers

### 12.1 Investment

Except as otherwise provided in this deed, the Trustee must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.

### 12.2 Other powers

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
  - (1) perform any administrative act; and
  - (2) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;

- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (n) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit;
- (o) fetter or otherwise limit the exercise of its powers or discretions; and
- (p) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **12.3 Powers are supplementary**

The powers and discretions in clause 6.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

---

## **13 Liability for breaches of trust**

The Trustee, where purporting to act in the exercise of the trusts and powers of this deed, and any officer, agent or employee of the Trustee purporting to exercise powers under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability,

unless the loss or liability is attributable to:

- (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
- (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

---

## **14 Indemnity of Trustee from Trust Fund**

The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
  - (1) entering into this deed or any deed amending this deed;
  - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (3) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 9(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

---

## **15 Appointment and removal of Trustee**

Subject to the agreement in writing of the TO Representatives, Argyle may by deed:

- (a) remove from office any trustee or trustees for the time being of this Trust;
- (b) appoint a new trustee or trustees in place of any trustee or trustees so removed or in addition to any existing trustee or trustees,

and exercise all statutory powers of appointing new or additional trustees of the Trust.

---

## **16 Books of account**

- (a) The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust and of all dealings connected with the Trust.
- (b) As soon as practicable after the end of each financial year the Trustee must prepare or cause to be prepared financial statements showing the financial position of the Trust Fund in respect of that financial year.
- (c) The financial statements must be audited by a person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act 2001.
- (d) If so required by Argyle or any of the TO Representatives, the Trustee must provide to Argyle or to the TO Representatives copies of the audited financial statements and all other Financial Records of the Trust.

---

## **17 Trustee's remuneration**

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any financial year must not exceed an amount equal to the maximum commission chargeable by trustee companies under the Trustee Companies Act 1987 (WA) in respect of that financial year.

---

## **18 Director's remuneration**

The directors for the time being of the board of directors of the Trustee will be paid until 31 December 2008, out of the further payments made by Argyle to the Trustee as a contribution to the costs of establishment and implementation of the Trust in accordance with Schedule 16 of the ILUA, to the extent that the Trustee's remuneration referred to in clause 17 is insufficient to meet the directors' remuneration.

---

## **19 Administration costs**

### **19.1 Administration**

Argyle and the Trustee;

- (a) acknowledge that pursuant to clauses 6.25 to 6.27 of the ILUA, Argyle will until 31 December 2008, make annual payments to the Trustee as a contribution to the administration costs of the Trust;
- (b) agree that the annual payments referred to in paragraph (a) do not form part of the Trust Fund;
- (c) agree, subject to clause 18, that the Trustee will apply these annual payments made by Argyle, only to the costs of the administration of the Trust; and
- (d) agree that if at the end of a calendar year monies provided by Argyle under clauses 6.25 to 6.27 of the ILUA have not been duly committed , such monies must be refunded to Argyle.

### **19.2 Review**

The Trustee will conduct a review of the administration costs of the trust as soon as practicable after 1 July 2008 and annually thereafter. The aim of the review is to ensure that the costs of the administration of the Trust are reasonable considering:

- (a) the quantum of the Trust Fund being administered; and
- (b) the work required to ensure proper and adequate administration of the Trust Fund.

---

## **20 General**

### **20.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of income or capital from the Trust Fund under this deed is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

## **20.2 Trustee's discretion**

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

## **20.3 Personal interest of Trustee**

The Trustee and any person who is a director or member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 12) even though the Trustee, or any person who is a director or member of the Trustee:

- (a) has or may have a direct or personal interest or conflict of fiduciary duty in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

## **20.4 Delegation of powers**

- (a) The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this deed. The execution or exercise of any of the trusts or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.
- (b) The Trustee may employ and pay a solicitor, accountant, broker or an employee or any other person to transact any business or to do any act required or permitted to be done under or in connection with the administration and management of the Trust.

## **20.5 Trustee's decisions**

- (a) The Trustee may decide:
  - (1) whether any money or receipt is to be considered as capital or income;
  - (2) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
  - (3) all questions and matters of doubt arising in the execution of the trusts of this deed.
- (b) In making a decision for the purposes of identifying the members of the Estate Groups described in Schedule 1:
  - (1) the Trustee may consult with the TO Relationship Committee and obtain any necessary advice;
  - (2) the Trustee may resolve conclusively all questions of fact or interpretation;
  - (3) a decision of the Trustee may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons

- interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary;
- (4) the Trustee need not give any reason or justification in respect of a decision; and
  - (5) the Trustee may change a decision made by it previously and may, for example, revoke a decision that a particular individual is or is not a member of an Estate Group.
- (c) In making a decision for the purposes of applying the net income of the Trust Fund in a financial year for the benefit of the members of each of the Estate Groups in accordance with Schedule 2:
- (1) the Trustee may consult with the Estate Groups before making any proposed distribution;
  - (2) the Trustee must keep all information obtained from the Estate Groups in the consultation process confidential;
  - (3) a decision of the Trustee may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary; and
  - (4) the Trustee need not give any reason or justification in respect of a decision.
- (d) Every decision, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, may be made in the absolute discretion of the Trustee and is conclusive in all respects and binds all persons interested in the Trust is conclusive and binds all persons interested under this deed.

## **20.6 Report to TO Relationship Committee**

The Trustee must provide a quarterly report in writing to the TO Relationship Committee which:

- (a) summarises the activities and financial position of the Trust; and
- (b) provides details of all distributions made in that quarter.

---

## **21 Notices**

- (a) Any notice to a Beneficiary will be deemed to have been duly given if it is in writing and either hand delivered or sent by post in a properly pre-paid envelope addressed to the Beneficiary.
- (b) Any notice given by post is deemed to have been served on the third day following the day when it was posted and in proving the service it is sufficient to prove that the letter containing the notice was properly addressed and posted by pre-paid post and a statement signed by the Trustee that it was so posted and when is conclusive of those facts.

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## **22 Alteration of trust deed**

At any time, the Trustee may, subject to the agreement in writing of Argyle and the TO Representatives, by deed or, if a company, by deed or resolution of its board of directors, amend, revoke or add to any of the provisions in this deed provided that no benefit or interest in the Trust Fund may be conferred on the Trustee and provided that no amendment, revocation or addition adversely affects the interests of, or entitlement of a Beneficiary to the income and capital of the Trust without the prior written approval of the TO Representatives.

---

## **23 Beneficiaries bound by deed**

- (a) The Beneficiaries are entitled to the benefit of and are bound by the terms and conditions of the Trust as outlined in this deed but nothing in this deed constitutes or be deemed to constitute the relationship of principal and agent between the Trustee and the Beneficiaries or the relationship of partners as between the Trustee and the Beneficiaries or as between the Beneficiaries themselves or give rise to any association between the Beneficiaries themselves.
- (b) All income and other money payable in accordance with the provisions of this deed to Beneficiaries are payable to them separately and income received by the Trustee is not received or to be construed as received by or on behalf of the Beneficiaries jointly or otherwise.

---

## **24 Jurisdiction**

This deed must be construed and take effect in accordance with the proper law of this trust that the parties agree is the law of Western Australia.



**Executed as a deed:**

**The common seal of  
Argyle Diamonds Limited**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
[Trustee]**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

---

## **Schedule 1**

### **Estate Groups**

#### **(clause 2)**

In this deed:

- (a) the Mandangala/Tiltuwam Estate Group comprised of the Toby, Dixon, Hall and Curtin families means the members of that Estate Group identified in the Ethnography and who are identified as Miriuwung and have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (b) the Mandangala/Tiltuwam Estate Group comprised of the Thomas and Barrett families means the members of that Estate Group identified in the Ethnography and who are identified as Gidga and have primary Traditional Rights over the entirety of the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26 and that portion of the Grazing Lease to the north of Mining Lease 259SA;
- (c) the Yunurr/Yalangga Estate Group means the members of that Estate Group identified in the Ethnography and who are identified as Miriuwung, Gidga and/or Malignin who have primary Traditional Rights in the southern most portion of Mining Lease 259SA and secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80/44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26;
- (d) the Neminuwarlin Estate Group means the members of that Estate Group identified in the Ethnography and who have primary Traditional Rights in that portion of the Grazing Lease to the south west of Mining Lease 259SA in the vicinity of Bow River and secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26;
- (e) the Balaburr Estate Group, the Bilbidjing Estate Group and the Dundun Estate Group means the members of those Estate Groups identified in the Ethnography and who have secondary Traditional Rights in the area covered by Mining Lease 259SA, Mining Lease 80/42, 80/43, 80,44 and 80/114 and Miscellaneous Licences 80/1, 80/11, 80/24 and 80/26.

---

## Schedule 2

### Initial income and capital application conditions (clause 6.1(d))

1. The Trustee may not make an income or capital distribution to an Estate Group in a financial year unless:
  - (a) the Estate Group has submitted:
    - (1) a proposal document setting out the manner in which the distribution for the year is intended to be applied, together with an estimated budget of monetary allocations for each application. The proposal document must include:
      - (A) proposed applications which must be consistent with the initial rules for applying the net income or capital of the Trust as contained in Schedule 3 or any new or amended rules and policies formulated by the Trustee in accordance with clause 8(b);
      - (B) any request by the Estate Group to pay all or part of their share of the distribution in respect of a financial year into the Charitable Trust; and
      - (C) any proposed cash payments to the Beneficiaries;
    - (2) except for the first financial year, a document setting out how the previous financial year's distribution was applied including a reconciliation of actual expenditure as against the previous year's proposal document; and
    - (3) if the Trustee requires, evidence of the previous financial year's application to establish the correctness of the document referred to in paragraph (a)(2),
  - and
  - (b) the Trustee is satisfied:
    - (1) that the previous year's distribution was applied in all material respects in compliance with the previous year's proposal; and
    - (2) that the current year's proposal is consistent with the ways in which applications are to benefit the Beneficiaries under this deed.
2. In the event that the Trustee is not satisfied in accordance with paragraph 1(b), the Trustee must consult with the relevant Estate Group to resolve the compliance issue and hold the distribution as part of Trust Fund but may distribute that sum if the Trustee is subsequently satisfied as to the matters set out in paragraph 1(b).

---

## **Schedule 3**

### **Initial rules for the application of income and capital**

#### **(clause 8(c))**

1. At least 90% of the net income or capital of the Trust Fund available for distribution to the Beneficiaries in a financial year must be applied to benefit the Beneficiaries in the following ways:
  - (a) employment and training;
  - (b) health;
  - (c) education:
    - (1) programmes to increase school attendances;
    - (2) programmes to increase school success; and
    - (3) enhancing access to education outcomes at all levels;
  - (d) business development;
  - (e) arts and culture;
  - (f) community development;
  - (g) sport and physical fitness programmes; and
  - (h) governance training and capacity building.
2. Up to 10% of the net income or capital of the Trust Fund available for distribution to the Beneficiaries in a financial year may be made by way of cash payments to the Beneficiaries. The cash payments may be applied by the Beneficiaries towards any purpose.
3. Each Estate Group may request the Trustee to transfer all or part of their share of the distribution in respect of a financial year into the Charitable Trust for a particular Charitable Purpose. Upon receipt of such request, the Trustee must:
  - (a) notify the trustee of the Charitable Trust in writing of the Estate Group's proposed transfer (including the proposed Charitable Purpose);
  - (b) request the trustee of the Charitable Trust to advise whether it would be willing to accept the proposed transfer (including the proposed Charitable Purpose) as a Sub-Fund Capital in accordance with clause 4.4 of the Charitable Trust deed; and
  - (c) if the trustee of the Charitable Trust is willing to accept the proposed transfer (including the proposed Charitable Purpose) as a Sub-Fund Capital in accordance with clause 4.4 of the Charitable Trust deed, agree to the Estate Group's request.

---

## Schedule 12 - Description and Map of Current Mining Area

*There is an area in the Argyle Mining Lease called the Current Mining Area where Argyle is already mining or plans to mine . Under this agreement Traditional Owners say that this area is cleared for mining or anything to do with mining. This schedule has a description of the Current Mining Area and a map showing those places that make up the Current Mining Area.*

---

### Description of Current Mining Area

The Current Mining Area means the areas of land and water shown on the Current Mining Area map attached in this Schedule, including:



#### **The AK1 Designated Area Fence (Restricted Access)**

The AK1 process plant, the explosives plant and magazine, MKIII plant, workshops, parking areas, recovery tailings stockpile, offices, the exploratory decline entrance, laydown areas for storage of equipment, sheds, back-up generators, mess facilities, showers and toilet facilities, change rooms, bulk fuel tanks, water tanks, a sewage treatment tank, landfills, pipelines, powerlines, telephone cables, pumps, standpipes, dams, sumps, roads and tracks, culverts, signs, survey stations and environmental monitoring equipment.






#### **The Alluvial Designated Area Fence (Restricted Access)**


The Alluvial process plant, the recovery tailings plant, recovery tailings stockpiles, exploration sample stockpiles, MKIII plant, workshops, parking areas, offices, laydown areas for storage of equipment, sheds, back-up generators, mess facilities, showers and toilet facilities, environmental monitoring equipment, change rooms, bulk fuel tanks, water tanks, septic tanks, powerlines, pipelines, telephone cables, pumps, dams, sumps, roads and signs.


#### **Outside Designated Areas**


Accommodation villages, workshops, parking areas, recovery tailings stockpiles, reject material stockpiles, stemming stockpiles, topsoil stockpiles, offices, laydown areas for storage of equipment, sheds, power station, back-up generators, showers and toilet facilities, change rooms, bulk fuel tanks, water tanks, sewage treatment ponds, landfills, borrow pits, fences and gates, pipelines, pumps and pump stations, dams, sumps, water treatment plant, roads and tracks, easements, weighbridge; survey stations, environmental monitoring equipment, the airport, aircraft navigational aids, radio communication/ transmission towers, satellite dishes, telephone cables, mobile telephone transmission tower, lease boundary track and marker pegs; signs and culverts.


- 11kV powerlines.
- 33kV powerlines.
- 132kV powerlines.
- Fire water pipes.


-  Raw water pipes.
-  Potable water pipes.
-  Sewage pipes
-  Communication lines e.g. phone lines
-  Fibre optic cables


 This is the area where a new tailings dam will be built to store tailings after the existing tailings dam is full. It is also the Reclaim Pond 3 site, which will capture water from the AK1 tailings dams' underdrains for recycling.


 This is another possible new tailings dam sites if the preferred area is not available.

 These show existing tailings dam and reclaim pond sites. These include the AK1 tailings dam (still in use), Alluvial tailings dam 1 and 2 (no longer being used and in the process of being rehabilitated) Alluvial tailings dam 3 (no longer being used, but not yet rehabilitated), Alluvial tailings dam 4 and reclaim pond (still has some use, receiving fine tailings from the recovery tailings processing plant) and Alluvial tailings dam 5 and reclaim pond (no longer being used, but not yet rehabilitated).

 This area is the current extent of the AK1 pit and waste dumps.

 This area is the final limit the AK1 waste dumps will get to when mining is finished. This area includes a bund around the base of the dumps to prevent material eroded from the dumps washing into the environment. The new Designated Area fenceline is the boundary of the dumps. On the north western side of the dumps near Devil Devil Spring, the dumps will not go out any further, apart from building the bund to prevent dirt and rocks being washed toward the spring and creek.

 These are the roads and tracks that may be used only by mining people, or others that may be used by mining people, Lissadell station people and visitors. The main roads at Argyle are the ones that run from the boom gate at Wandarrie to the mine, the road that runs from the mine to the Airport, and the road that runs from the Airport road to the Argyle village. These roads are sealed. There are also sealed roads that are service roads in the light industrial area near the mine, and in the process plant area. The main unsealed roads, which are used mainly by mining people, are the road to Gap Dam from near the water treatment plant near the village, the road from Gap Dam to the Alluvial Plant, and roads to the sewage lagoons at the village and Wandarrie. The unsealed road from the airport to Lake Argyle is used by mining people, Lissadell station people and visitors. There are a lot of minor tracks that are used by mining people for surveys, monitoring or exploration. Haul roads are mainly in the AK1 pit and are used only by mining people.

 These are alluvial resource blocks that were cleared by Traditional Owners on 6<sup>th</sup> August 2004. These are areas where we know there are diamonds, but they have not yet been mined and it may be uneconomical to mine them.



These are alluvial resource blocks that have already been mined and rehabilitated.



These are legacy sites, inherited from pre-Argyle exploration etc.



This is the lease boundary.





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## Schedule 13 – Land Trust

*Under this agreement Argyle will hold the Grazing Lease in a Trust so that Traditional Owners can get back full strength native title. This schedule is a copy of that Trust.*

# **Argyle Diamond Mine Land Trust**

**Alan Tietzel**

and

**Argyle Diamonds Limited**

**Freehills**

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Telephone +61 8 9211 7777 Facsimile +61 8 9211 7878  
[www.freehills.com](http://www.freehills.com) DX 104 Perth

SYDNEY MELBOURNE PERTH BRISBANE HANOI HO CHI MINH CITY SINGAPORE  
Correspondent Offices JAKARTA KUALA LUMPUR

Liability limited by the Solicitors' Limitation of Liability Scheme, approved under the  
Professional Standards Act 1994 (NSW)

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## This deed

is made on \_\_\_\_\_ between the following parties:

1. Alan Tietzel  
of c/- 2 Kings Park Road, West Perth, Western Australia  
(Settlor)
2. Argyle Diamonds Limited  
ABN 36 009 102 621  
of 2 Kings Park Road, West Perth, Western Australia  
(Trustee)

### Recitals

- A. In accordance with the terms of the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement dated [ ] between Argyle, the TOs and Kimberley Land Council, the Trustee wishes to establish a trust to enable the Trustee to acquire and hold the Replacement Lease on trust for the benefit of the Beneficiaries.

### The parties agree

in consideration of, among other things, the mutual promises contained in this Deed:

---

## 1 Definitions

Unless otherwise required by the context or subject matter:

**Accounting Period** means:

- (d) the period from the date of this Deed until 30 June next;
- (e) each period of 12 months commencing on 1 July in any year; and
- (f) the period from 1 July immediately before the Vesting Day to the Vesting Day.

**Argyle** means Argyle Diamonds Limited ABN 36 009 102 621;

**Argyle Interests** means the Granted Argyle Interests, the Interests and the Future Argyle Interests;

**Argyle Operations** means the conduct, by Argyle, of:

- (a) past, present and future mining operations within the Land Area including without limitation:
  - (1) the mining of ore from the Land Area;
  - (2) the processing, extraction and commercial sale of diamonds and other materials extracted as a by-product of diamond mining operations;
  - (3) the construction, development or installation of plant, facilities and infrastructure;

- (4) mine development and other earth-moving or earth disturbing activities; and
  - (5) all other activities which Argyle considers to be necessary, incidental or conducive to the extraction of minerals from within the Land Area;
- (b) exploration for diamonds within the Land Area;
  - (c) decommissioning and rehabilitation of any complete exploration or mining operations; and
- grazing operations within the Land Area;

**Beneficiary** means:

- (a) a person named or described in Item 3 of the Schedule; or
- (b) if all the existing Beneficiaries have agreed to form a Prescribed Body Corporate to hold their Native Title Rights, that Prescribed Body Corporate;

**Beneficiary's Fund** means a fund separate from the Fund held on trust by the Trustee for a Beneficiary under clause 10;

**Closure** means the date upon which the last Argyle Interest has been determined, surrendered or otherwise terminated;

**Deed** means this deed as amended, supplemented or varied from time to time and includes a notice given under this deed;

**Ethnography** means the ethnographic study undertaken by Kim Barber and Hilary Rumley dated [*insert date*] and which study was provided to Argyle by the KLC on [*insert date*] and which identifies the traditional owners of the Agreement Area;

**Fund** means the Settled Sum and all other money and property from time to time held by the Trustee on the terms of this Deed;

**Future Argyle Interests** means any Interests held or applied for by Argyle or granted to Argyle necessary or incidental to the conduct of the Argyle Operations and applied for or granted after the execution of the ILUA;

**Granted Argyle Interests** means any Interests held by Argyle in relation to the Argyle Operations and granted before the execution of the ILUA;

**ILUA** means the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement;

**Interests** means the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 and its schedules, or the Mining Act 1978 (WA) and any other interest held by Argyle under that Act or its schedules, and any other legal or equitable interest held by Argyle in relation to the Argyle Operations and includes any lease, licence, grant, authority, consent, permit, title or permission granted or given to Argyle and necessary or incidental to the Argyle Operations;

**Land Area** means the area of land and waters comprising the Granted Argyle Interests excluding that portion of Mining Lease 80/42 which is within the area of land and waters the subject of a native title determination in *State of Western Australia v Ward* (WAG6001/1995);

**Native Title Rights** means the Traditional Rights recognised to be native title rights by the Federal Court in a determination of native title in relation to the Land Area;

**Prescribed Body Corporate** means a registered native title body corporate within the meaning of section 253 of the Native Title Act 1993 and in a form prescribed under section 59 of that Act;

**Perpetuity Period** means the period of 80 years commencing on the date of execution of this Deed;

**Replacement Lease** means the lease to be granted by the State to the Trustee under clause 7 of the ILUA;

**Schedule** means the schedule to this Deed;

**Settled Sum** means the sum specified in Item 1 of the Schedule;

**State** means the Crown in right of Western Australia;

**TOs** has the same meaning as in the ILUA;

**Traditional Rights** means rights and interests held by the Beneficiaries under Aboriginal laws and customs in relation to the Land Area, including rights and interests which, although not recognised by the statutory and common law applicable in the State of Western Australia from time to time, are, subject to the ILUA, exercisable in relation to the entire Land Area;

**Trust** means the trust created by this Deed;

**Trustee** means the person named or described as Trustee in this Deed or a successor of that person;

**Trustee's Powers** means the rights, powers and discretions granted by this Deed or by law and exercisable by the Trustee; and

**Vesting Day** means whichever is the earlier of:

- (a) 18 months after Closure; or
- (b) a date specified by the Trustee after Closure.

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## 2 Trustee to hold fund

The Trustee:

- (a) acknowledges that the Trustee has received the Settled Sum; and
- (b) declares that and as from the date of execution of this Deed, the Trustee holds the Fund and the income of the Fund on the trusts set out in this Deed with, and subject to:
  - (1) the Trustee's Powers; and
  - (2) the terms of the ILUA, which terms should override any duty that the Trustee has under this Deed or at law from time to time.

---

### **3 Perpetuity**

Notwithstanding any other provision of this Deed, each:

- (a) interest in property; and
- (b) Trustee's Power over, or in connection with, property;

created or granted by this Deed which, but for this provision, might vest, take effect, or be exercisable, after the expiry of the Perpetuity Period:

- (c) if it has not vested or taken effect by that date, will vest or take effect on; and
- (d) is exercisable only on or before; expiry of the Perpetuity Period.

---

### **4 Exclusion of beneficiaries**

- (a) The Settlor;
    - (1) the trustee of any trust or settlement in, or under, which; and
    - (2) any other legal entity in which:  
the Settlor has a beneficial interest, so long as that interest continues; and
  - (c) any legal entity if the Settlor has:
    - (1) the control or the power to control; or
    - (2) a beneficial interest in the shares or other securities of;  
that legal entity so long as the Settlor continues to have that control, power or interest;
- are excluded from being a Beneficiary or receiving any benefit under the Trust.

---

### **5 Income of fund**

Subject to clause 12.1, the Trustee must deal with the income of the Fund for each Accounting Period in one or more of the ways set out in this clause 5.

#### **5.1 Power to accumulate**

The Trustee may accumulate the whole or any part of the income for that Accounting Period, in which case that income will be added to, and form part of, the capital of the Fund.

#### **5.2 Determination for Beneficiaries**

When the Trustee seeks to exercise the Trustee's discretion under this clause 5, the Trustee may pay, apply or set aside the whole or any part of the income to or for any one or more of the Beneficiaries then living or in existence in the proportions and in the manner determined by the Trustee.

### **5.3 Income destination if no determination is made**

If the Trustee does not exercise the Trustee's discretion under clause 5.2 in respect of the whole or any part of the income, the Trustee must hold the income which has not been the subject of a determination under this clause on trust for all the Beneficiaries then living or in existence in equal shares.

---

## **6 Income and capital treatment**

### **6.1 Definition**

In this clause **Act** means the Income Tax Assessment Act 1997.

### **6.2 Capital and Income**

The Trustee may from time to time:

- (a) treat any profit or gain, whether of a capital or income nature, or any receipt of money or property, which under the Act:
  - (1) is assessable income; or
  - (2) enters into the calculation of a taxpayer's assessable income;as income of the Fund;
- (b) treat a payment, expense or loss which is an allowable deduction under the Act as expenditure against the income of the Fund;
  - (1) distinguish between income of different types or from different sources; and
  - (2) deal with income of a particular type or from a particular source in one manner and income of any other type or from any other source in a different manner;
  - (1) distinguish between dividends and trust distributions which have been franked within the meaning of the Act and dividends and trust distributions which have not been franked; and
  - (2) deal with franked dividends and trust distributions in one manner and unfranked dividends and trust distributions in another manner; and
- (e) if the Trustee has decided to treat a capital gain within the meaning of the Act as income of the Fund:
  - (1) distinguish between that income and other income of the Fund and deal with the income consisting of or attributable to the capital gain in one manner and other income in a different manner; and
  - (2) pay, apply or set aside for the benefit of Beneficiaries any income consisting of, or attributable to, the capital gain.

---

## **7 Power to resort to accumulations**

The Trustee may from time to time resort to accumulated income as if it were income of the Fund for a subsequent Accounting Period.

---

## **8 Income application**

### **8.1 Pay, apply or set aside**

The Trustee may pay, apply or set aside income to which a Beneficiary is entitled by:

- (a) paying the income by cash or cheque to that Beneficiary or to a third person at the request of that Beneficiary;
- (b) paying the income into an account maintained by that Beneficiary, either solely or jointly with any other person, at a bank or other financial institution;
- (c) placing the income to the credit of that Beneficiary in the books of the Trust;
- (d) applying the income for the maintenance, education, advancement or benefit of that Beneficiary; and
- (e) if that Beneficiary is an infant or under a legal disability, paying the income to the parent, guardian or administrator of that Beneficiary or the person with whom that Beneficiary is residing.

### **8.2 Discharge**

If money is paid, applied or set aside in accordance with clause 8.1:

- (a) the Trustee is not bound to see to the application of that money; and
- (b) the payment, application or setting aside constitutes a full and final discharge to the Trustee for the sum paid, applied or set aside.

---

## **9 Determinations in excess of net income**

If the aggregate amounts in respect of which determinations have been made under clause 5 in respect of an Accounting Period exceed the income of the Fund for that Accounting Period, the Trustee may:

- (a) deduct the excess from any amount which the Trustee has previously determined to accumulate;
- (b) determine that the excess be deemed to have been a distribution under clause 15.1;
- (c) if the amounts have not been paid or applied, reduce the amounts to be paid, applied or set aside under clause 5 proportionately by the amount of the excess; and



- (d) if the amounts have been paid or applied, determine that the amount of the excess be deemed to be a loan to the Beneficiaries receiving the amounts paid or applied.

---

## **10 Income held on trust as separate fund**

### **10.1 Separate fund**

An amount set aside for a Beneficiary under clauses 5 and 8 or 15, will not form part of the Fund, but will be held by the Trustee as a separate fund on trust for that Beneficiary, and, pending payment of that amount to that Beneficiary, the Trustee may invest the amount in the name of:

- (a) that Beneficiary; or
- (b) any person on trust for that Beneficiary;

and the accretions to, and income from, that investment will belong to that Beneficiary.

### **10.2 Trustee's Powers in relation to a Beneficiary's Fund**

- (a) The Trustee's Powers and the indemnities granted by clauses 17 to 24 inclusive apply to a Beneficiary's Fund.
- (b) The Trustee may from time to time:
  - (1) if a beneficiary of a Beneficiary's Fund is not an infant or a person under a legal disability, pay or transfer the income of that fund to that beneficiary; or
  - (2) if the beneficiary of a Beneficiary's Fund is an infant or a person under a legal disability, apply the income of that fund in the manner provided in clause 8.1(d) and 8.1(e).

---

## **11 Certificate of determination**

A certificate by the Trustee as to any written or oral determination is sufficient evidence that a determination was made in the manner and on the date certified.

---

## **12 Provision for taxation**

### **12.1 Set aside sum for taxation**

The Trustee may at any time with respect to all or any part of the income of:

- (a) the Fund; or
- (b) a Beneficiary's Fund;

for an Accounting Period, set aside a sum which in the opinion of the Trustee will be sufficient to meet the tax due in respect of that fund for that Accounting Period.

## **12.2 Sum set aside inadequate**

If under this clause:

- (a) no sum is set aside; or
- (b) the sum set aside is insufficient to meet the tax assessed in respect of the Fund or a Beneficiary's Fund;

the Trustee may resort to the income or the capital of that fund to meet the tax assessed in respect of that fund.

## **12.3 Sum set aside excessive**

If it appears to the Trustee that the sum set aside under this clause is excessive, the Trustee must credit the excess in the books of account of:

- (a) if the sum was set aside out of the Fund, the Fund; or
- (b) if the sum was set aside out of a Beneficiary's Fund, the Beneficiary's Fund from which the sum was set aside.

---

## **13 Absorption of losses**

If in any Accounting Period the expenses of the Fund of an income nature exceed the income of the Fund for that period, the Trustee may:

- (a) offset that loss:
  - (1) first against the income of the Fund of the next Accounting Period; and
  - (2) then against the income of each successive Accounting Period; until the loss is absorbed;
- (b) apply capital of the Fund to offset that loss; or
- (c) deal with the loss partly under paragraph (a) and partly under paragraph (b).

---

## **14 Distribution of capital and income after the vesting day**

On and from the Vesting Day:

- (a) the Trustee must hold and distribute the Fund for the Beneficiaries living or in existence on the Vesting Day and if more than one in equal shares; and
- (b) in particular, subject to clause 15, the Trustee must transfer the Replacement Lease to the Beneficiaries living or in existence on the Vesting Day and if more than one in equal shares.

---

## **15 Application of capital before the vesting day**

### **15.1 Capital of Fund**

The Trustee may from time to time before the Vesting Day:

- (a) appoint the whole or any part of the capital of the Fund to or for:
  - (1) a Beneficiary for that Beneficiary's own use and benefit; or
  - (2) the maintenance, education, advancement or benefit of a Beneficiary; and
- (b) apply or distribute the same in the manner determined at the Trustee's discretion;

and an appointment made under this subclause will not be brought to account for the purposes of clause 14.

### **15.2 Capital of Beneficiary's Fund**

The Trustee may from time to time:

- (a) if a beneficiary of a Beneficiary's Fund is not an infant or a person under a legal disability, pay or transfer the capital of that fund to that beneficiary; or
- (b) if the beneficiary of a Beneficiary's Fund is an infant or is a person under a legal disability, apply the capital of that fund in the manner provided in clause 8.1(d) and 8.1(e) for the benefit of that beneficiary as if that capital were income of that fund.

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## **16 Statutory powers in augmentation**

Except to the extent of any inconsistency with this Deed, in which case this Deed prevails, the powers conferred on the Trustee by law are in augmentation of the powers conferred by this Deed.

---

## **17 Trustee's powers**

### **17.1 Trustee may act as if beneficially entitled**

The Trustee may deal with the Fund and act in any manner for the purpose or benefit of the Trust as if the Trustee were the beneficial owner of the Fund.

### **17.2 Determine receipts capital or income**

The Trustee may determine whether receipts or outgoings are of a capital nature or of an income nature or partly of a capital nature and partly of an income nature.

### **17.3 Acquire, retain and dispose of property**

- (a) The Trustee may:

- (1) acquire property, an interest in property, or rights in relation to property:
    - (A) whether or not that property, interest or right produces income; and
    - (B) whether jointly or as a tenant in common; and
  - (2) dispose of or retain property, an interest in property or rights in relation to property.
- (b) The power of the Trustee to dispose of property in clause 17.3(a) does not apply to a right to transfer or otherwise dispose of the Replacement Lease other than to the Beneficiaries.

#### **17.4 Distribute property in kind**

Subject to clauses 14 and 15, the Trustee may distribute property in kind to a Beneficiary.

#### **17.5 Lease**

The Trustee may grant or take a lease or sublease of property:

- (a) to or from any person, including itself and other related parties; and
- (b) on any terms.

#### **17.6 Option**

The Trustee may grant or take an option to acquire or dispose of property on any terms.

#### **17.7 Improve property**

The Trustee may improve and develop property.

#### **17.8 Borrow**

The Trustee may:

- (a) raise or borrow money, alone or jointly with any person on any terms; and
- (b) give security for money raised or borrowed;

and no person from whom the Trustee raises or borrows money will be concerned to see to, or enquire as to, the propriety of the transaction or the amount or application of the money raised or borrowed.

#### **17.9 Give guarantees and indemnities**

The Trustee may give:

- (a) a guarantee or indemnity or a guarantee and indemnity for the obligations or liabilities of any person; and
- (b) security for that guarantee or indemnity or guarantee and indemnity.

### **17.10 Carry on business**

The Trustee may:

- (a) establish, conduct, manage and carry on any business; and
- (b) enter into, vary or dissolve any partnership, joint venture or other business arrangement.

### **17.11 Advance, lend and deposit money**

The Trustee may advance, lend money to, deposit money with, or grant financial accommodation to, any person other than the Settlor on any terms with or without security or interest.

### **17.12 Bank account**

The Trustee may open and operate accounts with financial institutions and draw, endorse, discount, accept and negotiate bills of exchange.

### **17.13 Costs and expenses**

The Trustee may pay out of the Fund all costs, charges, expenses, taxes and duties of or incidental to:

- (a) the management of the Trust;
- (b) the exercise of the Trustee's Powers; and
- (c) the preparation and execution of this Deed and any variation to, or amendment of, this Deed.

### **17.14 Transfer to new fund**

- (a) In this subclause **New Fund** means a trust to which the whole or part of the Fund is transferred under this subclause.
- (b) Subject to paragraph (c), the Trustee may from time to time before the Vesting Day transfer the whole or any part of the Fund to a trust administered, or having effect, in any part of the world, so that:
  - (1) the property transferred will be held on, and subject to, the trusts of the New Fund; and
  - (2) the Trustee will be freed and discharged from the trusts of this Deed to the extent of the property transferred;

but:

- (c) no transfer may be made under this subclause:
  - (1) of property in which a Beneficiary has a vested interest;
  - (2) unless the Trustee is satisfied that it would be for the benefit of one or more of the Beneficiaries;
  - (3) if the Settlor may obtain an interest or benefit under the New Fund;
  - (4) if the transfer offends against the rule against perpetuities if that rule applies; or

- (5) so as to diminish the amount which each Beneficiary is entitled to below the amount that Beneficiary would be entitled to if the Vesting Day was the date of the transfer.

### **17.15 Sell to a Trustee or trust**

The Trustee may sell property to:

- (a) a person who is a Trustee in the personal capacity of that person; and
- (b) a trust in which a person who is a Trustee has a beneficial interest.

### **17.16 Use of assets**

The Trustee may allow a Beneficiary to have exclusive or shared custody or use of any property forming part of the Fund.

---

## **18 Exercise of trustee's powers**

### **18.1 Exercise power jointly**

The Trustee may exercise each Trustee's Power jointly with any other person.

### **18.2 Exercise power even if interested**

- (a) The Trustee may exercise each Trustee's Power even if a person who is a Trustee, or a director or member of a Trustee being a body corporate, is directly or indirectly interested in the mode or result of exercising that Trustee's Power; and
- (b) a person who is a Trustee, or a director or member of a Trustee being a body corporate, is not liable to account for any profit or other benefit derived by that person by reason of the exercise of that Trustee's Power.

### **18.3 Determinations binding**

Each determination made by the Trustee under this Deed is final and binding on the Beneficiaries.

---

## **19 Trustees to act jointly**

If at any time more than one person is the Trustee, they must only act jointly and unanimously.

---

## **20 Trustee may delegate**

A natural person who is a Trustee may:

- (a) in writing delegate the exercise of that person's Trustee's Powers for so long as that person is absent from Western Australia; and
- (b) execute a power of attorney or other instrument to give effect to that delegation.

---

## **21 Determination by trustee**

A determination by the Trustee may be made:

- (a) in writing signed by the Trustee;
- (b) by a resolution duly passed at a meeting of the Trustee; or
- (c) in the case of a sole Trustee being a body corporate, by a resolution of its board of directors or governing body.

---

## **22 Trustee not liable for loss**

- (a) Except in the case of dishonesty or wilful breach of trust, the Trustee is not liable for any loss, damage, costs or expenses arising out of the exercise or failure to exercise any Trustee's Power.
- (b) Each Beneficiary and person dealing with the Trustee is deemed to have notice of this clause.

---

## **23 Trustee to be indemnified**

Except in the case of dishonesty or wilful breach of trust, the Trustee is entitled to be indemnified out of the Fund in respect of all loss, damages, costs and expenses incurred by the Trustee as trustee of the Trust. This indemnity does not however require the disposal of the Replacement Lease and cannot prevent the vesting of the Replacement Lease in the Beneficiaries.

---

## **24 Records and accounts**

### **24.1 Trustee to keep records**

The Trustee must keep proper records, books and accounts of the Trust.

### **24.2 Accounts**

The Trustee must after the close of each Accounting Period promptly prepare written accounts of the Trust in accordance with generally accepted accounting principles for that Accounting Period including a balance sheet, a statement of income and expenditure, and a list of assets held at the close of that period.

---

## **25 Alteration of this deed**

### **25.1 Permitted alteration**

The Trustee may from time to time by deed revocably or irrevocably revoke, add to or vary all or any of the provisions of this Deed provided that the revocation, addition or variation:

- (a) does not result in the rule against perpetuities being offended against;

- (b) does not result in a benefit to the Settlor;
- (c) does not diminish the amount which each Beneficiary is entitled to below the amount that Beneficiary would be entitled to if the Vesting Day were the date of that revocation, addition or variation;
- (d) does not affect the entitlement of a Beneficiary to a Beneficiary's Fund;
- (e) does not enlarge the number of Beneficiaries; and
- (f) does not result in a change to the purpose of the trust set out at Recital A and does not prevent the vesting of the Replacement Lease in the Beneficiaries.

## **25.2 No other alteration**

Except as provided in this clause, this Deed may not be revoked, added to or varied.

## **26 Eligibility of trustee**

### **26.1 May be body corporate**

A Trustee may be a body corporate.

### **26.2 May resign office**

A Trustee may resign from that office by giving notice to the Trustee except that a sole Trustee must not resign without appointing a new Trustee in place of that Trustee.

### **26.3 Automatic vacation of office**

The office of a Trustee will automatically be vacated if the person holding that office or a person holding a share in a corporate Trustee:

- (a) is an individual and:
  - (1) dies;
  - (2) has a guardian or administrator appointed under the Guardianship and Administration Act 1990;
  - (3) commits an act of bankruptcy; or
  - (4) executes a deed of assignment or a deed of arrangement or enters into a composition under Part X of the Bankruptcy Act 1966;
- (b) is a body corporate and:
  - (1) an application is made, a resolution is passed, or a meeting is convened for the purposes of considering a resolution, for that body corporate to be wound up; or
    - (A) the directors appoint, or resolve to appoint, an administrator; or
    - (B) an administrator is appointed;



- of the person holding that office; or
- (c) is an individual or a body corporate and:
- (1) a compromise or arrangement is made between that person and a creditor of that person;
  - (2) an application is made to a court for an order summoning a meeting of any class of creditors of that person; or
    - (A) a receiver or receiver and manager; or
    - (B) if that person is a body corporate, a controller;
- of any of the property of that person is appointed;
- and the person next appointed as Trustee will become the Trustee in place of the person vacating that office.

#### **26.4 No successor appointed**

- (a) If:
- (1) the office of Trustee is vacated under clause 26.3; and
  - (2) no successor is appointed;
- the person nominated in writing by the Chief Executive Officer for the time being of Freehills, 250 St. George's Terrace, Perth will become the Trustee in place of the person vacating that office; but
- (b) if at the time of vacation of the office, the firm of Freehills has changed its name or has amalgamated with another firm, the reference to Freehills will be to the firm previously having that name or the firm resulting from the amalgamation with the firm known as Freehills at the date of this Deed.

---

### **27 Reliance on trust deed**

A person dealing with the Trustee may rely on a copy of this Deed certified as a true copy by the Trustee or the Trustee's solicitor to the same extent as that person might rely on an original.

---

### **28 Books and records**

A person becoming a Trustee may accept the books, records and accounts of the Trust and the property delivered to that person without the need for further enquiry.

---

### **29 Professional trustee's charges**

A Trustee practising a profession may charge and be paid all professional and other charges for business or acts done by that Trustee or that Trustee's firm under this Deed including business or acts which the Trustee could do personally.

---

### **30 Trustee's commissions**

A Trustee being an authorised trustee company under the Trustee Companies Act 1987 may charge and retain out of the Fund commissions and other charges which it may lawfully charge from time to time.

---

### **31 Other provision for Beneficiary**

A benefit conferred on a Beneficiary by this Deed is in addition to, and not in substitution for, any other provision made by the Settlor for that Beneficiary.

---

### **32 Trust name**

The name of the Trust is specified in Item 2 of the Schedule.

---

### **33 Section 58 of Act excluded**

Section 58(1)(b) of the Trustees Act 1962 does not apply to this Trust.

---

### **34 Trust separate**

- (a) The Trustee must administer the Fund as a discrete trust separate and distinct from any other trust fund; and
- (b) nothing in this Deed requires or causes the Trustee to join the Fund with any other trust fund.

---

### **35 Proper law**

This Deed is governed by, and to be interpreted in accordance with, the laws of Western Australia and where applicable the laws of the Commonwealth of Australia.

---

### **36 Interpretation**

#### **36.1 Reference to a statute**

A reference to a statute includes each regulation, by-law, requisition and order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order for the time being in force.

#### **36.2 Headings**

Except in the Schedule, headings in this Deed are for convenience only and do not otherwise affect its interpretation.

### **36.3 Reference to other document**

Subject to any contrary provision in this Deed, a reference to any other deed, agreement, instrument or contract includes a reference to that other deed, agreement, instrument or contract as amended, supplemented or varied from time to time.

### **36.4 Singular, plural and gender**

Where applicable:

- (a) words denoting the singular include the plural;
- (b) words denoting the plural include the singular; and
- (c) words denoting a gender include each gender.

### **36.5 Reference to a person**

Where applicable, a reference to a person is a reference to a person or an entity recognised by law including, but not limited to, a body corporate.

### **36.6 Reference to a Beneficiary**

Unless otherwise required by the context or subject matter, a reference to a Beneficiary includes a person not in existence or in a defined class at the date of this Deed.

### **36.7 Trustee's discretion**

Unless otherwise provided:

- (a) the exercise of each Trustee's Power is at the absolute discretion of the Trustee; and
- (b) the Trustee is not required to give any reason for the Trustee's failure or refusal to exercise a Trustee's Power or the manner of exercise of a Trustee's Power.

---

## Schedule

**1 Settled sum:**

\$100.00

**2 Name of trust:**

Argyle Diamond Mine Land Trust

**3 Beneficiaries**

Those Aboriginal persons who are the traditional owners of the Land Area and who are defined as TOs in the Argyle Diamond Mine Participation Agreement Indigenous Land Use Agreement and are more fully described in the Ethnography.

---

**Executed as a deed:**

**Signed sealed and delivered by**

**Alan Tietzel**

in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

**The common seal of  
Argyle Diamonds Limited**

is fixed to this deed

in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

---

## Schedule 14 – Deed of Transfer – Argyle to Substitute Party

*If Argyle wants to sell the mine or some of its mining rights to another mining company it has to make sure that the new mining company promises to follow the rules in this agreement. This schedule shows the agreement that the new mining company has to sign, before Argyle can sell.*

---

### This deed of transfer

is made on \_\_\_\_\_ between the following parties:

- 1 Argyle Diamonds Limited** ABN 36 009 102 621 and **Argyle Diamond Mines Pty Limited** ABN 52 008 912 418  
both of 2 Kings Park Road, West Perth, Western Australia  
(together **Argyle**)
- 2** *[insert name of Substitute Party]*  
*[insert ABN/ACN/ARBN]*  
of *[insert address]*  
(**Substitute Party**)

### Recitals

- A. Argyle and the TOs are parties to the ILUA.
- B. Argyle has agreed to transfer to the Substitute Party and the Substitute Party has agreed to take the Transferred Interest.

### The parties agree

in consideration of, among other things, the mutual promises contained in this deed:

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this deed (including the Recitals) words and phrases defined or referred to in the ILUA have the same meaning when used in this deed and, in addition, unless the subject matter or context otherwise requires:

**Effective Date** means *[insert date]*;

**ILUA** means the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement dated *[insert date]*;

**Power** means any right, power, authority, discretion or remedy conferred on a party under or by virtue of this deed or applicable law; and

**Transferred Interest** is specified in Schedule 1.

## **1.2 Interpretation**

Clauses 20.4 and 20.5 of the ILUA apply in this deed.

---

## **2 Transfer and Amendment**

### **2.1 Transfer**

On and from the Effective Date, Argyle transfers the Transferred Interest to the Substitute Party and the Substitute Party accepts that transfer.

### **2.2 Assumptions of rights and obligations**

- (a) On and from the Effective Date, the Substitute Party:
  - (1) must comply with the ILUA to the extent it relates to or is connected with the Transferred Interest;
  - (2) obtains the rights and assumes the obligations of Argyle in respect of or attaching to the Transferred Interest; and
  - (3) acknowledges and agrees that the obligations imposed on it under paragraphs (1) and (2) above are for the benefit of Argyle and the TOs and, in the case of the TOs, are enforceable against the Substitute Party by the TOs under section 11 of the Property Law Act 1969.
- (b) The Substitute Party does not obtain any rights or assume any obligations of Argyle under the ILUA which accrued or arose before the Effective Date.

### **2.3 Release**

- (a) Argyle remains liable for all of its obligations under the ILUA which arose before the Effective Date.
- (b) The Substitute Party does not accept liability for any obligations that arose and were due to be completed with under the ILUA before the Effective Date.

### **2.4 Indemnity and liability**

- (a) Argyle must indemnify the Substitute Party on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Substitute Party pays, suffers, incurs or is liable for in respect of any act of or omission by Argyle in respect of the ILUA, which occurred before the Effective Date.
- (b) The Substitute Party must indemnify Argyle on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Argyle pays, suffers, incurs or is liable for in respect of any act of or omission by the Substitute Party in respect of the Transferred Interest, which occurs after the Effective Date.
- (c) The Substitute Party is not liable as between the Substitute Party and Argyle to the TOs in respect of any claim, action, damage, loss, liability,

cost, charge, expense, outgoing or payment which the TOs pays, suffers, incurs or is liable for in respect the ILUA, which occurred, or which arises out of or is caused by any act or omission which occurred, before the Effective Date.

- (d) Without limiting the general nature of their respective terms, each indemnity in this clause 2.4 in favour of a party extends to all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis.

## 2.5 Amendment of ILUA

**Only include this clause 2.5 if the ILUA is to be amended by agreement. If not change the heading to clause 2 (Transfer).**

- (a) Each party undertakes to use its best endeavours to procure the written consent of the TOs to any amendments considered necessary to the ILUA as a consequence of the transfer of the Transferred Interests effected by this deed.
- (b) Where the parties agree that they are unable to procure the written consent of the TOs under clause 2.5(a), each party acknowledges and agrees that it will do all things and execute all deeds and instruments as may be necessary or desirable to give full effect to the provisions of this deed.
- (c) Subject to this deed, the ILUA continues in full force and effect.

---

## 3 Representations and warranties

### 3.1 General representations and warranties

**Further representations and warranties may be required if the parties amend the ILUA.**

The Substitute Party represents and warrants to each other party that:

- (a) **registration:** it is a corporation as that expression is defined in the Corporations Act 2001 having limited liability, registered (or taken to be registered) and validly existing under the Corporations Act 2001;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed and the ILUA;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors rights;
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed do not and will not violate:

- (1) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any Governmental Agency;
- (2) its constitution or other constituent documents; or
- (3) any encumbrance, undertaking or document which is binding on it or on any of its assets,

and do not and will not result in:

- (4) the creation or imposition of any encumbrance or restriction of any nature on any of its assets; or
  - (5) the acceleration of the date of payment of any obligation existing under any encumbrance, undertaking or document which is binding upon it or on any of its assets;
- (g) **no trusts:** it does not enter into this deed as trustee of any trust or settlement;
- (h) **Authorisations:** any authorisations, consents, permits, registrations, approvals or similar things required in connection with the execution, delivery and performance by it and the validity and the enforceability against it of this deed and its performance of the transactions contemplated by this deed have been obtained or effected and are in full force and effect and there has been no material default by it in the performance of any of the terms and conditions of any of them; and
- (i) **no immunity:** it does not, and its assets do not, enjoy immunity from any suit or execution.

### 3.2 Survival and repetition

The representations and warranties given in clause 3.1:

- (a) survive the execution of this deed and the occurrence of the Effective Date; and
- (b) are repeated on the Effective Date with respect to the facts and circumstances then subsisting.

### 3.3 Reliance

Argyle has entered into this deed in reliance on the representations and warranties in clause 3.1.

---

## 4 Costs and stamp duty

### 4.1 Costs

Subject to clause 4.2, each party must pay its own costs and expenses in relation to the negotiation, preparation, execution and delivery of this deed.

### 4.2 Stamp duty

The Substitute Party must pay all stamp duty assessed on this deed.



---

## 5 General

### 5.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this deed or the ILUA:
  - (1) sent to Argyle must be in the form required by clause 18.1 of the ILUA; and
  - (2) sent to the Substitute Party must be addressed as follows:
    - Address: [insert details]
    - Attention: [insert details]
    - Facsimile: [insert details]

### 5.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of Western Australia.
- (b) The parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia and all courts of appeal there from.

### 5.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### 5.4 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any Power, arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a Power arising from a breach of this deed; or
  - (2) a Power created or arising upon default under this deeddoes not result in a waiver of that Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a Power by that other party.
- (e) This clause may not itself be waived except by writing.

## 5.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

## 5.6 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this deed.

## 5.7 Continuing indemnities and survival of indemnities

(a) Each indemnity contained in this deed is a continuing obligation of the party giving that indemnity despite:

- (1) any settlement of account; or
- (2) the occurrence of any other thing,

and remains in full force and effect, until all money owing, contingently or otherwise, under any indemnity is paid in full.

(b) Each indemnity contained in this deed:

- (1) is an additional, separate and independent obligation of the party giving that indemnity and no one indemnity limits the generality of any other indemnity; and
- (2) survives the occurrence of the Effective Date and the termination of this deed.

## 5.8 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

## 5.9 GST

(a) In clause 5.9(b), any reference to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST. To the extent that any supply made under or in connection with this deed is a taxable supply, the recipient must pay, in addition to the consideration provided under this deed for that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

---

**Executed as a deed:**

**The common seal of  
Argyle Diamonds Limited  
(ABN 36 009 102 621)**

is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
Argyle Diamond Mines Pty Limited  
(ABN 52 008 912 418)**

is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
Substitute Party**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

---

## **Schedule 1 – Transferred Interest**

*[Refer to clause 13.1 of the ILUA and insert details of the Argyle Interest to be novated to the Substitute Party.]*

---

## Schedule 15 – Deed of Novation – TOs to TO PBC

*When Traditional Owners get full Native Title Rights, they will have to set up a corporation to look after these rights. This corporation is called a Prescribed Body Corporate in the Native Title Law. When the Prescribed Body Corporate is set up, it will have to follow the rules in this agreement too. This schedule shows the agreement between the Traditional Owners and the Prescribed Body Corporate to make sure it follows this ILUA.*

---

### This deed of novation

is made on

between the following parties:

- 1 **Argyle Diamonds Limited** ABN 36 009 102 621 and **Argyle Diamond Mines Pty Limited** ABN 52 008 912 418  
both of 2 Kings Park Road, West Perth, Western Australia  
(together **Argyle**)
- 2 **[TO Prescribed Body Corporate]**  
ABN [insert details]  
of [insert address]  
(**Substitute Party**)
- 3 **TOs as identified in Ethnography**  
c/- KLC  
(**TOs**)

#### Recitals

- A. Argyle and the TOs are parties to the ILUA.
- B. The parties have agreed to novate the ILUA on the terms of this deed.

#### The parties agree

in consideration of, among other things, the mutual promises contained in this deed:

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this deed (including the Recitals) words and phrases defined or referred to in the ILUA have the same meaning when used in this deed and, in addition, unless the subject matter or context otherwise requires:

**Effective Date** means [insert date];

**ILUA** means the Argyle Diamond Mine Participation Agreement – Indigenous Land Use Agreement dated [insert date];

**Power** means any right, power, authority, discretion or remedy conferred on a party under or by virtue of this deed or applicable law; and

**Reversion Date** means the date, as determined by Argyle acting reasonably and in good faith, the Substitute Party ceases to exist, operate or comply with its obligations under the ILUA.

## **1.2 Interpretation**

Clauses 20.4 and 20.5 of the ILUA apply in this deed.

---

## **2 Novation and Amendment**

### **2.1 Novation**

On and from the Effective Date, the parties novate the ILUA so that:

- (a) the Substitute Party replaces the TOs under the ILUA as if it was and had (subject to clause 2.2(b)) at all times been an original party to the ILUA; and
- (b) a reference in the ILUA to the TOs must be read as a reference to the Substitute Party.

### **2.2 Assumptions of rights and obligations**

- (a) On and from the Effective Date, the Substitute Party:
  - (1) must comply with the ILUA; and
  - (2) obtains the rights and assumes the obligations of the TOs under the ILUA.
- (b) The Substitute Party does not obtain any rights or assume any obligations of the TOs under the ILUA which accrued or arose before the Effective Date.
- (c) On and from the Effective Date, Argyle must comply with the ILUA on the basis that the Substitute Party has replaced the TOs under it in accordance with this deed.

### **2.3 Release by Argyle**

- (a) Argyle does not release the TOs from any of the TOs' obligations or any liability which arose under or in respect of the ILUA before the Effective Date.
- (b) The TOs remains liable for all of its obligations under the ILUA which arose before the Effective Date.
- (c) The Substitute Party does not accept liability for any obligations that arose and were due to be completed with under the ILUA before the Effective Date.

### **2.4 Indemnity and liability**

- (a) The TOs must indemnify Argyle on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Argyle pays, suffers, incurs or is liable for in respect of any act of or

omission by the TOs in respect of the ILUA, which occurred before the Effective Date.

- (b) The TOs must indemnify the Substitute Party on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Substitute Party pays, suffers, incurs or is liable for in respect of any act of or omission by the TOs in respect of the ILUA, which occurred before the Effective Date.
- (c) The Substitute Party must indemnify the TOs on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the TOs pay, suffer, incur or are liable for in respect of any act of or omission by the Substitute Party in respect of the ILUA, which occurs after the Effective Date.
- (d) The Substitute Party is not liable to Argyle in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Argyle pays, suffers, incurs or is liable for in respect the ILUA, which occurred, or which arises out of or is caused by any act or omission which occurred, before the Effective Date.
- (e) Without limiting the general nature of their respective terms, each indemnity in this clause 2.4 in favour of a party extends to all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis.

## 2.5 Amendment of ILUA

**Only include this clause 2.5 if the ILUA is to be amended agreement. If not change the heading to clause 2 (Novation).**

- (a) The Substitute Party and Argyle agree that on and from the Effective Date, the ILUA is amended **as set out in the schedule/as follows:**  
*[insert amendments]*.
- (b) Subject to this deed, the ILUA continues in full force and effect.

---

## 3 Reversion to TOs

### 3.1 Application

This clause 3 only applies if:

- (a) the ILUA has been novated by the TOs to the Substitute Party in accordance with clause 2; and
- (b) during the term of the ILUA, Argyle acting reasonably and in good faith forms the opinion that the Substitute Party:
  - (1) has ceased to exist;
  - (2) has ceased to operate; or
  - (3) has failed to comply with its obligations under the ILUA.

### **3.2 Novation back to TOs**

On and from the Reversion Date, the parties novate the ILUA so that:

- (a) the TOs replace the Substitute Party under the ILUA; and
- (b) a reference in the ILUA to the Substitute Party (if any) must be read as a reference to the TOs.

### **3.3 Assumptions of rights and obligations**

- (a) On and from the Reversion Date, the TOs:
  - (1) must comply with the ILUA;
  - (2) obtain the rights and assume the obligations of the Substitute Party under the ILUA;
  - (3) obtain all rights and assume all obligations of the Substitute Party under the ILUA which accrued or arose before the Reversion Date;
  - (4) will be deemed to have carried out any and all acts of and omissions of the Substitute Party in respect of the ILUA; and
  - (5) will be deemed to have received and accepted all rights, interests and benefits arising, accruing or granted to the Substitute Party in respect of the ILUA.
- (b) On and from the Reversion Date, Argyle must comply with the ILUA on the basis that the TOs have replaced the Substitute Party under it in accordance with this deed.

### **3.4 Release by Argyle**

- (a) Argyle does not release the TOs from any of the Substitute Party's obligations or any liability which arose under or in respect of the ILUA before the Reversion Date.
- (b) The TOs remain liable for all obligations under the ILUA including any obligations of the Substitute Party which arose before the Reversion Date.
- (c) The TOs accept liability for any obligations that arose under the ILUA before the Reversion Date.
- (d) The TOs acknowledge and agree that they will not, and will not be entitled to, bring any claim or action against Argyle for a failure by Argyle to perform any of its obligations under the ILUA where Argyle has discharged or performed such obligations for the benefit of the Substitute Party.

### **3.5 Indemnity and liability**

- (a) The TOs must indemnify Argyle on demand against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Argyle pays, suffers, incurs or is liable for in respect of any act of or omission by the Substitute Party in respect of the ILUA which occurred before the Reversion Date.
- (b) Without limiting the general nature of its respective terms, the indemnity in this clause 3.5 in favour of Argyle extends to all legal costs and



expenses incurred by Argyle on the higher of a solicitor and own client basis and a full indemnity basis.

### 3.6 Consequential amendments

- (a) Argyle and the TOs agree that on and from the Reversion Date, the:
  - (1) ILUA will be amended such that it reverts back to the form existing immediately prior to the Effective Date; and
  - (2) amendments made to the ILUA under clause 2.5 will no longer be of any force or effect.
- (b) Subject to this deed, the ILUA Continues in full force and effect.

---

## 4 Representations and warranties

### 4.1 General representations and warranties

**Further representations and warranties may be required if the parties amend the ILUA.**

The Substitute Party represents and warrants to each other party that:

- (a) **registration:** it is a corporation as that expression is defined in the Corporations Act 2001 having limited liability, registered (or taken to be registered) and validly existing under the Corporations Act 2001;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed and the ILUA;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors rights;
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed do not and will not violate:
  - (1) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any Governmental Agency;
  - (2) its constitution or other constituent documents; or
  - (3) any encumbrance, undertaking or document which is binding on it or on any of its assets,and do not and will not result in:
  - (4) the creation or imposition of any encumbrance or restriction of any nature on any of its assets; or

- (5) the acceleration of the date of payment of any obligation existing under any encumbrance, undertaking or document which is binding upon it or on any of its assets;
- (g) **no trusts:** it does not enter into this deed as trustee of any trust or settlement;
- (h) **Authorisations:** any authorisations, consents, permits, registrations, approvals or similar things required in connection with the execution, delivery and performance by it and the validity and the enforceability against it of this deed and its performance of the transactions contemplated by this deed have been obtained or effected and are in full force and effect and there has been no material default by it in the performance of any of the terms and conditions of any of them; and
- (i) **no immunity:** it does not, and its assets do not, enjoy immunity from any suit or execution.

#### 4.2 Argyle's representations and warranties

Argyle represents and warrants to the Substitute Party that:

- (a) **disclosures:** all information provided to the Substitute Party by or on behalf of Argyle before the date of this deed, and between the date of this deed and the Effective Date, is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading;
- (b) **no failure to disclose:** it has not withheld from the Substitute Party any information material to the decision of the Substitute Party to enter into this deed;
- (c) **default:**
  - (1) neither the TOs nor Argyle is in breach of or default under any provision of the ILUA;
  - (2) no event of default (however described) nor other event or circumstance has occurred which, with giving of notice, lapse of time, satisfaction of some other condition, or any combination of the above, causes or enables:
    - (A) the acceleration of any payment to be made under the ILUA; or
    - (B) the enforcement, termination or rescission of the ILUA.

#### 4.3 Survival and repetition

The representations and warranties given in clauses 4.1 and 4.2:

- (a) survive the execution of this deed and the occurrence of the Effective Date;
- (b) are repeated on the Effective Date with respect to the facts and circumstances then subsisting; and
- (c) are repeated on the Reversion Date with respect to the facts and circumstances then subsisting.

#### **4.4 Reliance**

Each of the parties have entered into this deed in reliance on the representations and warranties in clauses 4.1 and 4.2.

---

### **5 Costs and stamp duty**

#### **5.1 Costs**

Subject to clause 5.2, each party must pay its own costs and expenses in relation to the negotiation, preparation, execution and delivery of this deed.

#### **5.2 Stamp duty**

The Substitute Party must pay all stamp duty assessed on this deed.

---

### **6 General**

#### **6.1 Notices**

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this deed or the ILUA:
- (1) sent to the TOs or Argyle must be in the form required by clause 18.1 of the ILUA; and
  - (2) sent to the Substitute Party must be addressed as follows:  
Address: [insert details]  
Attention: [insert details]  
Facsimile: [insert details]

#### **6.2 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Western Australia.
- (b) The parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia and all courts of appeal there from.

#### **6.3 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this deed or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

#### **6.4 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power, arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a Power arising from a breach of this deed; or
  - (2) a Power created or arising upon default under this deeddoes not result in a waiver of that Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a Power by that other party.
- (e) This clause may not itself be waived except by writing.

#### **6.5 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

#### **6.6 Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to this deed.

#### **6.7 Continuing indemnities and survival of indemnities**

- (a) Each indemnity contained in this deed is a continuing obligation of the party giving that indemnity despite:
  - (1) any settlement of account; or
  - (2) the occurrence of any other thing,and remains in full force and effect, until all money owing, contingently or otherwise, under any indemnity is paid in full.
- (b) Each indemnity contained in this deed:
  - (1) is an additional, separate and independent obligation of the party giving that indemnity and no one indemnity limits the generality of any other indemnity; and
  - (2) survives the occurrence of the Effective Date and the termination of this deed.

#### **6.8 Counterparts**

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

## 6.9 GST

- (a) In clause 6.9(b), any reference to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST. To the extent that any supply made under or in connection with this deed is a taxable supply, the recipient must pay, in addition to the consideration provided under this deed for that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

---

**Executed as a deed:**

**The common seal of  
Argyle Diamonds Limited  
(ABN 36 009 102 621)**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
Argyle Diamond Mines Pty Limited  
(ABN 52 008 912 418)**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**The common seal of  
Substitute Party**  
is fixed to this document  
in the presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

**Signed sealed and delivered by  
[insert name of each TO]**  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

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## Schedule – Amendments to ILUA





## Schedule 16– Costs of the Special Purposes Trust and the Charitable Trust and the Executive Officer

*Under this agreement, Argyle will put some money in to set up the two Trusts and to help run these Trusts in the first few years, after the agreement is signed. Argyle will also put in some money to help pay for the Executive Officer. This schedule says how much money Argyle will put in. In 2008, Argyle will stop putting this money in.*

<b>Trusts &amp; TO Exec Officer</b>			
	<b>Total Cost</b>	<b>ADM Share</b>	<b>TO Share</b>
2004	\$196,066.92	\$196,066.92	\$0.00
2005	\$316,396.92	\$268,937.38	\$47,459.54
2006	\$325,572.43	\$227,900.70	\$97,671.73
2007	\$335,014.03	\$184,257.72	\$150,756.31
2008	\$344,729.44	\$137,891.78	\$206,837.66

Note: The above costs are based on the assumptions set out in the table below.

Trusts and TO Executive Officer Costs

	Rate per year	Daily Rate	Set-Up Costs 2004		Recurrent Costs per annum	
			Days	Cost	Days	Costs
<b>Charitable and Non-Charitable Trusts</b>						
Executive Officer	\$120,000.00	\$461.54	40		40	\$18,461.54
Field Officer	\$70,000.00	\$269.23	32		32	\$8,615.38
Admin Officer	\$80,000.00	\$230.77	32		32	\$7,394.62
Food and Accommodation		\$150.00	16		16	\$2,400.00
Motor Vehicle		\$70.00	48		48	\$7,380.00
Legal Advice		\$1,400.00	8		8	\$8,400.00
Accounting Services						\$10,000.00
Honorarium	\$120,000					\$120,000.00
Additional travel costs						\$4,000.00
<b>TOTAL</b>				<b>\$0.00</b>		<b>\$198,622.54</b>
<b>2004 Operating Costs (50% of Recurrent Costs)</b>						
Executive Officer	\$120,000.00	\$461.54	84		84	\$38,769.23
Field Officer	\$70,000.00	\$269.23	64		64	\$22,615.38
Admin Officer	\$80,000.00	\$230.77	21		21	\$4,846.15
Food and Accommodation		\$400.00	21		21	\$8,400.00
Motor Vehicle		\$70.00	56		56	\$3,920.00
Accounting Services						\$6,000.00
Other Independent Advice						\$6,000.00
<b>TOTAL</b>				<b>\$0.00</b>		<b>\$115,000.00</b>
<b>2004 Operating Costs (50% of Recurrent Costs)</b>						
Executive Officer	\$120,000.00	\$461.54	10		10	\$4,615.38
Field Officer	\$70,000.00	\$269.23	10		10	\$2,692.31
Admin Officer	\$80,000.00	\$230.77	3		3	\$692.31
Independent Advice (inc Travel)						\$7,000.00
M/O Partnership Fund ceases from 2009						
<b>TOTAL</b>				<b>\$0.00</b>		<b>\$15,000.00</b>
<b>2004 Operating Costs (50% of Recurrent Costs)</b>						
Executive Officer	\$120,000.00	\$461.54	20		20	\$9,230.77
Field Officer	\$70,000.00	\$269.23	18		18	\$4,846.15
Admin Officer	\$80,000.00	\$230.77	14		14	\$3,230.77
Office Fit Out				\$12,000.00		
Accountancy Fees				\$8,000.00		
<b>TOTAL</b>				<b>\$20,000.00</b>		<b>\$37,400.00</b>
<b>2004 Operating Costs (50% of Recurrent Costs)</b>						
Executive Officer	\$120,000.00	\$461.54	25	\$11,538.48		
Field Officer	\$70,000.00	\$269.23	25	\$6,730.77		
Admin Officer	\$80,000.00	\$230.77	10	\$2,307.89		
Motor Vehicle		\$70.00	25	\$1,750.00		
<b>TOTAL</b>				<b>\$22,326.14</b>		<b>\$9,000.00</b>
<b>2004 Operating Costs (50% of Recurrent Costs)</b>						
<b>Grand Total</b>				<b>\$198,622.52</b>		<b>\$307,480.00</b>

**ASSUMPTIONS**

No. of working days / year	260
All salaries include 20% on costs	
<b>Charitable and Non-Charitable Trusts</b>	
No. of meetings / year	4
Exec. Officer - Days / meeting	10
Field Officer - Days / meeting	8
Admin Officer - Days / meeting	3
Motor Vehicle, Staff - Days / meeting	8
Motor Vehicle, Ind Trustees - Days / mtg	1
Motor Vehicle, TO Trustees	\$4,000
Independent Trustees	2
TO Trustees	6
Days per meeting	2
Honorarium per trustee	\$15,000
Travel days per trustee	2
Additional travel / mtg	\$1,000
<b>M/O Partnership Fund</b>	
Exec. Officer - Days / meeting	10
Field Officer - Days / meeting	10
Admin Officer - Days / meeting	3

**NOTE:**  
 04 ADM pays 100%      TOs pay 15%  
 05 ADM pays 85%      TOs pay 15%  
 06 ADM pays 70%      TOs pay 30%  
 07 ADM pays 55%      TOs pay 45%  
 08 ADM pays 40%      TOs pay 60%  
 09 on                      TOs pay 100%

102.50% Used for calculating MG fund in 2009

**NB: All costs are EXCLUSIVE of GST**

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## Schedule 17 – Supplier Statement

*When Argyle pays Traditional owners for different things, it has to take out tax from this money, to give to the government. This whitefellas tax law says that Argyle has to take out nearly half of the money from this pay unless Traditional Owners make a promise. They have to promise Argyle that they are not running a business to get this money. This schedule shows the kind of promise that Traditional Owners have to make to Argyle so no money gets taken out of their pay for tax.*



# Statement by a supplier

## Reason for not quoting an Australian business number (ABN) to an enterprise

Name of supplier

Address of supplier

Under the pay as you go legislation and guidelines produced by the Tax Office I provide you with a written statement that explains why I have not quoted an ABN for the current and future supply of goods and services to you.

Tick the appropriate box

The supply is made to you in my capacity as an individual, and the supply is made in the course of an activity that is a **private recreational pursuit or hobby**

The supply is made to you in my capacity as an individual, and the supply is wholly of a **private or domestic nature for me**

I (or the supplier that I represent) am/is a **non-resident who is not carrying on an enterprise in Australia**

The whole of the payment that I (or the supplier that I represent) will receive for the supply is **exempt from income tax**

I (or the partnership that I represent) have **no reasonable expectation of profit or gain** from the activity undertaken and consider that I (or the partnership that I represent) do not meet the definition of enterprise for tax purposes

For this reason I am not quoting you an ABN. You should not withhold an amount from the payment you make to me for the supply. I agree to advise you in writing if circumstances change to the extent that this statement becomes invalid.

Name of authorised person (if not the supplier)

Signature of supplier or authorised person  Date

Daytime contact phone number

**It is an offence to make a false or misleading statement**

**The person or entity to whom this statement is made should retain the statement for 5 years**

NAT3346-2/2004

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**Schedule 18 – CD Rom containing maps**



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## Schedule 19 – Trust Payments

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### 1 First Payment Period

- (a) On the Full Year Payment Date relating to the First Payment Period, Argyle must pay:
- (1) the First CT Payment to the Charitable Trust; and
  - (2) the First SPT Payment to the Special Purposes Trust.

- (b) The First CT Payment will be calculated in accordance with the following formula:

$$\text{First CT Payment} = \left[ \left( \text{FullYearEHTDA} - \text{HalfYearEHTDA} \right) \times \text{AEP} \right] - \left( \text{TO Payments} + \text{Admin Payments} \right) \times 0.7$$

- (c) The First SPT Payment will be calculated in accordance with the following formula:

$$\text{First SPT Payment} = \left[ \left( \text{FullYearEHTDA} - \text{HalfYearEHTDA} \right) \times \text{AEP} \right] - \left( \text{TO Payments} + \text{Admin Payments} \right) \times 0.3$$

---

### 2 Second and Third Payment Periods

In each calendar year during the Second Payment Period and the Third Payment Period Argyle must:

- (a) on each Half Year Payment Date, pay:
- (1) the Half Year CT Payment to the Charitable Trust; and
  - (2) the Half Year SPT Payment to the Special Purposes Trust.
- (b) on each Full Year Payment Date, pay:
- (1) the Full Year CT Payment to the Charitable Trust; and
  - (2) the Full Year SPT Payment to the Special Purposes Trust.

---

### 3 Calculation of Payments in the Second and Third Payment Periods

#### 3.1 Half Year Total Payment

Each Half Year Total Payment will be calculated in accordance with the following formula:

$$\text{Half Year Total Payment} = \left( \text{HalfYearEBITDA} \right) \times \text{AEP} - \left[ 0.5 \times \left( \text{TO Payments} + \text{Admin Payments} \right) \right]$$

### **3.2 Full Year Total Payment**

Each Full Year Total Payment will be calculated in accordance with the following formula:

$$\text{Full Year Total Payment} = ((\text{Full Year EBITDA} - \text{Half Year EBITDA}) \times \text{AEP}) - [0.5 \times (\text{TOPayments} + \text{Admin Payments})]$$

---

## **4 Allocation of Payments in the Second and Third Payment Periods**

### **4.1 Half Year CT Payments**

Each Half Year CT Payment in the:

- (a) Second Payment Period will be seventy per cent (70%) of the relevant Half Year Total Payment;
- (b) Third Payment Period will be fifty per cent (50%) of the relevant Half Year Total Payment.

### **4.2 Half Year SPT Payments**

Each Half Year SPT Payment in the:

- (a) Second Payment Period will be thirty per cent (30%) of the relevant Half Year Total Payment;
- (b) Third Payment Period will be fifty per cent (50%) of the relevant Half Year Total Payment.

### **4.3 Full Year CT Payments**

Each Full Year CT Payment in the:

- (a) Second Payment Period will be seventy per cent (70%) of the relevant Full Year Total Payment;
- (b) Third Payment Period will be fifty per cent (50%) of the relevant Full Year Total Payment.

### **4.4 Full Year SPT Payments**

Each Full Year SPT Payment in the:

- (a) Second Payment Period will be thirty per cent (30%) of the relevant Full Year Total Payment less, subject to clause 8(b), the SPT Loan Balance;
- (b) Third Payment Period will be fifty per cent (50%) of the relevant Full Year Total Payment less, subject to clause 8(b), the SPT Loan Balance.

---

## **5 Top Up Payment**

Except in the First Payment Period, on the Full Year Payment Date, Argyle will pay to the SPT Trust the amount (if any) by which the sum of the Half Year SPT Payment and the Full Year SPT Payment is less than the Base Amount.



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## **6 Limitations**

- (a) Argyle's obligations to make Top Up Payments will:
  - (1) cease when the total of all Top Up Payments first exceeds \$1,500,000; and
  - (2) subject to (b), cease on the date Argyle gives notice to the TOs that Cessation of Production Operations will occur in 2 years time.
- (b) In the event that Argyle gives the notice under Clause 6(a)(2) and Cessation of Production Operations has not occurred within 2 years of that notice, Argyle's obligations to make Top Up Payments will resume, and subject to clause 6(a)(1) will continue until the Cessation of Production Operations.

---

## **7 Making Payments**

- (a) Payments to the Charitable Trust will be made to an account nominated from time to time to Argyle in writing by the trustee of the Charitable Trust.
- (b) Payments to the Special Purpose Trust will be made to an account nominated from time to time to Argyle in writing by the trustee of the Special Purpose Trust.
- (c) Any amount deposited in accordance with this clause 7 is deemed to have been received by the Charitable Trust or the Special Purposes Trust, as the case may be.

---

## **8 SPT Loans**

- (a) Where, in any Payment Period, Argyle is obliged to make a Top Up Payment, the amount of such Top Up Payment is deemed to be an advance by way of interest free loan by Argyle to the Special Purposes Trust (each a "SPT Loan").
- (b) Each SPT Loan is repayable by the Special Purposes Trust only from amounts by which future SPT Payments exceed the Base Amount.
- (c) Subject to clause 8(b) above, the TOs as the beneficiaries of the Charitable Trust and the Special Purposes Trust irrevocably authorise Argyle to deduct loan repayment amounts from future SPT Payments, provided that no deduction may result in the sum of the SPT Payments in any calendar year being reduced to an amount less than the Base Amount.

---

## **9 EBITDA**

- (a) If Rio Tinto plc ceases to publish EBITDA as contemplated in this agreement, Argyle must procure that EBITDA is calculated and certified by a Chartered Accountant appointed by the mutual agreement of Argyle and the TOs.

- (b) If Argyle and the TOs fail to agree on an appointment under clause 9(a), then the parties must request the President of the Institute of Chartered Accountants Australia to appoint a Chartered Accountant for the purposes of this clause.

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## 10 Definitions

**Admin Payments** means an amount equal to the relevant annual sum described in Schedule 16 as the "TO Share" of the establishment and implementation costs of the Charitable Trust and the Special Purposes Trust and the engagement of the Executive Officer during the relevant calendar year;

**AEP** means the Agreed EBITDA Percentage, which is set out in clause 3 of Schedule 20;

**Amortisation** in the definition of EBITDA has the meaning defined by International Accounting Standards;

**Base amount** means the sum of \$500,000 indexed annually for CPI from 1 January 2005;

**Cessation of Production Operations** means the point in time when the mining and processing of ore within the Agreement Area has permanently ceased and Argyle notifies the TOs in writing of that fact;

**Depreciation** in the definition of EBITDA has the meaning defined by International Accounting Standards;

**EBITDA** means the Net Earnings of Argyle Diamonds Limited before Interest, Tax Expense, Depreciation and Amortisation as defined by International Accounting Standards;

**First CT Payment** is defined in clause 1(b) of this schedule;

**First SPT Payment** is defined in clause 1(c) of this schedule;

**First Payment Period** means the period commencing on 1 July 2004 and ending on 31 December 2004;

**Full Year CT Payment** is defined in clause 4.3 of this schedule;

**Full Year EBITDA** means EBITDA for Argyle Diamonds Limited as stated in the relevant full year financial statements published by Rio Tinto plc;

**Full Year SPT Payment** is defined in clause 4.4 of this schedule;

**Full Year Payment Date** means the date 14 days after Rio Tinto plc publishes its full year financial statements relating to the relevant Payment Period;

**Full Year Total Payment** is defined in clause 3.2 of this schedule;

**Half Year CT Payment** is defined in clause 4.1 of this schedule;

**Half Year EBITDA** means EBITDA for Argyle Diamonds Limited as stated in the relevant half year financial statements published by Rio Tinto plc;

**Half Year Payment Date** means the date 14 days after Rio Tinto plc publishes its half year financial statements relating to the relevant Payment Period;

**Half Year SPT Payment** is defined in clause 4.2 of this schedule;

**Half Year Total Payment** is defined in clause 3.1 of this schedule;

**Interest** in the definition of EBITDA has the meaning defined in the International Accounting Standards;

**International Accounting Standards** means those standards published by the International Accounting Standards Board, or such entity which replaces the International Accounting Standards Board, in their form from time to time. The International Accounting Standards are published at [www.iasb.org.uk](http://www.iasb.org.uk);

**Net Earnings** in the definition of EBITDA has the meaning defined by International Accounting Standards;

**Payment** means a Half Year CT Payment, a Half Year SPT Payment, a Full Year CT Payment or a Full Year SPT Payment as the context requires;

**Payment Period** means:

- (a) in the calendar year 2004, the First Payment Period; and
- (b) in each subsequent year:
  - (1) in the case of a Half Year CT Payment or a Half Year SPT Payment, the period commencing on 1 January and ending on 30 June; and
  - (2) in the case of a Full Year CT Payment or a Full Year SPT Payment, the period commencing on 1 July and ending on 31 December;

**Rio Tinto plc** means Rio Tinto plc or the ultimate holding company of Argyle Diamonds Limited from time to time;

**Second Payment Period** means the period commencing 1 January 2005 and ending on 31 December 2008;

**SPT Loan** is defined in clause 8(a) of this schedule;

**SPT Loan Balance** means the total from time to time of all outstanding SPT Loans;

**Tax Expense** in the definition of EBITDA has the meaning defined by International Accounting Standards;

**Third Payment Period** means the period commencing 1 January 2009 and ending on the date being 6 months after the Cessation of Production Operations;

**TO Payments** means an amount equal to the total payments that Argyle is liable to make during the relevant calendar year to the Recipients under clauses 6.1 – 6.8 of this agreement less the sum of \$25,000 for each of the Recipients identified in clause 6.1(a) and clause 6.1(e) of this agreement who is alive on the first Business Day of the relevant calendar year;

**Top Up Payment** means a payment under clause 5 of this schedule.

---

## 11 Assumptions

- (a) EBITDA is reported by Rio Tinto plc in US dollars.
- (b) All payments referred to in this schedule will be made in Australian dollars.

- (c) For the purposes of this schedule, the reported EBITDA will be converted to Australian dollars using the average \$US:\$A exchange rate for the relevant reporting period, as reported and published by Rio Tinto plc in conjunction with EBITDA.

---

## **12 Trust Payment Examples**

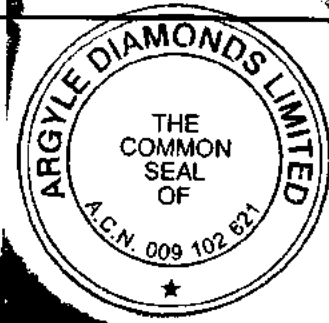
Clause 4 of Schedule 20 contains trust payments examples, which illustrate the application of the principles set out in this schedule.

**Executed as an agreement:**

The common seal of  
**Argyle Diamonds Limited**  
**ABN 36 009 102 621**  
is fixed to this document  
in the presence of:

Secretary

Mark Sokolich



Director

Brendan Hammond

The common seal of  
**Argyle Diamond Mines Pty Limited**  
**ABN 52 008 912 418**  
is fixed to this document  
in the presence of:

Secretary

Mark Sokolich



Director

Brendan Hammond

**Mandangal/Tiltuwam dawang (dawaam) comprised of the Toby, Dixon, Hall and Curtin families**

**Signed by**  
**Evelyn Hall**  
in the presence of:

*Evelyn Hall*

Witness

The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)

Signed by  
**Patsy Hall**  
in the presence of:

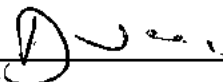
Patsy Hall

  
The Hon. Fred Chaney AO  
Witness Deputy President  
National Native Title Tribunal

Name (please print)

George Dixon

Signed by  
**George Dixon**  
in the presence of:

  
Witness  
**Michael Neal**

Name (please print)

\_\_\_\_\_

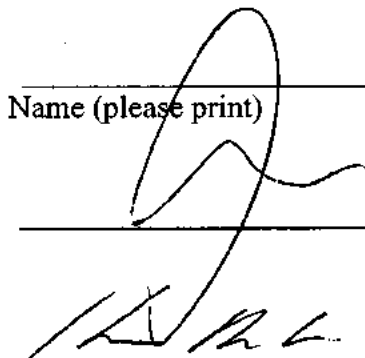
Signed by  
**John Toby**  
in the presence of:

Witness

Name (please print)

\_\_\_\_\_

Signed by TEO HALL  
in the presence of:

  
Witness

Mr Kevin E. A. Barber  
Name (please print)

D

Signed by

JAMES DIXON  
in the presence of:

James Dixon

Witness D Neal  
Michael Neal

Name (please print)

Signed by

DONALD CURTIN  
in the presence of:

Don Curtin

Witness L L L

Mr Kim E. Barber  
Name (please print)

Signed by

Garban Hall  
in the presence of:

Garban Hall

Witness Fred Chaney  
The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal  
Name (please print)

Signed by Aaron Hall

Aaron Hall  
in the presence of:

Aaron Hall

Witness Fred Chaney  
The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal  
Name (please print)

DN





Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

**Mandangala/Tiltuwam dawang (dawaam) comprised of the Thomas and Barrett families**

Signed by  
**Goody Barrett**  
in the presence of:

GOODY

Marcia Lydon  
MARCIA LANGLON

Kim Dooher  
Witness

Kim Dooher  
Name (please print)

Signed by  
**Chocolate Thomas**  
in the presence of:

CHOCOLATE THOMAS

D - Neal  
Witness  
Michael Neal

\_\_\_\_\_  
Name (please print)

Signed by  
**Lena Nyadbi**  
in the presence of:

LENA

Kim Dooher  
Witness

Kim Dooher  
Name (please print)

D.V.



Signed by

Myrelle Bedford  
in the presence of:

Myrelle Bedford

[Signature]  
Witness

Kim Doohan  
Name (please print)

Signed by

LARISSA CLIFTON  
in the presence of:

Larissa Clifton

[Signature]  
Witness

MARCIA LANGTON  
Name (please print)

Signed by

Michael Joseph Smith  
in the presence of:

[Signature]

[Signature]  
Witness  
**Michael Neal**

\_\_\_\_\_  
Name (please print)

Signed by

SHIRLEY PURDIE  
in the presence of:

SHIRLEY PURDIE

[Signature]  
Witness  
**Michael Neal**

\_\_\_\_\_  
Name (please print)

[Signature]

Signed by

Helen Pinday  
in the presence of:

Helen Pinday

Kim Dooker  
Witness

Kim Dooker  
Name (please print)

Signed by

Ethel McLennan  
in the presence of:

Ethel McLennan

Marcia Lythe  
Witness

MARCIA LANGTON  
Name (please print)

Signed by

ALLISON GARLETT  
in the presence of:

All garlett

Michael Neal  
Witness  
**Michael Neal**

Name (please print)

Signed by

Max Thomas  
in the presence of:

Kim Dooker

Kim Dooker  
Witness

Kim Dooker  
Name (please print)

D

Signed by

FABIAN W. GARLETT  
in the presence of:

Fabian W. Garlett

D Neal  
Witness **Michael Neal**

\_\_\_\_\_  
Name (please print)

**Yunurr/Yulangga dawang (dawaam)**

Signed by  
**Churchill Cann**  
in the presence of:

Churchill Cann

D Neal  
Witness **Michael Neal**

\_\_\_\_\_  
Name (please print)

Signed by  
**Nancy Nodea**  
in the presence of:

Nancy Nodea

K Doohan  
Witness

Kim Doohan  
Name (please print)

Signed by  
**Maggie John**  
in the presence of:

MAGGIE

D Neal  
Witness **Michael Neal**

\_\_\_\_\_  
Name (please print)

*DL*

Signed by PATRICK MUNG MUNG

\_\_\_\_\_ in the presence of:

PATRICK

Witness

The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Signed by ANTHONY YALUNGA

\_\_\_\_\_ in the presence of:

Anthony Yalunga

Witness

The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal  
Name (please print)

Signed by DOUGIE MACALE

\_\_\_\_\_ in the presence of:

DOUGIE MACALE

The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)

Signed by

Joseph Yalunga

\_\_\_\_\_ in the presence of:

Joseph Yalunga

D. Neal

Witness

Michael Neal

\_\_\_\_\_ Name (please print)

D

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

*DN.*





Signed by  
**Ronnie Ramsey**  
in the presence of:

Ronnie Ramsey  
Witness [Signature] Witness

Signed by  
**Fred Timms**  
in the presence of:

Name (please print) F. TIMMS  
The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

[Signature]  
Witness **Michael Neal**

Signed by  
**Clancy Patrick**  
in the presence of:

Name (please print) CLANCY PATRICK

[Signature]  
Witness **Michael Neal**

Signed by

\_\_\_\_\_ in the presence of:

Name (please print) \_\_\_\_\_

Witness \_\_\_\_\_

Name (please print) \_\_\_\_\_

[Signature]

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

Signed by

in the presence of:

Witness

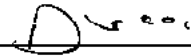
Name (please print)

Balaburr dawang (dawaam)

Signed by  
Nancy Dilyai  
in the presence of:

NANCY DILYAI

Witness



Michael Neal

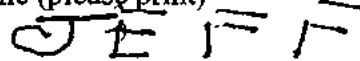
Name (please print)

Signed by  
Phyllis Ningamarra  
in the presence of:

PHYLLIS

Witness

Name (please print)



Signed by  
Jeff Janama  
in the presence of:

Witness

The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)



Signed by ANNETTE CHUNAMA

*Anette Chunama*

\_\_\_\_\_ in the presence of:

*[Signature]*

Witness Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

\_\_\_\_\_  
Name (please print)

Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

*[Handwritten mark]*

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
in the presence of:

\_\_\_\_\_   
Witness

\_\_\_\_\_   
Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

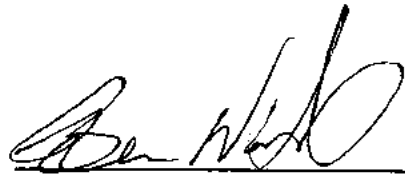
\_\_\_\_\_   
 Name (please print)

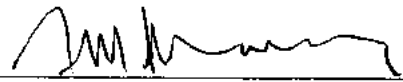
**Bilbiidjing dawang (dawaam)**

**Signed by**

**Ben Ward**

in the presence of:

 \_\_\_\_\_

 \_\_\_\_\_

Witness The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

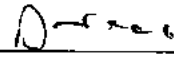
\_\_\_\_\_   
 Name (please print)

 \_\_\_\_\_

**Signed by**

**Ruth Ward**

in the presence of:

 \_\_\_\_\_   
 Witness

**Michael Neal**

\_\_\_\_\_   
 Name (please print)



Signed by  
Marjorie Brown  
in the presence of:

Marjorie Brown

D Neal  
Witness Michael Neal

Name (please print)

Signed by

PETER BROWN  
in the presence of:

Peter Brown

D Neal  
Witness Michael Neal

Name (please print)

Signed by

BEN WARD (JNR)  
in the presence of:

Ben Ward

[Signature]  
Witness The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)

Signed by DAVID WARD

in the presence of:

David Ward

[Signature]  
Witness The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)



**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

①

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Signed by**

\_\_\_\_\_   
 in the presence of:

\_\_\_\_\_   
 Witness

\_\_\_\_\_   
 Name (please print)

**Dundun dawang (dawaam)**

**Signed by**  
**Una Morgan**  
in the presence of:

*Una Morgan*  
\_\_\_\_\_

\_\_\_\_\_   
 Witness

*D Neal*  
\_\_\_\_\_

**Michael Neal**

\_\_\_\_\_   
 Name (please print)

Signed by  
**Frank Sampi**  
in the presence of:

Frank Sampi

[Signature]

Witness  
The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)

Signed by  
**Morton Moore**  
in the presence of:

MORTON MOORE

[Signature]

Witness

Kim E. A. Barber

Name (please print)

Signed by  
**Tiger Moore**  
in the presence of:

TIGER MOORE

[Signature]

Witness

Michael Neal

Name (please print)

Signed by  
**Charlie Martin**  
in the presence of:

C Martin

[Signature]

Witness  
The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal

Name (please print)

D

Signed by

Colin Morgan  
in the presence of:

Colin Morgan  
Witness D Neal  
Michael Neal

Name (please print)

Signed by

Karen Morgan  
in the presence of:

Karen Morgan  
Witness D Neal  
Michael Neal

Name (please print)

Signed by

Colleen Morgan  
in the presence of:

Colleen Morgan  
Witness D Neal  
Michael Neal

Name (please print)

Signed by

Ronald Morgan  
in the presence of:

Ronald Morgan  
Witness D Neal  
Michael Neal

Name (please print)

Signed by

*Peter Grandy*

\_\_\_\_\_ in the presence of:

*Peter Grandy*

*[Signature]*

Witness **The Hon. Fred Chaney AO  
Deputy President  
National Native Title Tribunal**

\_\_\_\_\_  
Name (please print)

Signed by

*Tommy Carroll*

\_\_\_\_\_ in the presence of:

**TOMMY CARROLL**

Witness

*[Signature]*

**Michael Neal**

\_\_\_\_\_  
Name (please print)

Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

Signed by

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

*[Handwritten mark]*

**Signed by**

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

**Signed by**

\_\_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name (please print)

**The common seal of  
Kimberley Land Council Aboriginal Corporation**  
is fixed to this document  
in the presence of:



*Tom Birch*

\_\_\_\_\_  
Chairman

Tom Birch

*Wayne Bergmann*  
\_\_\_\_\_  
Chief Executive Officer

Wayne Bergmann