

Capability Statement - Agreement Making

Keogh Bay Consulting is able to help project proponents develop relationships, agreements and the internal standards and procedures that address their Aboriginal cultural heritage and native title obligations. Our advice aims to help your business develop mutually beneficial long-term relationships with Aboriginal stakeholders.

The relationship between Aboriginal people, miners and other project developers has changed significantly in the last 20 years. KBC helps proponents to develop mutually beneficial, respectful relationships with Traditional Owners, founded on well-structured, practical agreements. Our aim is to avoid adversarial and exploitative engagements between the parties.

The need for agreement making is driven by two sets of laws:

- **Aboriginal Cultural Heritage laws:** The Aboriginal Heritage laws around Australia place a number of obligations on proponents centering on the need to work with Aboriginal people to identify sites or items of significance and to negotiate with them towards the effective management of heritage in the project context. KBC has experience drafting and negotiating cultural heritage management agreements, as well as managing cultural heritage surveys.
- **Native Title laws:** In mining and resource developments the Native Title Act 1994 requires good faith negotiations concerning exploration and project development with native title holders or claimants.

Our advice covers the following areas

- **Aboriginal Engagement Strategies:** The need for an agreement is often the first time that an organisation focuses on its relationship with Traditional Owners. Your approach to agreement making should be founded on a strong business case, policy and a wider perspective than the immediate need to tick the agreement box. Keogh Bay can assist you in developing a general approach to your long term engagement founded on strong principles.
- **Agreement negotiation strategies:** KBC works with resource businesses to develop agreement negotiation strategies and to assist them in their implementation. Our strategies include advice on costs and timing, likely agreement contents and position options.
- **Agreement implementation and relationship building:** The making of an agreement with Traditional Owners is just the start of a relationship, not the end. Effective implementation of



Figure 1 Kundat Jaru Community - the site of recently concluded Northern Minerals agreement with Jaru people

agreements can be as challenging as their negotiation. KBC has extensive experience assisting organisations to develop internal systems that allow them to meet Aboriginal training and employment, land access, cultural awareness and other agreement obligations.

KBC's consultants do not specialize in any single aspect or discipline in the agreement-making process. We are not lawyers or archaeologists. Instead, we bring an overall management experience to agreement-making that allows us to better advise businesses on the entirety of their relationships with Traditional Owners and oversee the range of people and skills needed to reach an agreement.

Where specialist advice is required, KBC has associate relationships with a portfolio of archaeologists, anthropologists, negotiators, lawyers and Aboriginal consultants with liaison skills.

**Your relationship starts the minute you set
foot on the ground - whether you know it or not!**

Our People

Mark Simpson

KBC director Mark Simpson has previously managed Rio Tinto Iron Ore's Community Relations, Heritage and Aboriginal Training and Liaison (ATAL) functions. As part of his heritage accountability he managed a team of archaeologists, anthropologists, Aboriginal liaison officers and consultants to address Rio Tinto Iron Ore's ever growing need to identify and collaboratively manage cultural heritage.

Mark has also been a member of Rio Tinto Iron Ore's agreement negotiation team and has negotiated significant expansions to Rio Tinto's operations in the Pilbara. Since leaving Rio Tinto to found Keogh Bay Consulting, Mark has assisted many businesses to develop their approach to cultural heritage management and implement their agreement commitments.

Matt Wrigley

KBC director Matt Wrigley has qualifications in linguistics-anthropology and spent many years in the Kimberley region working as an applied linguist on Aboriginal languages. With the Kimberley Language Resource Centre, Matt published a volume of Aboriginal history in five languages and developed competency in two of these languages. Later Matt worked for the Kimberley Land Council gaining experience in the operation of native title and heritage laws.

In 2002 Argyle Diamonds retained Matt's services to advise on cross-cultural communications during its negotiations towards a comprehensive agreement with East Kimberley Traditional Owners - signed in September 2004. Leaders in the negotiation process consider that Matt's contribution to effective cross-cultural communication was a major factor in the successful development of the agreement and has set a new benchmark in cross-cultural communication in Australia.

Matt led the development of Rio Tinto Alcan Weipa's successful Aboriginal Employment Strategy. At Rio Tinto Alcan he managed the implementation of the local co-existence agreement, including Aboriginal employment, land access and ground disturbance processes and cultural awareness training. The annual expansion of bauxite operations at Weipa required constant negotiation and collaboration with Traditional owners to manage the heritage, environmental and land access impacts of expansion.

Since founding KBC Matt has assisted a number of companies in the development of their approach cultural heritage management and agreement-making and has advised them on effective cross-cultural communication throughout the process. He has also written plain English agreements for large mining businesses and summarised complex legal texts to make them accessible to agreement stakeholders.

Scott McIntyre

Scott McIntyre: Scott McIntyre has unique skills in working with Aboriginal communities in land management and planning. He is a Community Development practitioner with over 15 years experience engaging with communities through roles in the Agricultural, Natural Resource Management, Public Health and Mining industries. Scott has held roles within Aboriginal Communities and organisations, State and Federal Governments, and most recently a global mining company. Scott has worked extensively in Aboriginal land management including the:

- Development of management plans and Aboriginal ranger programs to support improvements in regional land management practices;
- Development of employment & training programs and creation of employment opportunities, throughout the Daly River / Port Keats Aboriginal Land Trust;
- Establishment and strengthening relationships between local and state governments, pastoralists, Traditional Land Owners and the regional Land Council;

As manager of Community Relations and External Affairs for Rio Tinto Alcan's South of the Embley project Scott managed:

- The implementation of ILUA obligations as part of the South of the Embley expansion project including the negotiation of a Land Use Agreement implementation plan, on behalf of the company
- The company's community engagement and social impact processes, and directed the company's approach to engaging with and employing local Aboriginal people;
- The social and community components of a major expansion project through the process of developing an Environmental Impact Statement;

Projects and Case Studies

1. Northern Minerals – June 2014

Business Need

Northern Minerals had identified a prospective deposit of rare earths in the south east Kimberley, in land that would become subject to the Jaru native title claim in early 2012. The grant of a mining lease over the area would require an Aboriginal agreement. As a small exploration company Northern Minerals had no specialist expertise in this area, and did not know where to start.

Keogh Bay was contracted to advise Northern Minerals towards its native title agreement with Jaru people in late 2012. Northern Minerals was looking for advisors who could help them develop a strong relationship with Jaru people through the agreement process and beyond.

Solutions

Keogh Bay director Matt Wrigley had a long connection with Jaru people going back to the late 1980's when he had learned the Jaru language while working as a linguist at the Kimberley Language Resource Centre in Halls Creek.

Matt remembers that start of the Northern Minerals project, "This was a dream project for us because it was a chance to help a great company like Northern Minerals find ways to work with a great group of people. Northern Minerals approach from Day 1 told us they were interested in building a long-term relationship rather than just getting people to sign on the dotted line. We tend to avoid organisations that are not interested in mutual benefit."

Three things made Northern Minerals stand out – they had already worked hard to employ Jaru people in their exploration work; they wanted to handle the negotiations themselves to build a direct relationship, and they were keen to learn as much as they could about the history and culture of Jaru people.

Keogh Bay assisted Northern Minerals to understand the types of clauses that typically exist in Aboriginal agreements and develop a clear position on key issues based on solid principles of mutual benefit, the value of the long-term relationship and the practical realities of implementation.

The use of Plain English was critical in this agreement, with many Jaru people speaking English as a second or third language. We are able to assist NM in developing Plain English communication materials and presentations.

Benefits

- A strong agreement negotiated in less than one year
- A community relationship developed and reinforced through the agreement making process
- Potential for economic development in a region with few opportunities

Perhaps our proudest moment in the process was seeing the Northern Minerals CEO, George Bauk speak a little Jaru in his speech at the agreement signing. Few things communicate respect to another culture like taking the time to use their language.

See: <http://northernminerals.com.au/wp-content/uploads/2014/03/1406-16-Co-Existence-Agreement-finalised-for-Browns-Range-Project.pdf>

2. Argyle Case Study (2004)

Business Need

Argyle Diamonds undertook negotiations towards a comprehensive agreement with Traditional Owners beginning in 2000 covering all aspects of their relationship. Argyle realized early in the process that the effective presentation of information to senior Traditional Owners would be critical if the agreement were to be founded on Free Prior and Informed Consent (FPIC).

Most Traditional Owners spoke limited English as a second or third language. Many had not had access to formal schooling. Communication throughout the agreement process would require careful planning and the development of a variety of innovative resources and tools.

Solutions

Argyle Diamonds asked Matt Wrigley to assist them in communications planning because of his combination of linguistic expertise in the Kimberley region, multimedia development skills and instructional design capabilities.

Prior to each negotiation meeting the negotiation team at Argyle would meet to go over critical information that the company planned to present to Traditional Owners. Matt would advise on the most appropriate approach to communicating this information. Communications methods are usually a blend of tools, techniques and resources including:

- Translation of content into a specialized variety of Plain English suitable to the Kimberley context.
- The development of graphical tools, posters and story-boards that, in conjunction with Plain English and other forms of language, help non-literate and non-English speaking traditional owners understand the key ideas under discussion.
- Translation of some content into Aboriginal languages.
- Aboriginal language Interpreters.
- Appropriate meeting structure.
- The development of interactive multimedia tools.
- The development of video and sound.

Matt then managed the development of the recommended materials, in coordination with a number of Kimberley-based Aboriginal agencies and review groups, including the Kimberley Language Resource Centre.

Outcomes

- Better communication of a wide range of complex content to Traditional owners
- Empowering Traditional owners to take active part in the negotiations
- The ability of Traditional owners to understand and evaluate detailed legal agreements
- Demonstration of a commitment on the part of the company to bridging the communications divide