

# Mud Springs

## Layout Plan 1

### Background Report

September 2011

Date endorsed by WAPC



### Amendments

Amendment 1 - October 2012

Amendment 2 - January 2020



Department of **Planning,  
Lands and Heritage**



# MUD SPRINGS LAYOUT PLAN 1

Mud Springs Layout Plan No. 1 (LP1) was prepared by the former Department of Planning during 2009-2010 in partnership with Ribinyung Aboriginal Corporation (RAC), MG Corp and OES. The layout plan was prepared with a number of other Layout Plans prepared at that time in response to the outcomes of the Ord Final Agreement and the desires of the MG Dawang Land Trust and MG Corp. MG Corp (representing the traditional owners) and the Mud Springs Community endorsed the Mud Springs LP1.

Layout Plan 1 (LP1) was endorsed by the Shire of Wyndham-East Kimberley, on 21 June 2011 and the Western Australian Planning Commission (WAPC) endorsed the LP on 29 September 2011.

The WAPC endorsed one amendment in October 2012 to incorporate administrative changes to the map-set, no changes were made to the background report. The endorsed amendment is listed in part 6 of this report.

In January 2020 the background report was updated as a part of Amendment 2. The Amendment 2 background report update sought to keep all relevant information, while removing and replacing out-of-date references and data. All temporal references in the background report refer to the original date of preparation, unless otherwise specified.

As part of the machinery of government (MOG) process, a new department incorporating the portfolios of Planning, Lands, Heritage and Aboriginal lands and heritage was established on 1<sup>st</sup> of July 2017 with a new department title, Department of Planning, Lands and Heritage. Since the majority of this report was finalised before this occurrence, the Department of Planning, Lands and Heritage will be referred to throughout the document. Other government departments mentioned throughout this document will be referred to by their department name prior to the 1<sup>st</sup> of July 2017.

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## Community Contact Details

Representative Organisation	:	Ribinyung Aboriginal Corporation
Related Organisations	:	MG Corp MG Dawang Land Trust Pty Ltd Ord Enhancement Scheme

## Acronyms

AHA	:	Aboriginal Heritage Act (WA) 1972
ATSIC	:	Aboriginal and Torres Strait Islander Commission
LP	:	Layout Plan
CR	:	Crown Reserve
DoC	:	Department of Communities (Housing)
DIA	:	Department of Indigenous Affairs
DPLH	:	Department of Planning, Lands and Heritage
EHNS	:	Environmental Health Needs Survey
ILUA	:	Indigenous Land Use Agreement (under the Native Title Act 1993)
KRSP	:	Kimberley Regional Service Providers
KWAC	:	Kununurra Waringarri Aboriginal Corporation
MG Corp	:	Yawoorong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation
NNTT	:	National Native Title Tribunal
NTA	:	Native Title Act (Commonwealth) 1993
NTRB	:	Native Title Representative Body
OES	:	Ord Enhancement Scheme
OFA	:	Ord Final Agreement (ILUA)
ORIA	:	Ord Irrigation Area
PBC	:	Prescribed Body Corporate (under the NTA, representing native title holders)
RAC	:	Ribinyung Aboriginal Corporation
RAESP	:	Remote Area Essential Services Program
SL-lot	:	Settlement Layout Lot
SWEK	:	Shire of Wyndham East Kimberley
UCL	:	Unallocated Crown Land
WAPC	:	Western Australia Planning Commission

### Layout Plans & the Development Process

Layout Plans provide a guide for future development. Layout Plan preparation includes consultation with a range of relevant government authorities and agencies, but it does not constitute development approval.

It is the responsibility of the developer to ensure that all relevant consents, approvals, licences and clearances are in place prior to commencing physical works on the site.

Organisations responsible for such matters may include the landowner, local government, incorporated community council, native title representative body, native title prescribed body corporate, Aboriginal Cultural Materials Committee, Environmental Protection Authority, state and federal government departments, and other relevant regulatory authorities.

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## EXECUTIVE SUMMARY

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Mud Springs LP No. 1 (LP1) was prepared by the former Department of Planning during 2009-2010 in partnership with RAC, MG Corp and OES. LP1 is for Mud Springs, as defined under the OFA.

The tables below summarise the main issues concerning planning, development and provision of services at Mud Springs. These issues are covered in more detail in the body of this report.

**Table 1 – Population**

Design Population	:	75
Existing population	:	25
Existing Service Capacity	:	100
Aspirational Population	:	75

**Table 2 - Infrastructure and essential/social service characteristics at Mud Springs**

<b>Infrastructure/service Indicator</b>	<b>Community Characteristics</b>
Drinking water	Water obtained from bore. No data available on quality or quantity.
Native title	The community falls within a determined native title claim (MG #1 - WAD6001/95) with a registered ILUA in place.
Secure land holding(s)	Mud Springs is located on Crown Reserve 40536 (99.5 ha) vested to the Aboriginal Lands Trust (ALT). There is a lease to Ribinyung Dawang Aboriginal Corporation expiring in 2091.
Flood / storm surge	Low lying areas are subject to inundation. No damage to existing infrastructure is believed to occur.
Emergency assistance	Emergency services at Kununurra, approximately 20 minutes away by road.
Education	Education facilities at Kununurra, approximately 20 minutes away by road.
Health	Health facilities at Kununurra, approximately 20 minutes away by road.
Governance	Ribinyung Aboriginal Corporation.
Employment and enterprise opportunities	Aquaculture enterprise at community. Other employment opportunities in Kununurra.
Transport	Road access from Victoria Highway is via Crossing Falls Road and Fish Farm Road.
Food	Retail outlets at Kununurra, approximately 20 minutes away by road.
Electricity	Reticulated electricity supply provided by Horizon Power.

LP No.1 plans for future expansion of the community and formalises existing infrastructure and land-uses and provides a future lot layout and road design.

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## **DEVELOPMENT PRIORITIES**

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The following initiatives, were developed by the community in 2010 and considered to be needed to implement LP No.1:

Within the next year:

1. Prepare an essential services strategy.
2. Connect the drinking water bore to the reticulated power supply.
3. Connect the ablution block to a water supply.
4. Provide filtration system to drinking water supply.
5. Construct housing on SL-lot 9, if required.

Within the next 5 years:

1. Prepare Drinking Water Source Protection Plan.
2. Clear, fill and drain SL-lots 18-21 for medium term housing.
3. Provide reticulated power and sewerage to SL-lots 18-21.
4. Construct additional housing on SL-lots 18-21 as required.

Within the next 10 years:

1. Seal access road to community.
2. Clear, fill and drain SL-lots 11-17 for long term housing.
3. Provide reticulated power and sewerage to SL-lots 11-17.
4. Construct additional housing on SL-lots 11-17 as required.

### **Implementing the LP**

The implementation of this LP will rely on the energy and endeavour of the community members. The future growth of Mud Springs will require community members to find solutions for the provision of services and infrastructure (such as housing and sealed roads). This reinforces the objectives of Ribinyung Aboriginal Corporation to help bring about self-support of its members, and to encourage members to manage their affairs on their own land.

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# 1 REGIONAL CONTEXT

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## 1.1 Location & Setting



**Figure 1 - Location of Mud Springs proximate to Kununurra**

Mud Springs, also known as Rowena Downs, is in the Shire of Wyndham-East Kimberley. It is located on the banks of the lower Ord River at the end of Fish Farm Road, located approximately 20 kilometres from Kununurra.

The Ord River, known locally as *Gunanurang*, is one of Western Australia's major river systems. It has an estimated catchment of 50,000km<sup>2</sup> and flows from near Halls Creek in the south to the Cambridge Gulf in the north. This catchment is generally characterised by fertile soils and rich riparian systems.

The geography of the Ord River has significantly changed since the damming of the Ord in the 1970s. Whereas the river used to flow only seasonally, lake Argyle provides storage and a year-round flow of water suitable for irrigation purposes.

The settlement and river system lie in the wet-dry tropics, which is characterised by an extended dry season with most rainfall occurring during December-March. Rainfall is highly variable (Lund 2009).

## 1.2 Regional Culture & Demography

The broader Ord River catchment area from the Bow River junction in the south to the Cambridge Gulf in the north is the country that now comprises the Miriuwung Gajerrong native title determination areas and is the traditional country of Miriuwung, Gajerrong, Doolboong, Wardenybung and Gija peoples (FCAFC 283 [2003] & FCA 1848 [2006]).

This catchment area consists of discrete land-holding units known locally as *Dawang*. Members of a Dawang (ie traditional owners), known as *Dawawang*, are the key decision-makers about their country under customary law. Some decisions about country are shared and jointly managed with agencies such as the former Department of Environment and Conversation and former Department of Water (Hill et al 2009; DoW 2009).

Traditional rights and interests in country stem from the *Ngarangani*, the creative Dreaming period, when mythical ancestors travelled the country, made the river systems and landscape and its features. During their travels they provided the framework about how the social and physical world should be (Barber & Rumley 2003).

Successive determinations of native title in 2003 and again in 2006 recognise and demonstrate the continuing strength of cultural connections to country among traditional owners in the Ord valley and catchment despite impositions associated with European settlement, pastoralism, and the extensive irrigation scheme.

Aboriginal residents comprise about half the total population of the Ord River Irrigation Area (ORIA). Aboriginal population growth is largely due to natural increase rather than in-migration. This means that, on a regional level, the Aboriginal population is younger, more permanent, stable, and fairly evenly comprised of males and females. The non-Indigenous population on the other hand is more influenced by in-migration and seasonal employment and disproportionately comprised of working-aged males (KLC 2003; Taylor 2003).

Whereas the non-Indigenous population is concentrated in the Kununurra townsite, the Aboriginal population is more dispersed, with many living in smaller settlements such as Mud Springs.

### **1.3 Regional History & Economy**

As a population, local Aboriginal peoples have been integral to the historical development of the Ord Valley and East Kimberley. Firstly as integral labour to the pastoral economy, and later by providing a permanent and stable population for the provision of a government service economy. The inundation and irrigation of traditional country for the integration of the region into a market economy was at a direct but largely unrecognised cost to Miriung and Gajerrong peoples (see Skyring 2004; Redmond & Skyring 2009).

#### **Station life**

The initial occupation along the Ord River by pastoral interests from the 1880s was characterised by violence (Redmond & Skyring 2009). Aboriginal people at that time however were the only large and permanent population in the Kimberley, so by the 1920s were used as labour on stations such as Argyle Downs, Texas Downs, Lissadell and Ivanhoe. State legislation such as the *Native Administration Act 1936 (WA)* bonded Aboriginal labour to pastoral leaseholders. The pastoral economy in the East Kimberley was predominantly made-up of an Aboriginal workforce until the 1970s. While this enabled many people to remain on traditional country, the workforce was paid in rations until equal wages legislation was introduced in the 1960s. This had the effect of marginalising Aboriginal people, over successive generations, from the regional economy even though their labour was integral to it (Skyring 2004; Jebb 2002).

By the mid 1950s serious consideration was being given by Federal and State governments to the development of the Ord River for irrigation purposes. The introduction of Commonwealth legislation in 1958 and 1968 saw the Federal government provide significant funding for the river's development. Construction of the Diversion Dam (ie Lake Kununurra) began in 1961 and was completed in 1963. By 1971 much of Argyle station, and other pastoral leases, had been flooded for the creation of the Ord Dam ('Lake Argyle'). Local Aboriginal people were not consulted in the planning and development of the Dam and broader irrigation area but were the population most affected by the river's development and the ensuing change to the natural environment and associated residential dislocation (Skyring 2004; see also Barber & Rumley 2003).

#### **Town life**

Kununurra townsite was established in 1960 on an excision of Ivanhoe Station on the Ord River, initially as a Water Authority centre for the irrigation project. It was gazetted as a town in 1961 and has since become the east Kimberley's main administrative centre.

The period from the 1970s until the 1980s can be characterised by the increasing urbanisation of Aboriginal populations in the Ord catchment. During this period, after the introduction of equal wages legislation and the creation of the irrigation scheme, relatively large numbers of former station workers moved into centres such as Kununurra, with an associated shift away from economic engagement in the private sector to an engagement in the government sector in the form of CDEP (Taylor 2003). Nulleywah reserve, on the outskirts of the town centre, was established in the 1980s as accommodation for people who had migrated from surrounding pastoral stations.

Voting rights in local government in Western Australia were restricted until 1985 to owners and occupiers of rateable property. This had the effect of excluding most Aboriginal people in the Shire of Wyndham-East Kimberley from local representation as Aboriginal people have generally lived on non-rateable land (Rumley H. & D. 1988).

There was no formal land-use planning of the Nulleywah reserve in Kununurra until the first layout plan was prepared as late as 1997 (Connell Wagner 2002). Poor living conditions in town spurred some Miriwung and Gajerrong family groups in the 1980s to establish camps and living areas at locations away from the town but within proximity to town services.

## **Community life**

The Mud Springs community was established in the mid 1980s by the parents of the current generation. The initial dwellings were self-made shelters and not connected to reticulated power and water. While living conditions were modest, the newly established camp offered space away from town life. Ruins from the initial camp site remain.

As is detailed below, the creation of community living areas for most Miriwung Gajerrong settlements was formalised through the native title process under the Ord Final Agreement in 2006. Tenure for the Mud Springs settlement however was formalised prior to and outside of the native title process.

The Mud Springs settlement contributes to the regional economy through the development of an emerging aquaculture project.

## **1.4 Native Title**

### **Native title issues affecting Mud Springs**

Mud Springs settlement falls within the Miriwung Gajerrong #1 native title determination area and is principally comprised of native title holders.

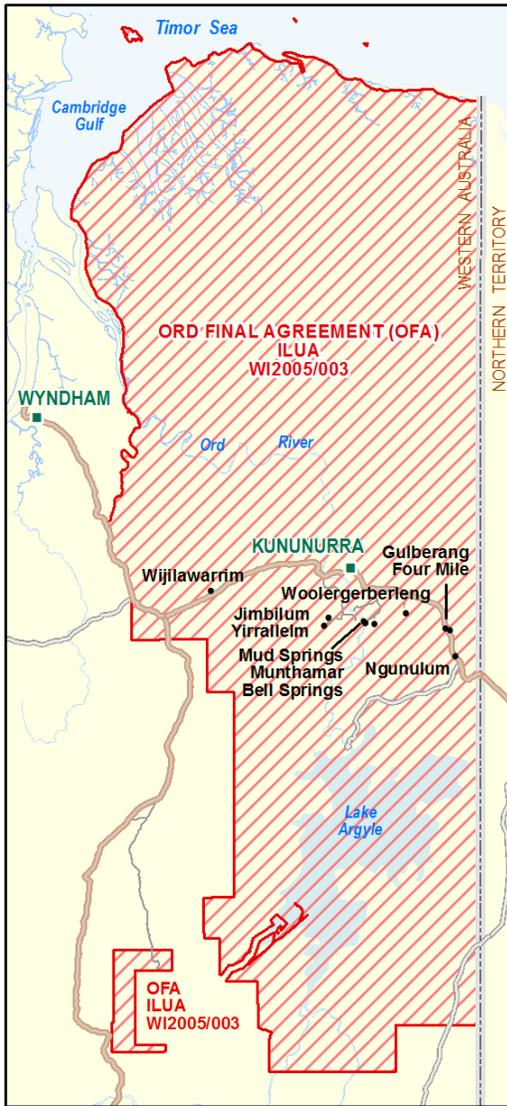
The application for determination of native title by Miriwung Gajerrong peoples comprised two claim areas, Miriwung Gajerrong #1 (WAD6001/95) (MG #1) and Miriwung Gajerrong #4 (WAD124/04) (MG #4). The two combined determination areas total approximately 14,000 sq km. The native title holders referred to in this report refer to both determination areas. Separate PBCs exist for MG #1 and MG #4 determinations respectively.

### **Ord Final Agreement**

Mud Springs falls within the Ord Final Agreement area, which is an 'area agreement' ILUA under the NTA and resolves native title issues associated with both the MG #1 MG #4 determination areas. The ILUA, commonly referred to as the 'OFA' or 'Ord Stage 2 Agreement', was registered with the National Native Title Tribunal in August 2006. The area subject to the OFA is shown in Figure 2.

Key features of the OFA include:

- Recognition of Miriwung and Gajerrong peoples as the traditional owners for Kununurra and surrounding areas;
- The State's acquisition of 65,000ha of land for agricultural, residential and industrial development of Ord Stage 2;
- The creation of six new conservation parks and their joint management with the former DEC. The parks are held under freehold title by MG Corp and leased to the State;
- Clarification and agreement as to instances where native title is extinguished (including the granting of freehold titles) and where native title is not extinguished;



- The establishment of the Ord Enhancement Scheme (OES), to redress social, cultural and economic impacts that development of Ord Stage 1 has had on Miriwung and Gajerrong peoples, including the flooding of traditional country to create Lake Argyle and associated displacement of people;
- The creation of a 50,000ha freehold title (Yardungarrl) and 19 Community Living Areas.

The production of LP1 in collaboration with the Mud Springs community is therefore an indirect outcome of the broader native title process and the OFA.

**Figure 2 - Area subject to Ord Final Agreement & location of settlements**

**Background to Native Title in Australia**

The *Native Title Act 1993* (NTA) enshrines in legislation the High Court Mabo decision, in which the common law of Australia formally recognised Indigenous rights and interests in land through the continuing observance of traditional law and custom.

Native title is defined by section 223 of the NTA as:

*the communal, group or individual rights and interests of Aboriginal people or Torres Strait Islanders in relation to land or waters where:*

*the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal people or Torres Strait Islanders; and b) the Aboriginal people or Torres Strait Islanders, by those laws and customs, have a connection with the land and waters; and c) the rights and interests are recognised by the common law of Australia.*

Native title is therefore not a form of land tenure, such as freehold or a crown lease. Rather it is the recognition of pre-existing rights and interests in country. Traditional rights and interests in country may co-exist with other non-Indigenous interests in some instances.

Under the NTA, native title holders and registered claimants are entitled to the right to negotiate regarding proposed future acts which may affect claimed or held native title. Examples of future acts which may affect native title rights and interests include mining exploration, the construction of public works (such as public housing), and the granting of certain forms of land tenure (such as freehold).

Also under the NTA, agreements called ILUAs can be entered into to clarify, eg, future acts that will not extinguish native title or how traditional owners are to be compensated for the extinguishment of traditional rights and interests.

More information about native title can be obtained from the [National Native Title Tribunal](#).

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## 2 COMMUNITY PROFILE

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### 2.1 Population

Estimating and predicting populations in Aboriginal communities is difficult because Aboriginal people tend to be mobile in terms of housing and living arrangements. Populations can increase and decrease quite rapidly based on family, cultural or administrative factors (Morphy 2010; Memmot et al 2004).

The community members of Mud Springs have close affiliations with other settlements in the MG Determination Area and there are regular movements of people throughout the region.

The Australian Bureau of Statistics has advised that recent census data for Mud Springs is unavailable as the settlement was not included as a discrete collector district in the 2001, 2006, 2011 or 2016 censuses. The only known published population estimates for Mud Springs are from the Environmental Health Needs Survey (EHNS) undertaken by the former Department of Indigenous Affairs in 1997, 2004 and 2008. These are:

Population of Mud Springs	1997 EHNS	2004 EHNS	2008 EHNS
Total persons	20	20	19

In addition to the above, a key source of population data is from the community itself. Community members advised that the usual permanent population of Mud Springs is approximately 25 people, comprised of 12 adults and 13 children.

Based on the available data, the population of Mud Springs is estimated to be 25 people.

#### **Aspirational population**

Aspirational population refers to the future population as desired by the existing community.

Community members have advised that there are up to 50 members of their extended family who currently live in Kununurra and elsewhere who would relocate to Mud Springs if sufficient housing were available. Including the existing population, the aspirational population for Mud Springs is up to 75 people.

#### **Existing Service Capacity**

Urban growth at Mud Springs is constrained by the existing level of essential services available at the settlement. It is estimated that the existing electricity generation capacity could service up to 100 people. (see section 3)

Drinking water quantity and quality is unknown, refer to section 3.

The risk of contaminating the existing drinking water source is very high, as existing houses, a disused power-house and an ablution block at Mud Springs are located within the 500m buffer for the drinking water source. Additional housing will increase the risk of contamination to the settlement's drinking water supply. (see section 3)

The total existing services capacity population for Mud Springs is 100 people.

## **Design population**

Design population refers to the number of residents that the LP plans for. The design population takes into consideration the community's aspirational population, available population growth data, and the servicing and physical constraints.

One of the objectives of the LP is to ensure that community residents are provided with an appropriate level of services and housing throughout the 15 year time frame of the LP, by coordinating infrastructure provision with population growth.

As Mud Springs is connected to the reticulated electricity service, the provision of an adequate and safe drinking water supply is the main constraint to the growth of the settlement. The long term sustainability and quality of the groundwater supply is unknown, however if a drinking water supply that is adequately removed from incompatible land uses is secured, the settlement will be capable of meeting the requirements of the aspirational population.

In light of this, the design population for Mud Springs is 100 people.

## **2.2 Governance & Representation**

Over time Miriwung and Gajerrong peoples have developed their own sophisticated formal governance structures, at various spatial scales to assist with the delivery of services and local representation.

The various governance structures that affect the planning and development of Mud Springs are summarised below.

### **Incorporated Community**

The community is managed through its incorporated body - Ribinyung Aboriginal Corporation (RAC). Ribinyung Dawang Aboriginal Corporation was incorporated under the *Aboriginal Councils and Associations Act 1976* in 1986. The name of the organisation was changed to Ribinyung Aboriginal Corporation in 2007.

The aims of RAC are as follows:

- (a) operate an aquaculture business on behalf of its members;
- (b) support the social and community development of its members in all ways;
- (c) support education and job training for its members;
- (d) participate with other organisations to achieve its objectives; and
- (e) receive and spend grants of money from the Government of the Commonwealth or of the State or from other sources.

RAC is registered with the Office of the Registrar of Indigenous Corporations (ORIC). RAC documents can be obtained from [www.oric.gov.au](http://www.oric.gov.au)

### **Dawang Council**

The 16 Dawang that comprise the traditional lands of Miriwung Gajerrong peoples are represented by an over-arching Dawang Council. Membership of the Dawang Council is regulated under the incorporated rulebook of MG Corp.

### **MG Corp**

At a broader governance level, MG Corp acts in trust on behalf of all MG native title holders to ensure compliance with its obligations under the Ord Final Agreement including those relating to community living areas.

MG Corp was incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* in 2006 and its constitution was subsequently amended in 2008. Although membership to MG Corp is limited to native title holders, MG Corp is not a native title prescribed body corporate. However MG Corp has the authority to assist MG peoples in relation to planning, management and use of traditional lands.

MG Corp (or a subsidiary entity of MG Corp such as MG Dawang Land Pty Ltd) may hold titles to land transferred under the OFA, though this is not the situation with regard to land holdings at Mud Springs.

**Ord Enhancement Scheme**

The Ord Enhancement Scheme (OES) is an outcome of the OFA and is a partnership between MG Corp and the State Government through the Kimberley Development Commission (KDC). The purpose of the OES is to address the negative social and economic impacts that Stage 1 of the irrigation scheme has had on Miriuwung and Gajerrong peoples (see KLC 2004).

The OES Management Committee is jointly appointed by the State and MG Corp.

LP No. 1 is prepared for Mud Springs at the request of the OES and by way of a Memorandum of Understanding between the OES and Western Australian Planning Commission.

**2.3 Land Tenure**

Mud Springs is located on a 99.5ha Crown Reserve 40536 (Lot 517), which is vested to the Aboriginal Lands Trust (ALT) for “the use and benefit of Aboriginal inhabitants” with the power to lease the whole reserve or any portion for any term.

A summary of the title details follows:

<i>Crown Land Title details</i>	LR 3159/76
<i>Lot Details</i>	Lot 517 on Deposited Plan 58030
<i>Status Order / Interest</i>	Reserve under Management Order
<i>Primary Interest Holder</i>	Aboriginal Lands Trust
<i>Area</i>	99.5ha
<i>Limitations/Interests/ Encumbrances/Notifications</i>	<ol style="list-style-type: none"> <li>1. Reserve 40536 for the purpose of use and benefit of Aboriginal inhabitants.</li> <li>2. Lease to Ribinyung Dawang Aboriginal Corporation.</li> </ol>

**2.4 Aboriginal Heritage**

Notwithstanding the below, the following discussion of heritage matters derives from discussion with community representatives and a desk-top survey of sites registered under the AHA 1972 using the [Aboriginal Heritage Inquiry System](#).

The purpose of the following discussion is to foreshadow heritage constraints to development as they relate to the implementation of the LP. These constraints to development must be addressed prior to construction of housing and other works.

### Impact of Aboriginal Heritage on Development of Settlements

The *Aboriginal Heritage Act 1972* (AHA) was introduced in Western Australia to provide automatic protection for all places and objects in the State that are important to Aboriginal people because of connections to their culture. The Department of Planning, Lands and Heritage maintains a Register of Aboriginal Sites as a record of places and objects of significance to which the AHA applies. Unregistered sites of cultural significance to Aboriginal people are also protected under the State Government's *Aboriginal Heritage Act 1972*, but only registered sites are recorded on the Department's database and are generally included in the Aboriginal Heritage Inquiry System.

The presence of an Aboriginal site places restrictions on what can be done to the land. Under the AHA it is an offence for anyone to excavate, damage, destroy, conceal or in any way alter an Aboriginal site without obtaining the appropriate approvals. This applies to the development of Aboriginal settlements as it does any other type of settlement. Investigation whether there is an Aboriginal heritage site on the land must be undertaken prior to development or works, and may require a heritage survey or clearance.

Contact should be made with the relevant Native Title Representative Body in the first instance.

No formal heritage assessment under the *Aboriginal Heritage Act 1972* has been undertaken as part of the preparation of this LP. The LP background report and map-set do not represent clearance under that Act in any way. It is expected that any future development of housing and other infrastructure on the community be undertaken in consultation with the community and native title holders and cleared in accordance with the provisions of the AHA.

### No-Go Area

The community has advised that there are registered cultural sites and other heritage places in the vicinity of the living area.

However there are not any 'no-go' areas depicted on LP No.1.

### Registered Sites

There is one registered site and four other heritage sites in the vicinity of the Mud Springs (as of November 2019).

All sites are mythical in nature, meaning that they relate to the creation of country under customary law. Some sites are also associated with physical artefacts, skeletal material, and engravings.

Any future development at the community, including implementing LP No.1, should therefore be undertaken in consultation with the community and MG Corp on behalf of the native title holders to ensure adequate avoidance of sites.

### Built Heritage

An unoccupied and over-grown ruined corrugated iron dwelling exists at the site of a former camp, to the east of the existing settlement. The location of the ruin is in proximity to the proposed future residential area, settlement layout lots (SL-lots) 11-17.

It has not been ascertained whether this ruin should be retained. The community should be consulted prior to development of future residential SL-lots in this area.

## 2.5 Community Aspirations

The ideas for improvements to the facilities noted by the Mud Springs community when developing the Layout Plan are listed below. Where possible, these have been incorporated into the recommended program of works for the LP. Others that cannot be implemented as part of the LP have been noted as a record of a more general community improvement plan.

1. Extend the aquaculture enterprise.
2. Provide housing to accommodate aspirational population.
3. Seal access road to community.

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## 3 EXISTING INFRASTRUCTURE & SERVICES

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### 3.1 Housing

#### Existing Situation

At present there are four houses at Mud Springs. These houses are currently occupied, however community members stated that the housing stock is very old and major repairs are required to all dwellings. This is reflected by the EHNS from 2004, which found that 100% of dwellings at Mud Springs require repairs and maintenance. Given the age and the unsuitable design of the existing houses, replacement may be a better option than refurbishment.

In addition to the houses there is also a transportable building at the community that has been used for accommodation purposes in the past, but is not occupied on a permanent basis. This has recently been positioned adjacent to the shed at the community.

Based on 4 habitable dwellings at the settlement and a usual permanent population of 25 people, the average number of residents per house is 6.25.

#### Essential Services

### 3.2 Water Supply

The former Department of Water conducted an audit of water supply infrastructure at Mud Springs in 2008. A summary of the findings follows:

Bore	<ul style="list-style-type: none"><li>- Bore 1 (B1) 75m north west of nearest house. It is used for community water supply</li><li>- Bore compound is not fenced.</li><li>- Bore is leaking from the head works. Firebreak clearing required to protect the solar infrastructure.</li><li>- The community also has a hand-pump, located 100m south-west of the nearest dwelling. It is in an ok condition.</li></ul>
Water tank	<ul style="list-style-type: none"><li>- 1 main tank approximately 30m north west of nearest house.</li><li>- Tank elevated on stand.</li><li>- 5000L capacity.</li><li>- Water tank compound is not fenced</li><li>- Water tank is in good condition.</li><li>- A second tank is located abutting the community workshop. The tank has a burst base and usage is unknown.</li></ul>
Water distribution	<ul style="list-style-type: none"><li>- Pressure pump available.</li><li>- Condition of pipe work is good.</li><li>- Water pressure is good at the current level.</li></ul>
Water treatment and testing	<p>The community has an aquaculture project operating and has a licence to draw water from the river.</p>

The Shire of Wyndham-East Kimberley had advised in that testing for the Mud Springs bore has not been conducted for over three years and that disinfection treatments for the bore had not been implemented. Due to this lack of water treatment and disinfection, ongoing compliance with the national standards could not be assured (Shire of Wyndham - East Kimberley, cited in Department of Water 2008).

The bore is solar powered and its operation is therefore reliant on suitable climatic conditions. The community advised that, in overcast conditions when the pump is unable to draw water, the operational water tank only has capacity to supply the community with water for one or two days. In order to ensure a reliable and year-round drinking water supply, it is recommended that the bore be connected to the town power supply.

Due to the general lack of scientific data available on water quality and quantity, it is not possible to determine whether the existing drinking water supply is adequate for the existing and design population for Mud Springs.

The bore is not suitably separated from incompatible land uses and is therefore at risk of contamination. The WAPC 'Aboriginal Settlements Guideline 3: Layout Plan Exclusion Boundaries' policy 2012 recommends a 500m buffer for groundwater drinking water sources.

The disused power station, dwellings and an ablution site are located within 150m of the bore at Mud Springs, and are therefore at risk of contaminating the settlement's drinking water supply.

### **3.3 Electricity Supply**

Mud Springs is located in the Kununurra Electricity Licence Area, for which Horizon Power is the licensed electricity supplier. Mud Springs is connected to the reticulated electricity service provided by Horizon Power. The settlement received an LV distribution system upgrade in 2006 when the Kununurra supply was extended to the area.

Horizon Power provides a master meter for the Mud Springs connection.

### **3.4 Wastewater**

Mud Springs disposes of its wastewater via septic tanks and leach drains. Community members raised no major issue with this system, and advised that Kununurra Waringarri Aboriginal Corporation (KWAC) provides assistance with maintenance of the sewer disposal systems.

An ablution block is located proximate to the existing dwellings, although it is not connected to the water system and is therefore unusable. It is recommended that appropriate plumbing connections to the ablution block be provided.

## **Municipal Services**

### **3.5 Flooding & Drainage**

The close proximity of Mud Springs to the Ord River gives rise to flooding and drainage issues that affect development. Low lying areas in and around the settlement become periodically inundated after major rain events. A number of shallow drainage channels have naturally formed, and pose a physical constraint to development at the community.

Community members advised that existing houses have an elevated finished floor level and are therefore generally not subject to flood damage. The drinking water bore is located on a slight rise that does not appear to be flood-prone, although there is no accurate data to confirm this.

There is an area of elevated land approximately 100m north east of the existing shed. This was the location of a former camp, with some cleared areas and building materials still evident. This is considered to be a suitable area for housing in the future.

### **3.6 Access & Dedicated Roads**

Access to Mud Springs from Victoria Highway is via Crossing Falls Road and Fish Farm Road. Crossing Falls Road is a dedicated road with a bitumen surface and is maintained by the Shire of Wyndham - East Kimberley.

Fish Farm Road is an access reserve (Reserve 46265, reserve without management order) that provides legal road access to the settlements of Mud Springs, Munthamar and Bell Springs. There is no dedicated responsibility for maintenance of the gravel road.

### **3.7 Internal Road Layout**

The internal road layout of Mud Springs is comprised of the access road into the settlement from Fish Farm Road (compacted gravel) and a number of informal tracks leading to dwellings and community infrastructure. The layout plan proposes to rationalise the existing tracks into a simple road layout featuring one main east-west running access road to service the future residential area and one north-south running to provide access to the bore and existing housing area. This road system is based on well-used tracks which can be used as a basis for the construction of future roads. The proposed road network also takes into consideration future service alignments and existing drainage lines.

### **3.8 Rubbish Disposal**

Mud Springs' rubbish is collected by KWAC on a fortnightly basis. When required, community members also dispose of their own rubbish in the licensed rubbish tip in Kununurra.

### **3.9 Community Services**

Residents of Mud Springs generally commute to Kununurra for community services such as education and health care, as well as commercial activities such as retail and banking.

Other infrastructure at the community include a shed on SL-lot 10 and play equipment on SL-lot 8.

### **3.10 Commercial Enterprise**

A commercial aquaculture enterprise presently exists on SL-lot 26. Infrastructure on this SL-lot includes an industrial storage shed and ponds.

There is no designated office at the community.

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## **4 RECOMMENDATIONS**

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### **4.1 Essential & Municipal Service Delivery**

There is a lack of clarity with regard to which agency or agencies are responsible for funding and delivery of essential and municipal services to MG Corp communities.

Implementing the layout plan will be difficult until such time that specific agencies are identified for, for example, the funding of drinking water analysis and protection, sealing of roads, and reticulation of power and wastewater.

In normal circumstances municipal services in townsites (such as the maintenance of access roads and collection of rubbish) would be undertaken by local government. Larger remote Aboriginal communities with a population greater than 50 permanent residents generally fall within the Remote Area Essential Service Program (RAESP) managed by the Department of Communities (Housing). The smaller MG communities fall outside of these two categories.

It is beyond the scope of the LP to allocate responsibility for provision of municipal and essential services and their ongoing funding arrangements.

It is recommended that an implementation strategy be prepared by MG Corp to establish which agencies (if any) have current responsibility for the delivery of essential and municipal services. The implementation strategy should address whether agencies such as local government and/or KWAC have the potential to become essential and/or municipal essential service providers to MG communities and identify what the recurrent funding source would be.

### **4.2 Joint Essential Service Infrastructure**

The proximity of Mud Springs to Munthamar and Bell Springs provides an opportunity for the sharing of essential service infrastructure. The Context plan for Munthamar and Mud Springs identifies a site for future sewage ponds and an existing drinking water bore. All sites are suitably separated from incompatible land uses and provide the prospect for reduced costs and suitably located infrastructure for all settlements.

### **4.3 Drinking water analysis and protection**

The unknown quality and quantity of the existing drinking water supply at Mud Springs may limit the potential growth of the settlement in the future. It is therefore recommended that appropriate analysis of the settlement's drinking water supply occurs, in order to determine compliance with the Australian Drinking Water Guidelines and whether the sustainable yield meets current and projected usage levels. This should occur prior to any significant investment at Mud Springs in the future.

An assessment of the drinking water supply could be undertaken as part of the preparation of a Drinking Water Source Protection Plan (DWSPP) for Mud Springs. In order to ensure that existing and future drinking water supplies are appropriately protected, a DWSPP should be prepared by the appropriate agency. Such a plan would incorporate monitoring and maintenance requirements, estimates of groundwater flow directions, estimation of aquifer resources, likely zones of influence of production bores and an assessment of the potential for contaminants to impact water supplies. DWSPPs also define areas of land within which land uses are restricted in order to protect drinking water that is harvested within that area, and are based on hydrological analysis of the particular circumstances of the water source and the settlement/s it serves.

It is acknowledged that analysis of the existing water supply or the preparation of a DWSPP is unlikely in the immediate future, given that no agency has responsibility for the provision of essential services to Mud Springs. As an interim measure it is recommended that a functioning water treatment/filtration system be provided at Mud Springs to address the issue of sediment in the drinking water, and that the bore be connected to the reticulated power to ensure a reliable and year-round drinking water supply.

#### 4.4 Future housing

Based on a residential density of five people per house, Mud Springs would require 15 houses in total to accommodate the aspirational population of 75. The LP plans for 16 residential SL-lots in total.

There are a limited number of suitable locations for future housing at Mud Springs due to the existence of numerous physical constraints at the settlement. The western portion of the settlement (around the three existing dwellings) is rocky and subject to inundation, making it unsuitable for housing. A number of drainage lines and low-lying areas further limit the construction of houses to the eastern, more elevated portion of the settlement.

It is recommended that the provision of housing at Mud Springs be prioritised in the following manner:

- Short term - SL-lot 9 is cleared of vegetation and requires minimal extension of essential service infrastructure;
- Medium term - SL-lots 18-21 are partially cleared of vegetation and require upgrading of First Street;
- Long term - SL-lots 11-17 require significant clearing of vegetation, construction of a new road and extension of essential service infrastructure. These SL-lots are also proximate to the aquaculture ponds and the suitability of this location for residential purposes should be confirmed prior to construction.

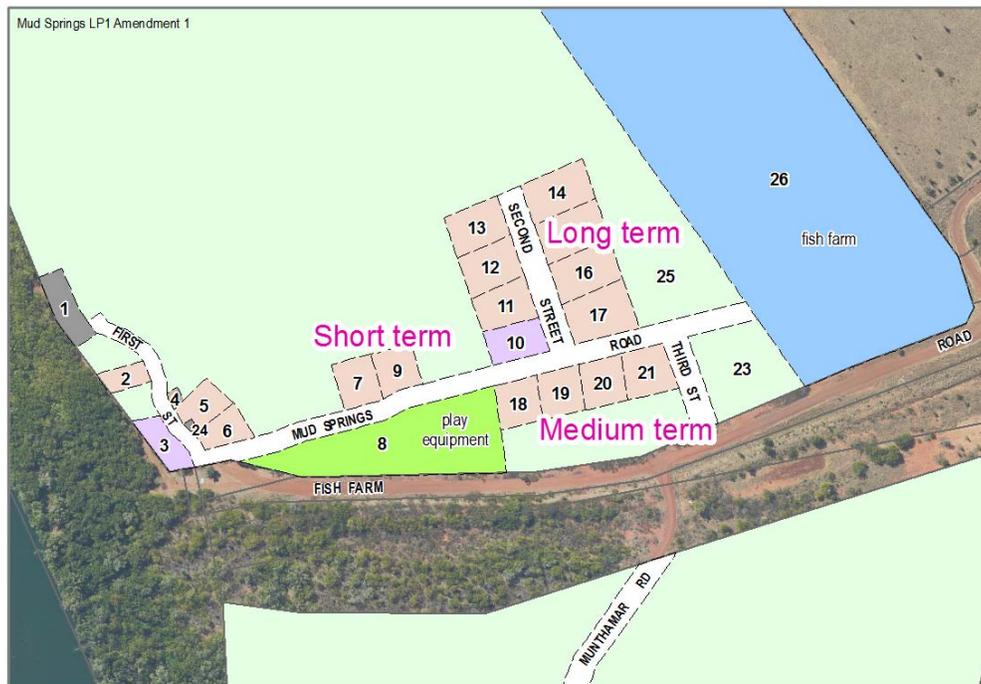


Figure 3 - Future housing development in short, medium and long term

#### **4.5 Road layout**

The road layout depicted in the LP generally reflects the simple settlement layout (SL) road system that currently exists at the settlement. Fish Farm Road is a road reserve and the carriageway is compacted gravel. Other roads have been shown as SL roads as they are generally based on informal, unconstructed tracks that require clearing of vegetation and construction of a trafficable carriageway.

All roads should be sealed and bituminised in the future when funds to do so become available to reduce issues of dust generation.

SL roads are generally 20m in width. A simple system of table drains should be incorporated into the road verges as the road network is formalised to assist with stormwater conveyance. The road network should also be used as the alignment for essential service infrastructure such as power lines and water pipes.

#### **4.6 Lot numbering**

The LP assigns a settlement layout lot (SL-lot) number to every designated land area at Mud Springs. A simple road naming system has also been employed. The purpose of this is to provide a unique identifier to each designated land area for administrative purposes and to assist with the delivery of essential/emergency services.

The SL-lot numbers have been adopted as a guide only, and do not exist in any legal sense. SL-lot numbers can change subject to approval from RDAC and endorsement by the Western Australian Planning Commission.

#### **4.7 Wastewater Disposal**

Improvement to the method of wastewater disposal is required to minimise the risk of contamination to the groundwater system. The long-term solution is to provide a reticulated sewerage service, although it is acknowledged that there is a lack of funds to do so and no agency is assigned the responsibility for the construction and ongoing maintenance of such infrastructure at Mud Springs.

It is therefore recommended that improvements to the current method and/or new methods of on-site effluent disposal be investigated. Possible improvements to the current method include: the use of filters on the outlet of septic tanks to reduce the amount of solids in the outgoing effluent; an alternating system of two or more leach drains with a diverter box to change the flow of effluent (allowing the unused portion to dry out); and regular desludging of septic tanks as part of a systemic maintenance regime by a responsible agency. Alternatively, the site suitability of the various alternative treatment units approved by Department of Health for use in WA should be investigated. The LP has outlined a potential site for waste water treatment ponds to the north of the community living area. there is the potential for joint settlement use of this infrastructure (see section 4.2).

Any effluent disposal system should comply with the specifications of the Department of Health and the Shire's Environmental Health department. It is also recommended that the settlement's drinking water supply be regularly tested in order to identify any potential contamination.

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## **5 PLANNING FRAMEWORK**

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### **5.1 State Planning Policies**

State Planning Policies (SPPs) are prepared and adopted by the WAPC under statutory procedures set out in section 26 of the *Planning and Development Act 2005*.

The WAPC and local governments must have 'due regard' to the provisions of State Planning Policies when preparing or amending town planning schemes and when making decisions on planning matters. The State Administrative Tribunal is also required to take SPPs into account when determining appeals.

The following SPPs were given due regard in the preparation of LP No. 1:

- SPP 3 – Urban Growth and Management;
- SPP3.2 Planning for Aboriginal Communities; and
- SPP2.7 Public Drinking Water Source

### **5.2 Land Use Buffers for Aboriginal Communities**

The exclusion boundaries shown on the map-set are in accordance with the WAPC's Aboriginal Settlements Guideline 3: Layout Plan Exclusion Boundaries.

### **5.3 Shire of Wyndham-East Kimberley**

#### **Local Planning Scheme No. 9**

The Shire of Wyndham-East Kimberley Local Planning Scheme No. 9 (LPS 9) was gazetted on 19 February 2019.

Mud Springs is zoned settlement under LPS 9 which identifies existing and proposed Aboriginal settlements and to collaboratively plan for the orderly and proper development of those places.

Under the Scheme, preparation and endorsement of a layout plan in accordance with State Planning Policy 3.2; and ensuring that development accords with a layout plan is a requirement of the settlement zoning (see current Scheme zoning in Figure 4 on the following page).

LPS 9 states development in the Settlement Zone is to accord with an endorsed Layout Plan and provide for:

- (a) a mix of land uses typically found in Aboriginal Settlements, including light industrial, tourism, residential, commercial, community, recreation and public utility; protecting sensitive areas such as No Go areas and drinking water source protection areas from inappropriate development.
- (b) traditional law and culture.

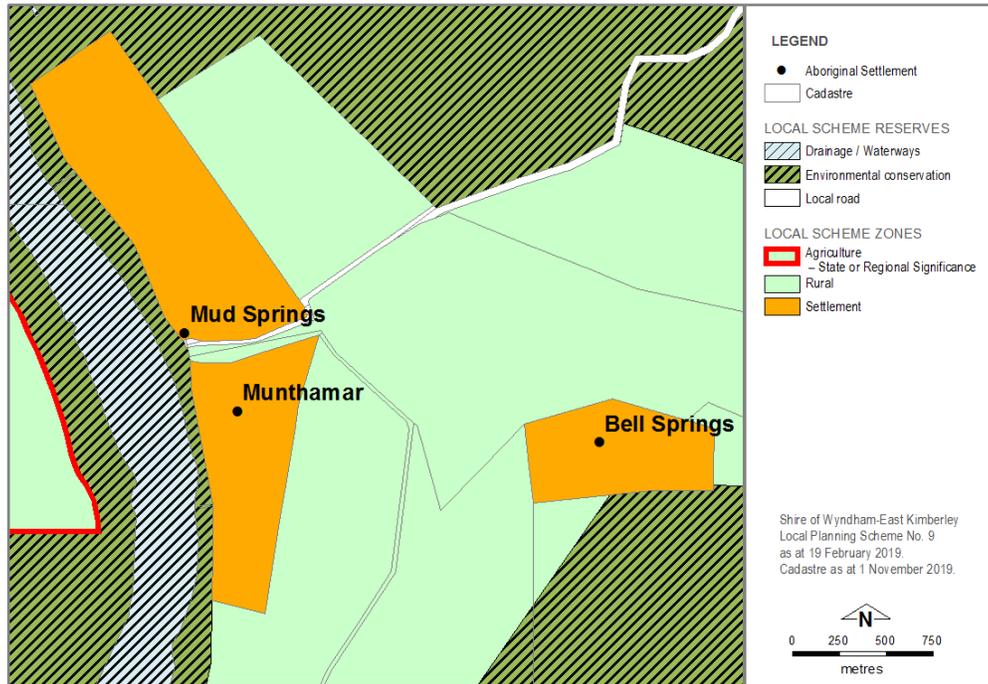


Figure 4 - Land classification under SWEK LPS 9 - Mud Springs, Mud Springs and Munthamar

### Local Planning Strategy

The Shire of Wyndham-East Kimberley Local Planning Strategy (endorsed by the WAPC 21 August 2019) provides a vision for the growth and development of the Shire over a 10-15 year time frame. The strategy notes that Layout Plans should be prepared for all remote settlements, and should incorporate planning for infrastructure within and to these settlements and that existing Layout Plans within the Shire should be reviewed for currency.

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## **6 ENDORSEMENTS**

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# Mud Springs Community Layout Plan No.1

PO Box 43  
Kununurra  
WA 6743

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The Ribinyung Aboriginal Corporation (representing the community) hereby adopts the **Mud Springs Community Layout Plan No. 1 (2010)** as a guide for future development within its boundaries.

The elected council acknowledges that the layout represents community aspirations for future development, and hereby adopts the plan, report and provisions at the meeting held on:

The 16<sup>th</sup> Day of November 2010

Adopted by the Ribinyung Aboriginal Corporation:



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Director  
[Please print and sign name]

Director

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Director

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Director

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Director

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Director

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MG Corporation Endorsement

# Mud Springs Community Layout Plan No.1



PO Box 2110  
Kununurra WA 6743

MG Corporation (representing the traditional owners of Miriuwung Gajerrong #1 & #4 native title determinations) hereby adopts the **Mud Springs Community Layout Plan No. 1 (2010)** as a guide for future development within the native title determination area.

The Board acknowledges that the layout represents community aspirations for future development, and hereby adopts the plan, report and provisions at the meeting held on:

The .....17..... Day of .....January..... 2011  
2010

Adopted by the MG Corporation Board:

M. C. Lee

Ted Carlton

M. C. Lee

TED CARLTON

Director  
[Please print and sign name]

Director  
[Please print and sign name]

Iain Summers

\_\_\_\_\_

Director IAIN SUMMERS

Director

Helena Gellard

\_\_\_\_\_

Director HELEN GELLARD

Director

Edna O'Malley

\_\_\_\_\_

Director

Edna O'Malley

Director



# Mud Springs Community Layout Plan No. 1

PO Box 614  
Kununurra WA 6743

The Shire of Wyndham-East Kimberley hereby adopts the **Mud Springs Community Layout Plan No. 1 (2010)** as a basis for future growth and development within Mud Springs community.

The .....21<sup>st</sup>.....Day of .....JUNE..... 2010

Endorsed by the Shire of Wyndham-East Kimberley:

OR FRED MILLS

Shire President  
(Please print and sign name)

GARY GAFFNEY

CEO  
(Please print and sign name)

Council  
Seal



# Mud Springs Community Layout Plan No. 1

469 Wellington Street  
Perth WA 6000

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The Western Australian Planning Commission hereby endorses the **Mud Springs Community Layout Plan No. 1 (2010)** as a guide for development to ensure proper and orderly planning within the community area

The .....29<sup>th</sup>..... Day of .....September..... 2011

Signed for and on behalf of the Western Australian Planning Commission

*Geah Lan*

an officer of the Commission duly authorised by the Commission pursuant to section 24 of the *Planning and Development Act 2005* in the presence of

*M. Wieclaw*

Witness

29.9.2011 Date

# CONSULTATION & REFERENCES

## CONSULTATION SUMMARY

Preparation of this Layout Plan is the result of consultation with the community representatives and a range of agencies, authorities, non-government organisations during 2009-2010.

Information was obtained from the following sources.

<b>Organisation</b>	<b>Date</b>
Mud Springs site visits	Oct 2009 Mar 2010
MG Corp/OES	Oct 2009
Australian Bureau of Statistics	June 2009
State Land Services, Department of Regional Development & Lands	July 2010
Department of Indigenous Affairs	June 2010
Department of Housing	July 2010
Kununurra Waringarri Aboriginal Corporation	July 2010
Shire of Wyndham-East Kimberley	Oct 2009 Aug 2010
Landgate	Oct 2009 July 2010
Horizon Power	July 2010
Department of Water	June 2010

The PACP team of the former Department of Planning would like to thank Mr Lawford Benning and Ms Anna Moulton of the Ord Enhancement Scheme for their assistance in co-ordinating and mediating site visits to communities in the Ord Valley.

## REFERENCE

Barber, K. & H. Rumley 2003 'Gunanurang: (Kununurra) Big River. Aboriginal Cultural Values of the Ord River and Wetlands'. Study and report prepared for the Water and Rivers Commission, Perth, WA.

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Memmot, P. & S. Long & M. Bell & J. Taylor & D. Brown 2004 *Between Places: Indigenous Mobility in Remote and Rural Australia*. Australian Housing & Urban Research Institute, University of Queensland.

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Skyring, F. 2004 'History, development and Ord 1 today', in Kimberley Land Council (KLC) 'Ord Stage 1: Fix the Past, Move to the Future. Aboriginal Social and Economic Impact Assessment of the Ord River Irrigation Project'. Unpublished report by the KLC, Broome.

Taylor, J. 2003 *Aboriginal Population Profiles for Development Planning in the Northern East Kimberley*. Research monograph no. 23. Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.

# AMENDMENTS

Plan Date : 16 November 2010 WAPC Endorsed : 29 September 2011  
Proponent : Department of Planning Requires : WAPC only – minor amendment  
Endorsement

**Reason for the Amendment**

The Department of Planning, on behalf of the Western Australian Planning Commission (WAPC), is the custodian for Layout Plans prepared under State Planning Policy 3.2, including the Mud Springs Layout Plan 1.

Since the publication of that Policy in August 2000 all Layout Plan map-sets have been prepared using a variety of computer-aided-design (CAD) formats. All Layout Plan map-sets have now been converted to a common user geographic information systems (GIS) format, including the Mud Springs Layout Plan 1.

This conversion process has required a comprehensive re-development of the map-set and includes a number of data and content upgrades. This may include the establishment of new Settlement Layout lots (SL-lots), the inclusion of recommended settlement zones, modification to ensure land-use areas accord with Aboriginal Settlements Guideline 1, inclusion of drinking water source protection areas, incorporation of updated cadastre, and many other general improvements.

**Approved**

This is a minor amendment as the myriad changes made to content and illustration are of a technical nature. As such, under provision 6.14 the endorsement of the WAPC only is required.

Western Australian Planning Commission

RESOLVED & RECORDED IN MINUTES  
OF THE STATUTORY PLANNING  
COMMITTEE MEETING  
23 OCT 2012

Date 25/10/2012

*[Handwritten signature]*

please sign and print name

Rosa Rigali  
Planning Administration Team Leader  
Perth, Peel Planning - Department of Planning

**Other Information:**

**This Layout Plan does not constitute development approval.**  
It is the responsibility of the developer to ensure that all relevant consents, approvals, licences and clearances are in place prior to commencing physical works on site. Organisations responsible for such matters may include landowner, local government, incorporated community council, native title representative body, Department of Environment & Conservation, Aboriginal Cultural Materials Committee, Environmental Protection Authority, Department of Consumer & Employment Protection and Department of Water.

## Mud Springs Layout Plan No. 1

### Amendment No. 2

<b>Proponent</b> : Department of Planning, Lands and Heritage
<b>Date</b> : 17 <sup>th</sup> January 2020

#### Reason for the Amendment

The enactment of the Shire of Wyndham-East Kimberley (SWEK) Local Planning Scheme 9 (LPS 9), gazetted on 19 February 2019, has resulted in the need to delete the 'Recommended Settlement Zone' and add the 'Settlement' zone to match the LPS 9.

DPLH has also undertaken an update of the Layout Plan background report to ensure that it remains up-to-date, accurate and fit-for-purpose. The update includes:

- Revising the population and housing data;
- Editing and reformatting the background report;
- Removing out of date text and references

Land Identification		Amendment description
1.	All	Delete the 'Recommended Settlement Zone'. Add 'Settlement' zone to match the SWEK LPS 9.
2.	All	Update the Background Report.

#### Endorsement:

In accordance with Planning Bulletin 108/2013 this amendment is minor in nature. As such, the endorsement of the Western Australian Planning Commission is solely required.

Determined on behalf of the Western Australian Planning Commission in accordance with the *Instrument of Delegation – Delegation to officers of certain powers and functions of the Western Australian Planning Commission.*

Determination 17/01/2020 date

Ashley Randell  
Director, Regional Planning Policy  
Regional Planning  
PN: 15151

#### Other Information:

**This Layout Plan does not constitute development approval.**

It is the responsibility of the developer to ensure that all relevant consents, approvals, licences and clearances are in place prior to commencing physical works on site. Organisations responsible for such matters may include landowner, local government, incorporated community council, native title representative body, Aboriginal Cultural Materials Committee, Environmental Protection Authority and Department of Water and Environmental Regulation.