

Queensland



# **CENTURY ZINC PROJECT ACT 1997**

**Act No. 49 of 1997**



# Queensland



## CENTURY ZINC PROJECT ACT 1997

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Queensland



## **Century Zinc Project Act 1997**

### **Act No. 49 of 1997**

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**An Act to facilitate certain aspects of an agreement about the establishment of a mine and other facilities on certain land in north-west Queensland**

*[Assented to 8 September 1997]*

**Parliament's reasons for enacting this Act are—**

1. Century Zinc Limited is developing a project involving preparing for and operating a base metal mine to recover zinc, lead and silver from a deposit at Lawn Hill, processing and concentrating the ore, transporting the concentrate slurry by pipeline to Karumba on the Gulf of Carpentaria, dewatering the ore, barging and shipping it for export and other related activities.

2. After negotiations under the right to negotiate provisions of the *Native Title Act 1993* (Cwlth), the parties to the negotiations have made the agreement allowing certain acts do be done.

3. The project will better provide infrastructure and services for people and businesses in the area known as the Carpentaria–Mount Isa mineral province.

4. The project will provide employment for Queenslanders and in particular the people of the mineral province.

5. The project will improve the economy of Queensland and Australia.

6. The project will result in social and other benefits for all people of the mineral province.

7. It is important that any native title should not be extinguished by the grant of a right to mine or acquisition of land or interests in land affected by the project and it is not intended to prevent native title claims being pursued.

8. It is in the national and State interest that the project start without delay.

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Century Zinc Project Act 1997*.

### **Commencement**

- 2.(1) This Act commences on a day to be fixed by proclamation.
- (2) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

### **Purpose of Act**

3. The purpose of this Act is to facilitate certain aspects of the agreement made under the right to negotiate provisions of the *Native Title Act 1993* (Cwlth) relating to—
  - (a) the proposed development by Century Zinc Limited of a mine for mining zinc, lead and other minerals; and
  - (b) the establishment of a corridor for use for miscellaneous transport infrastructure, including for the construction, operation and maintenance of a slurry pipeline from the mine site to the port of Karumba; and
  - (c) the establishment by Century Zinc Limited of facilities at the port of Karumba for processing (including dewatering), storage and transport of mineral concentrates; and
  - (d) the construction of associated works for the purposes mentioned in paragraphs (a), (b) and (c); and
  - (e) development proposed to be undertaken on land held by the Bidunggu Aboriginal Land Trust.

**Dictionary**

4. The dictionary in schedule 6 defines terms used in this Act.

**PART 2—TAKING OF NATIVE TITLE AND  
EASEMENT****Taking**

5.(1) Native title in land described in schedule 1, part 1, items 1 to 6 is taken.

(2) Native title in land described in schedule 1, part 1, item 7 may be taken by proclamation.

(3) Also, the following interests in land described in schedule 1, part 2 may be taken by proclamation—

- (a) native title;
- (b) an easement.

(4) A proclamation under subsection (3) must state the rights and obligations to be conferred or imposed by the easement.

(5) A proclamation under subsection (2) or (3) is not subordinate legislation.

(6) Interests in land taken under this section vest in the State.

(7) This section has effect despite any other Act.

(8) This section applies subject to section 18.

**Acquisition of Land Act 1967**

6.(1) The *Acquisition of Land Act 1967* applies to a resumption under section 5 with any necessary changes, including those mentioned in this section.

(2) The provisions of the *Acquisition of Land Act 1967* stated in schedule 2 do not apply to the resumption under section 5.



(3) A person whose interest in land is taken has the right to claim compensation under the *Acquisition of Land Act 1967*, section 12(5A) and (5B) and part 4.<sup>1</sup>

(4) Subsection (3) applies subject to the agreement and the *Native Title (Queensland) Act 1993*.

(5) A reference in a provision of the *Acquisition of Land Act 1967* that applies to a resumption under section 5, to a proclamation that takes land, is taken to be a reference to section 5 or a proclamation under section 5.

### **Application of Acquisition of Land Act 1967**

7. In applying the *Acquisition of Land Act 1967*, part 4 under sections 5 and 6—

- (a) the State is the constructing authority; and
- (b) a reference in the part to an owner of land includes a lessee of a lease affected by a resumption under section 5; and
- (c) the compensation claimant refers the claim for compensation to the Land Court by filing in the office of the registrar of the court—
  - (i) copies of the claim given by the claimant to the State; and
  - (ii) a statement identifying the provisions of this Act or any instrument under this Act that effected the taking.

## **PART 3—TITLES**

### **Purpose of ss 9–10**

8.(1) The main purpose of sections 9 and 10 is to remove any doubt about the validity of the leases mentioned in the sections because of the native title Acts and in the light of certain decisions of the High Court of

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<sup>1</sup> Part 4 (Compensation)

Australia.<sup>2</sup>

(2) In this section—

“**native title Acts**” means—

- the *Native Title Act 1993* (Cwlth); and
- the *Native Title (Queensland) Act 1993*.

### **Cancellation and grant of term lease**

**9.(1)** Term lease 205674 of lot 6 on CP892041, county of Gregory, parish of Bulmung, issued to the company (the “**former lease**”) is cancelled.

(2) A term lease of lot 6 on CP892041, county of Gregory, parish of Bulmung (the “**new lease**”) is granted to the company.

(3) The new lease is taken to have been granted under the *Land Act 1994* on the same terms as the former lease.

(4) However, the term of the new lease starts on the commencement of this section.

(5) Also, the new lease is granted in full satisfaction of any rights arising out of or in relation to the former lease.

(6) Anything done under the former lease is taken to have been validly done under the new lease.

### **Cancellation and grant of mining leases**

**10.(1)** Mining leases 90045 and 90058 (the “**former leases**”) granted under the *Mineral Resources Act 1989* are cancelled.

(2) Mining leases 90045 and 90058 (the “**new leases**”) are granted to the company.

(3) The *Mineral Resources Act 1989*, section 318 does not apply to the

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<sup>2</sup> North Ganalanja Aboriginal Corporation & Anor v. State of Queensland & Ors. 185 CLR 595, and The Wik Peoples v. State of Queensland & Ors. 187 CLR 1

former leases only because of their cancellation under subsection (1).<sup>3</sup>

(4) Each new lease is taken to be have been granted under the *Mineral Resources Act 1989* on the same terms as the corresponding former lease.

(5) However, the term of each new lease starts on the commencement of this section.

(6) Also, each new lease is granted in full satisfaction of any rights arising out of or in relation to the corresponding former lease.

(7) Anything done under the former leases is taken to have been validly done under the new leases.

### **Vesting of certain port land**

**11.(1)** The land described in schedule 3 is vested in the Ports Corporation of Queensland and is taken to be strategic port land under an approved land use plan under the *Transport Infrastructure Act 1994*, section 171.

(2) For subsection (1) and schedule 3, item 3, lease SL 34/38495 of lot 72 on NM 54 may be taken by proclamation if the lease is not surrendered under the *Land Act 1994* before the commencement of this subsection.

(3) Compensation for the resumption under subsection (2) or for the surrender of the lease is payable to The Far North Queensland Electricity Board by the Ports Corporation of Queensland.

(4) The amount and conditions of compensation under subsection (3) are to be decided by the Governor in Council.

(5) Conditions of compensation under subsection (4) may include conditions relating to the grant by the State to the Far North Queensland Electricity Corporation Ltd of an interest in land other than lot 72 on NM54.

### **Declaration about easement resumed under s 5(3)(b)**

**12.(1)** This section applies to the easement mentioned in schedule 1.

(2) Whether the easement is taken under section 5 or in another way, the

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<sup>3</sup> See the *Mineral Resources Act 1989*, section 318 (Rehabilitation of land covered by mining lease).

easement is taken to be a public utility easement under the *Land Act 1994*.

(3) Also, if the easement is taken under section 5, the easement is taken to have been acquired by the chief executive for the State under the *Transport Planning and Coordination Act 1994* for miscellaneous transport infrastructure purposes.

(4) For ensuring the construction, operation and maintenance of miscellaneous transport infrastructure in the easement—

- (a) a licence under the *Transport Infrastructure Act 1994* in relation to the infrastructure has the effect of a contract under seal between the licensee and any person having an interest in land affected by the easement; and
- (b) the licensee may enforce rights granted under the licence against the person.

### **Crossing roads, reserves, watercourses etc.**

**13.(1)** This section applies to the parts of reserves, roads, watercourses and land of other tenure mentioned in schedule 1, part 1, item 7 (the “**land**”).

(2) This section applies only for ensuring miscellaneous transport infrastructure can be constructed, operated and maintained across the land.

(3) The rights and obligations conferred or imposed by the easement apply to the land.

(4) However, the rights and obligations can not be exercised or performed because of this section unless the entity responsible for the land gives to a licensee under the *Transport Infrastructure Act 1994* consent to the exercise or performance of the rights and obligations.

(5) If the responsible entity fails to give the consent under subsection (4), the licensee may apply to the Premier for the consent.

(6) The consent of the Premier under subsection (5) is taken for all purposes to be the consent of the responsible entity.

(7) In this section—

“**responsible entity**” means the following—

- (a) for a non-tidal watercourse—the chief executive of the department

- through which the *Water Resources Act 1989* is administered;
- (b) for a tidal watercourse—the chief executive of the department through which the *Transport Infrastructure Act 1994* is administered;
  - (c) for a reserve—the trustee of the reserve;
  - (d) for a road—the local government for the area in which the road is located or, if the road is a State controlled road, the chief executive of the department through which the *Transport Infrastructure Act 1994* is administered;
  - (e) otherwise—the chief executive of the department through which the *Land Act 1994* is administered.

## PART 4—GREGORY OUTSTATION

### Application of part

**14.** This part applies only in relation to the use or development proposed to be undertaken under a development application made to the Burke Shire Council (the “**council**”) by the Bidunggu Aboriginal Land Trust in relation to lot 13 on CP855144 (the “**Gregory outstation proposal**”).

### Ministerial call-in power

**15.** The Minister may call in the development application for the Gregory outstation proposal whether or not the council has decided the application.

### Notice of exercise of call-in power

**16.(1)** The Minister may call in the development application by written notice given to the council and—

- (a) if the application has not been decided by the council—assess and decide the application; or
- (b) if the application has been decided by the council—reassess and

re-decide the application.

(2) The notice must state the reasons for calling in the application.

(3) The Minister must give a copy of the notice to the applicant and anyone else whose concurrence to the development application is required.

### **Effect of call-in**

**17.(1)** If the Minister calls in the development application before the council makes a decision on the application, the Minister—

- (a) must continue the process from the point at which the application is called in; and
- (b) has the powers of the council for the application from the time the application is called in.

(2) If the Minister calls in the development application after the council makes a decision on the application—

- (a) the process starts again from a point in the process the Minister decides; and
- (b) the Minister has the powers of the council for the application from that point in the process.

(3) Also, if the application is called in—

- (a) an entity whose concurrence is required may give advice about the application; and
- (b) if an appeal has been made—the appeal is of no further effect; and
- (c) a person may not appeal against the decision of the Minister under the Act or law under which the application is made (the “**relevant law**”).

(4) The council must provide the Minister with all reasonable assistance required by the Minister to decide the application, including giving the Minister—

- (a) all relevant material about the application the council had before the application was called in; and
- (b) any relevant material received by the council after the application was called in.

(5) When the Minister gives notice of the decision to the applicant, the Minister must also give a copy to the council.

(6) The decision of the Minister is taken to be the decision of the council under the relevant law for all purposes other than appeal.

## PART 5—NATIVE TITLE

### Effect of resumption and grant of rights in relation to native title interests

18. It is Parliament's intention that—

- (a) this Act and anything done under this Act does not extinguish and has not extinguished any native title in land; and
- (b) the non-extinguishment principle under the *Native Title Act 1993* (Cwlth) applies to anything done under this Act.

### Application of Native Title (Queensland) Act

19. For the *Native Title (Queensland) Act 1993*, the taking of an interest in land under section 5 is taken to be an acquisition of land under a State Compulsory Acquisition Act.<sup>4</sup>

### Grant of interest taken to include certain words

20. Each interest granted by this Act is taken to include the statement in schedule 4.

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<sup>4</sup> See *Native Title (Qld) Act 1993*, section 4

## PART 6—MISCELLANEOUS

### Regulation-making power

**21.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may, in relation to any interest taken under a proclamation under this Act, describe the boundaries of the land affected by the proclamation.

**(3)** The boundaries described are taken—

- (a)** to be the boundaries of the land affected by the proclamation; and
- (b)** to be included, from the date of assent of this Act, within the boundaries referred to in schedule 1, part 1, item 7 and schedule 1, part 2.

**(4)** Subsection (3) applies whether or not the boundaries described would, if this section had not been passed, be included within the boundaries referred to in the proclamation or in schedule 1, part 1, item 7 and schedule 1, part 2.

**(5)** A regulation under subsection (2) must be made within 2 years after the first proclamation made under section 5.

**(6)** The power under subsection (2) to (4) may only be used for the following purposes—

- (a)** to enable the land mentioned in those subsections to be surveyed;
- (b)** to make necessary adjustments of the description of the boundaries after consideration of concerns for cultural heritage and geological impediments.



**SCHEDULE 1****LAND IN WHICH INTERESTS ARE OR MAY BE  
TAKEN**

section 5

**PART 1—LAND IN WHICH NATIVE TITLE IS OR  
MAY BE TAKEN**

1. Lot 6 on CP892041
2. Lot 85 on CP846496
3. Lot 71 on CP892088
4. Lot 72 on NM54
5. Lot 107 on NM130
6. Lot 81 on NM130
7. Land following the route shown on the plan in schedule 5 across reserves, roads, watercourses and land of any other tenure joining together—
  - (a) any 2 lots of land mentioned in part 2, to the width of 100 m; or
  - (b) a lot mentioned in part 2 to a lot mentioned in schedule 3, to the width of the road reserve affected.

**PART 2—LAND IN WHICH NATIVE TITLE AND AN  
EASEMENT MAY BE TAKEN**

Land 100 m wide following the route shown on the plan in schedule 5 across the following land—

## SCHEDULE 1 (continued)

- lot 4 on GY805051
- lot 2 on GY14
- lot 2 on GY838438
- lot 2948 on PH1233
- lot 1906 on PH1404
- lot 5121 on PH1011
- lot 2928 on PH1234
- lot 2 on CP838627
- lot 1 on CP838627
- lot 9 on NM143
- lot 117 on NM140
- lot 77 on NM 88.

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## SCHEDULE 2

### PROVISIONS OF THE ACQUISITION OF LAND ACT 1967 THAT DO NOT APPLY TO A RESUMPTION UNDER SECTION 5

section 6

1. Sections 5 to 11
2. Section 12, other than as provided by section 6(3) of this Act
3. Section 13
4. Sections 15 to 17
5. Section 21
6. Section 36(3) and (6)
7. Section 37, other than for section 36(7)
8. Section 41<sup>5</sup>

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<sup>5</sup> Section 5 (Purposes for which land may be taken)  
 Section 6 (Easements)  
 Section 7 (Notice of intention to take land)  
 Section 8 (Dealing with objections)  
 Section 9 (Means by which land to be taken other than by Brisbane City Council or an approved local authority)  
 Section 10 (Means by which land to be taken by Brisbane City Council or an approved local authority)  
 Section 11 (Correction of errors etc. in proclamation or notification of resumption)  
 Section 12 (Effect of proclamation or notification of resumption)  
 Section 13 (Owner may require small parcel of severed land to be taken)  
 Section 15 (Taking by agreement)  
 Section 16 (Discontinuance of resumption before proclamation or notification of resumption)  
 Section 17 (Revocation before determination of compensation)  
 Section 21 (Grant of easement etc. in satisfaction of compensation)  
 Section 36 (Powers of entry etc.)  
 Section 37 (Temporary occupation of land)  
 Section 41 (Disposal of land)

**SCHEDULE 3****LAND VESTED IN PORTS CORPORATION OF  
QUEENSLAND AS STRATEGIC PORT LAND**

section 11

1. Lot 85 on CP846496
2. Lot 71 on CP892088
3. Lot 72 on NM54
4. Lot 107 on NM130
5. Lot 81 on NM130
6. Lot 1 on CP902052

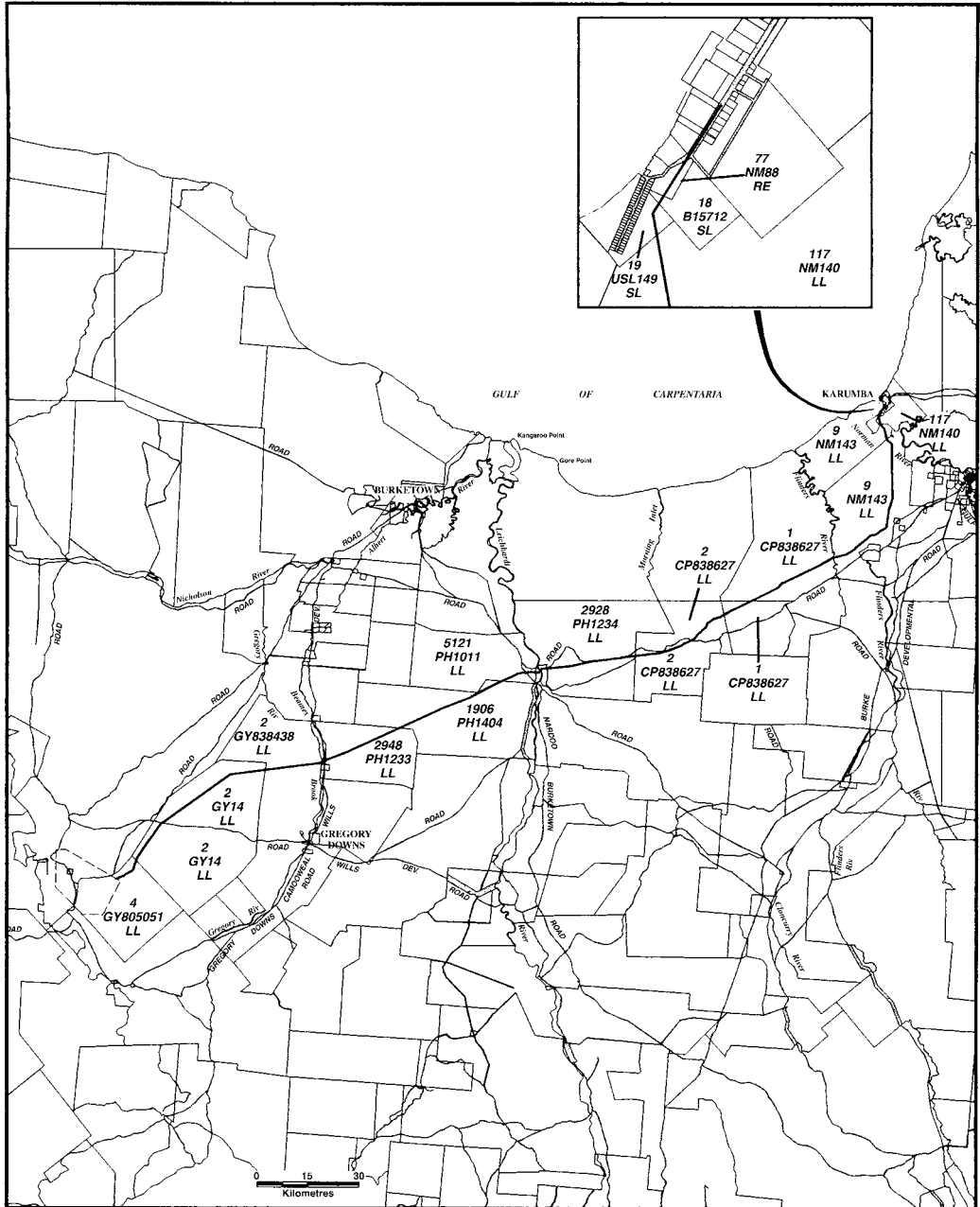
**SCHEDULE 4****STATEMENT TAKEN TO BE INCLUDED IN  
INTERESTS GRANTED UNDER THIS ACT**

section 20

‘If any native title exists in the land and the grant of this [Title] would validly affect it in some way, then the grant of this [Title] is wholly inconsistent with the native title, but it is intended that (without in any way affecting any of the [Grantee's] rights during the term of the grant, including the [Grantee's] right of exclusive possession)—

- (a) the native title in the land should nevertheless continue to exist and not be extinguished by the grant of this [Title] or the exercise of any of the rights granted hereunder;
- (b) the native title should never have any effect upon or in relation to this [Title] or any act or right of the [Grantee];
- (c) the persons who are entitled in accordance with any traditional laws and customs, as applying from time to time, to possess the native title should continue to be native title holders;
- (d) if this [Title] or any act done under this [Title] ceases to have effect to an extent, the native title rights and interests should again have effect to that extent;
- (e) if this [Title] or its effects are wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect.’

**SCHEDULE 5—PLAN (schedule 1, part 1, item 7 and part 2)**



Map Projection: Geographical Latitude & Longitude (AGD84)  
 Compilation: Land Tenure information obtained from the Digital Cadastre Data Base  
 Department of Natural Resources Brisbane.

**TENURE TYPES**  
 LL : LANDS LEASE RE : RESERVE SL : STATE LAND



## SCHEDULE 6

### DICTIONARY

section 4

**“company”** means Century Zinc Limited A.C.N. 006 670 300, its successors in title and permitted assigns.

**“council”**, for part 4, see section 14.

**“development application”**, for part 4, means an application for approval under any of the following for the use or development to which part 4 applies—

- (a) the *Local Government (Planning and Environment) Act 1990*;
- (b) the *Building Act 1975*;
- (c) the Standard Water Supply Law;
- (d) the Standard Sewerage Law;
- (e) a local law of the council.

**“miscellaneous transport infrastructure”** means miscellaneous transport infrastructure under the *Transport Infrastructure Act 1994*.

**“the agreement”** means the agreement under the right to negotiate provisions of the *Native Title Act 1993* (Cwlth) made on 7 May 1997 between the following—

- Henry Aplin, Peter Bell, Shirley Chong, Don George, Peter O’Keefe and Beryl Willetts for themselves and the Waanyi people
- Stella Diamond and Jane Karkadoo for themselves and all persons descended from Ned Lorraine, Hislop Jacob, Harry (Father of Bonny Pedro) and Trooper Campbell and on behalf of any other Aboriginal people of the claim and neighbouring region to the north and south of the claim area, whose old people were also traditional owners, and customary users, of the claim area, some of those people identifying as Mingginda people

## SCHEDULE 6 (continued)

- Jerry Callope and Richard Bee for themselves and the Gkuthaarn and Kukatj people
- Audrey Callope, Shirley Toby and Jerry Callope for themselves and the Gkuthaarn people
- the State of Queensland
- Century Zinc Limited.