

**MEMORANDUM OF
UNDERSTANDING**

MEMORANDUM OF UNDERSTANDING BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

STATE OF WESTERN AUSTRALIA

IN RELATION TO INTERIM WORKING ARRANGEMENTS FOR THE
REGULATION OF MINERAL EXPLORATION ACTIVITIES BY PALADIN ENERGY
LTD WITHIN THE YAMPI SOUND TRAINING AREA IN WESTERN AUSTRALIA

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MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING (MOU) IN RELATION TO INTERIM
WORKING ARRANGEMENTS FOR THE REGULATION OF MINERAL EXPLORATION
ACTIVITIES BY PALADIN ENERGY LTD WITHIN THE YAMPI SOUND TRAINING
AREA IN WESTERN AUSTRALIA

Date

This MOU is dated

Parties

This MOU is made between:

1. **Commonwealth of Australia** (the Commonwealth)
and
2. **State of Western Australia** (Western Australia)

Context

This MOU is made in the following context:

- A. The Commonwealth owns the freehold in the YSTA, save and except the rights to mines of coal or other minerals which are owned by Western Australia.
- B. The YSTA is a place acquired by the Commonwealth for a public purpose within the meaning of s 52(i) of the Commonwealth Constitution.
- C. The *Mining Act 1978* (WA) does not apply to the YSTA.
- D. Western Australia is presently undertaking a review of the *Mining Act 1978* with a view to amendments that will allow the *Mining Act 1978* to regulate Mineral Exploration Activity in the YSTA.
- E. Mining activities in the YSTA are presently regulated by the Commonwealth under ss 51 and 53(2) of the *Lands Acquisition Act 1955* (Cth), which continue in force under s 124(8) of the *Lands Acquisition Act 1989* (Cth).
- F. The Commonwealth recognises that regulation of Mineral Exploration Activity in the YSTA will require cooperation with Western Australia. The Commonwealth will use its best endeavours to work with Western Australia to regulate Mineral Exploration Activities by Paladin in the YSTA notwithstanding the current absence of Western Australian legislation.

- G. The parties have agreed to the terms of this MOU as an interim measure to facilitate consideration by the Commonwealth of an Application from Paladin to undertake Mineral Exploration Activity in the YSTA.

Interim Working Arrangements

1. Interpretation

Definitions

- 1.1. Unless the contrary intention appears, a term in bold type has the meaning shown opposite it:

Application	means an application for an Authorisation made by Paladin.
Authorisation	means an authorisation of the grant of a right under s 53(2) of the <i>Lands Acquisition Act 1955</i> (Cth) to conduct Mineral Exploration Activity in the YSTA.
Commencement Date	means the date that this MOU is signed by the parties or, if signed on different dates, the later of those dates.
Commonwealth Minister	means the Commonwealth Minister of State for the time being administering the <i>Lands Acquisition Act 1989</i> (Cth).
Confidential Information	means information that is by its nature confidential and is designated as such by the party that provides it.
Crown Land	has the same meaning as in s 8 of the <i>Mining Act</i> (WA) 1978.
Mineral Exploration Activity	means any ground disturbing activity or activity which would require a Mineral Exploration Licence or an application for a Programme of Work, under Division 2 of Part IV of the <i>Mining Act 1978</i> (WA), if it were to be conducted on land subject to the <i>Mining Act 1978</i> (WA).
Programme of Work	means a detailed description of proposed exploration activity, including the use of ground disturbing equipment.
Paladin	means Paladin Energy Ltd.
YSTA	means Lot 15 on Deposited Plan 242219 being the land comprised in Certificate of Title Volume 1545 Folio 970 and known as the Yampi Sound Training Area.
Specified areas in YSTA	means particular locations within the YSTA identified by Paladin in an Application.

2. Status of MOU

- 2.1. This MOU is not legally binding on the parties.

- 2.2. The parties intend to deal with each other on the basis of the arrangements set out in this MOU,
- 2.3. The term of this MOU is a period of two years commencing on the Commencement Date.
- 2.4. The parties acknowledge the overriding legal principle that the Commonwealth Minister has a statutory discretion under s 53(2) of the *Lands Acquisition Act 1955* (Cth) as to whether or not the Minister grants an Authorisation and nothing in this MOU is intended to fetter any such statutory discretion.
- 2.5. Western Australia acknowledges that the Commonwealth's use of the YSTA as a Defence training area takes precedence over any other activity to be undertaken in the YSTA, and this MOU is to be interpreted accordingly.

3. Scope and Purpose of MOU

- 3.1. This MOU relates to an Application by Paladin to carry out Mineral Exploration Activity in Specified Areas in the YSTA. It does not relate to any other activities or any other area of land.
- 3.2. The purpose of this MOU is to clarify the roles and responsibilities of the Commonwealth and Western Australia in relation to mineral exploration by Paladin within the YSTA so that:
 - a. the Application can be considered with maximum effectiveness and efficiency;
 - b. an Authorisation may be granted; and
 - c. transparent and effective communications between the parties is established and maintained.

4. Roles and Responsibilities

Commonwealth of Australia

- 4.1. The Commonwealth Minister is responsible for granting the Authorisation.
- 4.2. The Department of Finance and Deregulation administers the *Lands Acquisition Act 1955* (Cth) and the *Lands Acquisition Act 1989* (Cth) and provides advice to the Commonwealth Minister and will manage this MOU on behalf of the Commonwealth.
- 4.3. The Department of Defence is the land manager of the YSTA and will be responsible for developing and managing any Deed of Access contemplated by clause 5.11 of this MOU.

State of Western Australia

- 4.4. The Western Australian Minister for Mines and Petroleum is responsible for administering the *Mining Act 1978* (WA).
- 4.5. The Department of Mines and Petroleum assists the Western Australian Minister of State in administering the *Mining Act 1978* (WA) and will manage this MOU on behalf of the State of Western Australia insofar as this is consistent with the roles and responsibilities set out in clauses 5.7, 5.8 and 5.9.

5. Process

Guiding Principles

- 5.1. An Authorisation by the Commonwealth provides the legal authority for the conduct of Mineral Exploration Activities in the YSTA.
- 5.2. The Commonwealth only intends to grant an Authorisation after having first consulted with Western Australia.
- 5.3. The process for handling the Application, granting an Authorisation and obtaining the support of Western Australia is set out in this clause 5.

Application

- 5.4. The Application is to be made to the Commonwealth by Paladin and is to include all information that would be required by Western Australia if the activity was to be carried out on Crown Land subject to the *Mining Act 1978* (WA), together with such other information as the Commonwealth may require from time to time.

Process

- 5.5. When the Commonwealth receives the Application, the Commonwealth will, within a reasonable time, provide a copy of the Application to Western Australia, together with any preliminary comments that the Commonwealth wishes to make in respect of the Application.
- 5.6. Western Australia will, within a reasonable time of receiving the Application, review the Application as if it were an application to carry out Mineral Exploration Activity on Crown Land subject to the *Mining Act 1978* (WA).
- 5.7. In conducting the review, Western Australia will undertake such processes as are agreed with the Commonwealth from time to time.
- 5.8. Upon completion of the review referred to in clause 5.6, Western Australia will provide the Commonwealth with a written report setting out:
 - a. whether Western Australia would have granted an exploration licence or approved a Programme of Work under the *Mining Act 1978* (WA) if the

Application had been made directly to Western Australia in respect of Crown Land subject to the *Mining Act 1978* (WA);

- b. confirmation of Western Australia's agreement to Paladin's extraction of minerals for the purpose of conducting the Programme of Work or Mineral Exploration Activity ;
 - c. any conditions (that might otherwise apply to an exploration licence or programme of work in Western Australia) that Western Australia considers should be imposed if the Authorisation is granted; and
 - d. any other material it considers relevant to the Commonwealth Minister's decision in respect of the Application.
- 5.9. Following receipt of the report from Western Australia under clause 5.8, the Commonwealth will determine whether to grant an Authorisation. An overview of the Commonwealth's proposed decision-making process in determining whether to grant an Authorisation is set out at Attachment A to this MOU.
- 5.10. In the event that the Commonwealth does not agree to impose a condition recommended by Western Australia under clause 5.8.b, officials of each party will meet together within a reasonable time and endeavour to reach a mutually agreeable outcome.

Deed of Access

- 5.11. If the Commonwealth Minister agrees to grant an Authorisation, the Commonwealth will enter into a Deed of Access with the authorised party that will include:
- a. the Authorisation;
 - b. the terms and conditions attaching to the Authorisation; and
 - c. any other terms and conditions associated with the proposed access to and use of the YSTA that the Commonwealth sees fit.

Compliance monitoring

- 5.12. If the Commonwealth Minister grants an Authorisation, Western Australia agrees to have primary responsibility for monitoring compliance by Paladin with any conditions that are included in the Authorisation and must promptly provide the Commonwealth with details of any non-compliance by Paladin.
- 5.13. Western Australia will be responsible for all costs of monitoring compliance by Paladin.
- 5.14. In the event of a dispute or disagreement between Paladin and Western Australian authorities, Western Australia may wish to advise the Commonwealth that, if the exploration licence or approval for the Programme of Work had been granted by Western Australia in respect of Crown Land subject to the *Mining*

Act 1978 (WA), Western Australia would consider revoking the grant or approval. In that event, the Commonwealth would reconsider the Authorisation given by the Commonwealth Minister and, if requested by Western Australia, may revoke the Authorisation.

6. Management

Information Sharing

- 6.1. The parties agree to share information on Mineral Exploration Activity within the YSTA in a transparent and efficient manner to the extent that it is possible to do so without breaching any confidentiality or security restrictions.

Confidentiality

- 6.2. A party will not, without the prior written authorisation of the other party, disclose any Confidential Information provided by the other party.
- 6.3. This clause does not apply to disclosure to a Commonwealth Minister or Western Australian Minister or a Parliamentary Secretary or to a disclosure required by law.

Meetings

- 6.4. Unless otherwise agreed by the parties, senior officers of the following agencies will meet at least annually to discuss matters related to this MOU:
- a. the Department of Finance and Deregulation;
 - b. the Department of Defence; and
 - c. the Department of Mines and Petroleum.
- 6.5. Meetings will be held at a time and place agreed by the parties.

Regular Communication

- 6.6. The Department of Finance and Deregulation and the Department of Mines and Petroleum will maintain regular "officer-level" contact on matters related to this MOU, and will maintain an appropriate level of contact with other Commonwealth and Western Australian agencies to ensure the smooth and efficient operation of this MOU.

Review

- 6.7. This MOU may be jointly reviewed at any stage at the request of either party. This may include a review of whether or not this MOU should continue to operate.

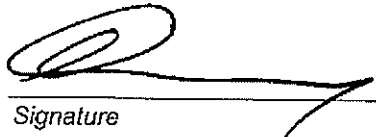
7. Regulations

- 7.1. In the event that the Commonwealth develops regulations under s 124 of the *Lands Acquisition Act 1989* (Cth) in relation to mineral exploration and/or mining activities on Commonwealth land situated within the State of Western Australia, the Commonwealth will consult with Western Australia in the development of any such regulations.

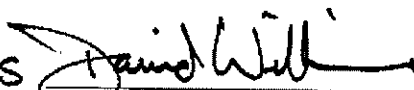
Signatures

SIGNED for and on behalf of the)
Commonwealth of Australia by :)

The Honourable Gary Gray AO MP,
Special Minister of State


Signature

In the presence of:

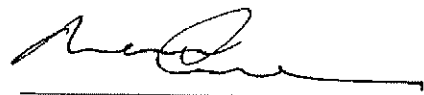
DAVID ALLAN WILLIAMS 
Name of witness Signature of witness

Date:

7 FEBRUARY 2012

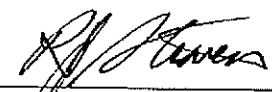
SIGNED for and on behalf of the)
State of Western Australia by:)

The Honourable Norman Moore MLC,
Minister for Mines and Petroleum of
the State of Western Australia


Signature

In the presence of:

ROBERT JAMES STEVENS
Name of witness


Signature of witness

Date:

30th January 2012

Attachment A

Overview of Commonwealth administrative decision making process: Paladin's application to access the YSTA for mineral exploration.

In this Attachment, the following abbreviations are used:

Commonwealth	Commonwealth of Australia
Defence	Department of Defence
DFAT	Department of Foreign Affairs and Trade
DRET	Department of Resources, Energy and Tourism
DSEWP&C	Department of Sustainability, Environment, Water, Population and Communities
Finance	Department of Finance and Deregulation
Finance Minister	Minister for Finance and Deregulation
LAA55	<i>Lands Acquisition Act 1955</i>
LAA89	<i>Lands Acquisition Act 1989</i>
PM&C	Department of the Prime Minister and Cabinet
SMOS	Special Minister of State
Treasury	Department of the Treasury
YSTA	Yampi Sound Training Area
WA	Government of Western Australia

Mining Act

Mining Act 1978 (WA)

Assumptions:

1. The YSTA is owned freehold by the Commonwealth, and occupied and managed by Defence.
2. Commonwealth land use policy is generally in favour of multiple land use purposes, including mineral exploration and / or mining, wherever this is compatible with the Commonwealth's use of the YSTA.
3. Ownership of the minerals in the YSTA is reserved to the Crown in right of WA.
4. The Mining Act does not apply to the YSTA as a result of the High Court decision in *Commonwealth v. WA* [1999] HCA 5.
5. The SMOS is the relevant Commonwealth decision-maker for authorising access to Commonwealth land for the purposes of mineral exploration (section 124(8) of the LAA89, and section 53(2) of the LAA55).
6. The decision-making process described in Finance's published advice: *Access to Commonwealth land for mineral exploration and mining activities* (www.finance.gov.au) will be followed so far as possible.

- Step 1 Application for access to the YSTA received by Finance
- Step 2 Finance obtains information about:
- Ownership of the YSTA, any registered interests and ownership of the minerals on the land;
 - Details about the exploration work proposed: precise location, methods, equipment, personnel and technology to be used; and
 - WA licences and approvals that may and, in the case of the Mining Act, would ordinarily be required under WA law (noting that the Mining Act does not apply to the YSTA).
- Step 3 Finance consults Commonwealth agencies:
- including Defence as the agency occupying / managing the land;
 - AGD, to identify any native title interests on the land;
 - DRET, to ascertain relevant Commonwealth policy issues vis-à-vis mineral development;
 - DSEWP&C, to identify environmental issues; and
 - other agencies may also be consulted (depending on the particular facts: such as DFAT, PM&C and Treasury).
- Step 4 Finance consults WA State agencies
- for comments on the Application, particularly in relation to any matter that the SMOS should be aware of prior to making a decision to grant an Authorisation; and

- for evidence of WA agreement that Paladin may extract minerals owned by WA to the extent that it is necessary to do so to undertake a Programme of Work or conduct the proposed exploration activities.

Step 5 Where

- the proposed exploration is compatible with the Commonwealth's use of the YSTA;
- Paladin has all relevant and applicable State approvals and licences;
- the minerals are owned by WA and WA has agreed to Paladin's extraction of minerals to the extent necessary to conduct the Programme of Work or proposed exploration activities;
- there are no issues of concern to other Commonwealth agencies (and they are not opposed to the proposed activity on the YSTA); then

the SMOS may authorise the grant by the Commonwealth to Paladin of an Authorisation to explore for minerals in the YSTA. The SMOS is likely to impose a condition that before commencing exploration Paladin negotiates a deed of access with Defence.

Step 6

Thereafter Paladin would gain access to the YSTA to undertake the agreed mineral exploration. The Commonwealth would assume that relevant State law would govern the Paladin's activities to the fullest extent possible.