

19. ESTABLISHMENT OF BODIES CORPORATE AND TRUSTS

19.1 KLC to establish bodies corporate and trusts

- (1) The KLC, acting on behalf of and on the instructions of the MG People, must as soon as practicable after the Execution Date establish:
 - (a) the MG Corporation, in accordance with clause 20 (dealing with MG Corporation); and
 - (b) the MG Charitable Trust and the MG Charitable Trustees Pty Ltd, in accordance with clause 26.
- (2) To the extent the KLC has the funds to do so (whether under clause 19.3 or otherwise) and is requested to do so by the MG People, the KLC acting on behalf of and on the instructions of the MG People must establish:

20. MG CORPORATION

20.1 Establishment and name

- (1) Subject to clause 28 (dealing with MG Entity May Receive Benefits), references throughout this deed to the "*MG Corporation*" are references to the

body corporate established in accordance with clause 19.1(1)(a) and this clause 20.

- (2) The MG Corporation must be established under the *Aboriginal Councils and Associations Act 1976* (Cth).
- (3) The MG Corporation may be named "Yawoorroong Yirgeb Noong Dawang Aboriginal Corporation" or such other name chosen by the MG People

20.2 Objects

The objects of the MG Corporation must include, but are not limited to, the following:

- (1) Complying with the obligations of the MG Corporation under this deed and receiving the rights and benefits of the MG Corporation under this deed.
- (2) In accordance with this deed, holding by itself or by an MG Entity, beneficially or as trustee, title to land transferred for the benefit of the MG People under this

- (f) transportation, relief housing and resettlement of the MG People in their traditional country;

(g) _____

- (h) cultural development activities; and

- (i) sporting assistance.

- (7) Assisting the MG People in relation to the planning, management and use of land and waters to which they have a traditional connection, including by:

- (a) consulting with, and advising, the MG People about matters affecting such land and waters:

- (b) providing representation and resources to ensure that the MG People are _____

(b) have the following characteristics which are characteristics of a public benevolent institution:

- (i) it is set up for needs that require benevolent relief;
- (ii) its dominant purpose is providing benevolent relief;

suffering from them;

- (iv) it is carried on for the public benefit;
 - (v) it is non-profit; and
 - (vi) it is an institution.
- (4) The MG Corporation must at all times comply with its constitution.
- (5) The MG Corporation must not amend its constitution during the Contribution Period except with the written approval of the State. If a proposed amendment to the constitution is not inconsistent with this deed then the State must give its approval to the proposed amendment.

- (b) ratification by the Governing Committee of the exercise of the power;
- (c) reporting requirements regarding the exercise of the power; and
- (d) revocation of the delegation.

20.6 Management Group

- (1) The Governing Committee must appoint a Management Group of the MG Corporation consisting of not more than five members of the

Governing Committee and such other persons as the Governing Committee consider appropriate.

- (2) The function of the Management Group shall be to:
 - (a) exercise the powers delegated to it under clause 20.5(3); and
 - (b) oversee and take responsibility for the administration and staff of the MG Corporation.

20.7 Administration

The Management Group must arrange for the MG Corporation to employ or contract relevant staff and consultants.

20.8 Economic Development Unit

- (1) The MG Corporation must establish and operate an Economic Development Unit throughout the Contribution Period.
- (2) The MG Corporation must fund and maintain a position at least to the equivalent level of 1 full time employee, to carry out the functions and responsibilities of the Economic Development Unit. The person or persons

20.10 Requirements for MG Corporation to act as trustee

- (1) Subject to clause 20.10(2), the MG Corporation must receive any money or interest in land under this deed beneficially and not as a trustee.
- (2) The MG Corporation may receive money or an interest in land under an express trust (which may be a discretionary or a charitable trust) if the trust deed provides that, without limitation:
 - (a) the class of beneficiaries of the trust is one or more of the following:

(i) the MG People (which for the avoidance of doubt includes all of the

(ii) some other entity (including an MG Entity, or a trust, company, association or other legal entity) established for the benefit of the MG People and approved by the Governing Committee of the MG Corporation;

(b) only the Governing Committee of the MG Corporation may appoint a

whereby such obligations shall be deemed to be the obligations of the MG Corporation.

20.14 Substitution of MG Corporation

(1) If, after the Satisfaction Date:

- (a) the State and MG#1 PBC and any MG#4 PBC agree in writing that another specified body corporate shall be the MG Corporation for the purposes of this deed in place of the existing MG Corporation; and
- (b) the requirements in this clause 20 (including in particular clause 20.12)

then that body corporate shall on and from the date specified in the written agreement, be the MG Corporation for the purposes of this deed.

- (2) The State must not enter into an agreement referred to in clause 20.14(1) without first making reasonable efforts to consult with the Governing Committee for the time being of the MG Corporation and taking any such consultations into account.
- (3) If a new body corporate is substituted as the MG Corporation in accordance with clause 20.14(1) then, on and from the date of the substitution, the former MG Corporation shall retain any liability incurred before that date under this deed and shall remain entitled to any benefit which accrued under this deed prior to that date, but shall not be entitled to any of the benefits and shall not have any liability under this deed in respect of anything done or not done on or after that date.

20.15 MG Employment and Contracting Register

(1) The MG Corporation must establish and maintain a written list ("**MG Employment and Contracting Register**") containing the following details:

(a) MG Corporation's employees who are employed in a Project

21. COMMENCEMENT OF BENEFITS TO MG CORPORATION

21.1 Satisfaction Date

(1) The MG Corporation must, on or as soon as practicable after the Ratification Date, provide the State with each of the following:

(a) copies of the certificate of incorporation and constitution of the MG Corporation;

(b) copies of notices from the Australian Taxation Office:

(i) ~~confirming that the MG Corporation is registered for GST purposes~~

(as required under clause 20.9); and

(ii) ~~confirming the Australian Business Number for the MG Corporation~~

(c) copies of the certificate of incorporation and constitution of the MG

22. FINANCIAL CONTRIBUTION BY THE STATE TO MG CORPORATION

Notes.

(1) *This clause 22 provides for the payment by the State to the MG Corporation of*

£

Year (1 July to 30 June).

(2) *The payments are divided into two parts -*

(a) *Administration Payment - \$750,000 a year for administration of the MG Corporation and other entities (which is referred to as an **Administration Payment**, with the first being the **First Administration Payment**), and*

(b) *Economic Development Payment - \$250,000 a year to enable the MG Corporation to operate an Economic Development Unit (which is referred to as an **EDU Payment**, with the first being the **First EDU Payment**).*

(3) *The following terms used in this clause 22 apply to this Division 4A:*

(a) *Administration Balance Payment has the meaning in clause 22.1(2)(h):*

- (k) *EDU Payment Purpose means the expenditure of moneys for the costs associated with operating the Economic Development Unit and the administration of MG Charitable Trustees Pty Ltd, including payment of fees to the Independent Directors of MG Charitable Trustees Pty Ltd and any other relevant expenses;*
- (l) *First Administration Budget has the meaning in clause 22.2(2);*
- (m) *First Administration Payment has the meaning in clause 22.1(1)(a);*
- (n) *First EDU Payment has the meaning in clause 22.1(1)(b);*

- (o) *First EDU Payment has the meaning in clause 22.1(1)(b); and*
- (p) *First Payment Period means the period between the Satisfaction Date and 30 June next following the Satisfaction Date.*

22.1 First Administration and Payments and Balance Payments

(1) On the Satisfaction Date the Statement to the MG Corporation

- (2) In accordance with clauses 21.1(1)(e), 21.1(1)(f) and 21.2, the First Administration Budget and a First EDU Budget must be provided to the State for approval and the State shall notify the MG Corporation if they are satisfactory.
- (3) The MG Corporation may, at any time prior to the end of the First Payment

Administration Budget or an amended First EDU Budget.

- (4) If the State is provided with a copy of an amended First Administration Budget or an amended First EDU Budget in accordance with clause 22.3(3) then the State must, as soon as practicable, consider the document and:

(a) if it is not inconsistent with this deed, approve the amended First

- (a) during the Contribution Period, must only expend it for the Administration Payment Purpose; and
 - (b) after the Contribution Period, must only expend it for the benefit of the MG People in a manner consistent with the objects of the MG Corporation.
- (2) To the extent (if any) that the First EDU Payment or the interest derived from either of them, is not reasonably required for the EDU Payment Purpose during

bearing trust account and:

- (a) during the Contribution Period, must only expend it for the EDU Payment

- (b) part of the Administration Payment or part of the EDU Payment unless it has approved that part of the Administration Budget or that part of the EDU Budget (as the case may be) for the Contribution Period Financial

Year to which the part of the Administration Payment or part of the EDU Payment applies.

- (2) On or before 15 April prior to the commencement of each Contribution Period Financial Year, the MG Corporation must provide the State with:
 - (a) a budget and operational plan ("*Administration Budget*") for the forthcoming Contribution Period Financial Year, which clearly identifies the manner in which the MG Corporation will expend the Administration Payment and which is consistent with the Administration Payment

22.11 Moneys not Expended During Relevant Contribution Period Financial Year

- (1) To the extent (if any) that an Administration or EDU Payment, or the interest derived from either of them is not reasonably required for the Administration

Purpose or EDU Payment Purpose during the relevant Contribution Period
Financial Year the MG Corporation must only expend those amounts which are

- (a) during the next Contribution Period Financial Year in accordance with the Administration Budget or EDU Budget for the next Contribution Period Financial Year;
- (b) thereafter, during the Contribution Period, for the benefit of the MG People in a manner consistent with the objects of the MG Corporation;
- (c) or a combination of both of the above.

23. ANNUAL AUDIT OF FINANCIAL CONTRIBUTIONS

- (1) The MG Corporation must, on or before 15 October in each Contribution Period Financial Year (including the 15 October in the Contribution Period

Financial Year immediately following the First Payment Period), provide the State with a copy of a report by a qualified and independent auditor as to whether:

- (a) the financial accounts of the MG Corporation and MG Charitable Trustees Pty Ltd for the previous Financial Year are fair and accurate according to Australian accounting standards;
- (b) for the First Payment Period, clause 22.4 (dealing with Compliance with of First Administration Budget, First EDU Budget and Balance Payment Purposes) has been complied with;
- (c) for the First Payment Period, clause 22.5 (dealing with Balance Payments to be held in Interest Bearing Account) has been complied with;
- (d) for the Contribution Period Financial Year, clause 22.6 (dealing with Unexpended Moneys and Interest from First Payment Period) has been complied with;

(e) for the Contribution Period Financial Year, clause 22.10 (dealing with

24.1 Non-Compliance Events

Subject to clause 24.2 (Dealing with Insubstantial Non-Compliance) for the purpose

of this Division 4A a *Non-Compliance Event* means any of the following:

- (1) where the MG Corporation does not provide to the State, within 5 business days written confirmation in accordance with clause 22.5(2) that the

- (1) when the audit report under clause 23 (dealing with Annual Audit of Financial Contributions) is provided, the MG Corporation provides written information regarding the Non-Compliance Event reported in the audit report; and
- (2) within 10 days of receipt of the information in clause 24.2(1) the State in its absolute discretion gives written notice to the MG Corporation that it considers the Non-Compliance event to be insubstantial.

24.3 Rectification of Non-Compliance Events

If a Non-Compliance Event occurs the State may at any time issue the MG Corporation with a written notice ("*Rectification Notice*");

- (1) identifying each instance of Non-Compliance Event;

- (2) where relevant, identifying all or part of one or more of the following (as the

24.5 Non-compliance with *Aboriginal Councils and Associations Act 1976 (Cth)*

For the purpose of Division 4A *ACAA Non-Compliance* means if at any time after the Satisfaction Date one or more of the following occurs:

- (1) the MG Corporation fails to comply with sections 54, 56, 57, 58 or 59 of the *Aboriginal Councils and Associations Act 1976 (Cth)*;
- (2) the Governing Committee of the MG Corporation does not take action specified

in a notice under section 60A of the *Aboriginal Councils and Associations Act 1976 (Cth)* within the period specified in the notice; or

- (2) the Registrar of Aboriginal Corporations applies for an injunction under

subsection 61(2) of the *Aboriginal Councils and Associations Act 1976 (Cth)*.

24.6 Notice to Comply with *Aboriginal Councils and Associations Act 1976 (Cth)*

- (1) If an *ACAA Non-Compliance* occurs then the State may issue the MG Corporation with a written notice ("*ACAA Compliance Notice*"):

24.8 MGC (MG Corporation) Defaults

- (1) For the purpose of this Division 4A *MGC Default* means any of the following:

is appointed for the MG Corporation, or a receiver or controller is appointed in respect of the MG Corporation's property, or a liquidator is

- (i) up to the full Administration Payment; or
 - (ii) up to the full EDU Payment.
- (6) If as a result of the operation of this clause ~~24.8~~ 24.9, the State withholds one or more of:
- (a) all or part of an Administration Payment; or
 - (b) all or part of an EDU Payment,
- for the whole of a Contribution Period Financial Year, then the withheld payments are deemed to be "*Deferred Payments*".

25. PAYMENT OF DEFERRED PAYMENTS

- (1) Subject to any agreement to the contrary by the State and the MG Corporation the State is not obliged to pay MG Corporation any Deferred Payments during the Contribution Period.
- (2) If the Contribution Period has ended and all MGC Suspension Notices (if any)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the State must pay MG Corporation any unpaid portion of the Deferred Payment as follows:

- (a) in the first Financial Year following the Contribution Period – up to \$1,000,000 or the unpaid portion of the Deferred Payments, whichever amount is the lesser; and
- (b) in each subsequent Financial Year, if any portion of the Deferred Payments remains unpaid – up to \$1,000,000 or the unpaid portion of the Deferred Payments, whichever amount is the lesser

26. MG CHARITABLE TRUST

26.1 Establishment of corporate trustee

- (1) An MG Entity must be established under the Corporations Law 2001 to be the trustee of the MG Charitable Trust, in accordance with clause 19.1(1)(b) and this clause 26.1 26.
- (2) A reference in this deed to "*MG Charitable Trustees Pty Ltd*" is a reference to the body corporate referred to in clause 26.1(1), or any replacement body corporate in accordance with clause 26 8.
- (3) *MG Charitable Trustees Pty Ltd* may have any name chosen by the MG People

- (4) MG Charitable Trustees Pty Ltd must, as soon as practicable after its incorporation, register for GST purposes and be capable of issuing tax invoices.

26.2 Constitution of MG Charitable Trustees Pty Ltd

The constitution of MG Charitable Trustees Pty Ltd must provide, without limitation, that:

- (1) the objects of MG Charitable Trustees Pty Ltd include to hold on trust and to manage and administer the funds received from the State and the rights, obligations and benefits received by it from time to time under this deed for

has failed to vest the trust property in another entity for the benefit of the MG People, it shall be deemed to vest in the MG Corporation;

- (5) during the State Contribution Period:

- (2) nine (9) subsequent payments of \$1,000,000 each:
 - (a) on the anniversary of the most recent payment under clause 26.6; or
 - (b) if a MG Trust Suspension Notice has been issued:
 - (i) on the anniversary of the most recent payment plus the period during which the MG Trust Suspension Notice is operative; and
 - (ii) thereafter in accordance with clause 26.6(2)(b)(i).

26.7 **MGCT Ratification Deed**

[REDACTED]

- (1) As soon as possible after the MG Charitable Trustees Pty Ltd is established, the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pty Ltd to execute and deliver to the State a deed to which the State may be Party ("**MGCT Ratification Deed**") in which on and from the date of the deed:

20 [REDACTED]

27.1 MG Trust (MG Charitable Trust) Default

- (1) For the purpose of this Division 4A an *MG Trust Default* is any of the following:

(a) MG Charitable Trust [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (5) The State must revoke a MG Trust Suspension Notice as soon as:
- (a) all of the MG Trust Defaults specified in the MG Trust Suspension Notice have been remedied or are otherwise no longer operative; or
 - (b) the MG Corporation or MG Charitable Trustees Pty Ltd have taken any action reasonably required by the State in respect of the MG Trust Default (which, without limitation, may include action to ensure that the MG Trust Default does not happen again).
- (6) If an MG Trust Default is due to a negative or significantly qualified audit report then, without limitation, that default may be remedied by the MG Charitable Trustees Pty Ltd and the State entering into an agreement as to the

manner in which future instalments of the State Contribution are to be invested or otherwise dealt with.

- (7) On the revocation of a MG Trust Suspension Notice, the State must pay the MG Charitable Trustees Pty Ltd, in accordance with clause 26.6 (dealing with State Contribution), the payment under clause 26.6 that would have been paid to the MG Charitable Trustees Pty Ltd by the State but for the suspension under clause 27.2(2) and the following payments are to be made on the anniversary of that date thereafter (as set out in clause 26.6(2)(b)).

28. MG ENTITY MAY RECEIVE BENEFITS

28.1 Nomination of MG Entity

(1) The MG Corporation may from time to time nominate as MG Entity to receive:

(a) any payment of money under a particular clause or clauses of this deed

~~provide the payment of money or transfer or grant of an interest in land the~~
[REDACTED]

subject of the nomination.

- (7) The MG Corporation may at any time before an MG Entity has received any payment of money or transfer or grant of an interest in land under this deed, by ~~noting in writing to the State and to the person liable to make the relevant~~
[REDACTED]

- (2) In any proceedings brought by an MG Entity to enforce the provision of a benefit under this deed, the person who is obliged to provide the benefit may set off against any judgment sum any monies owing to that person by the MG

Continuation of the deed of the Indemnity Co. of M.C. 1911

29. DEFAULT BY MG ENTITIES

- (1) The MG Corporation must, during the Contribution Period, provide the State with a copy of any annual report and any audited financial accounts for any MG Entity which has been nominated to receive benefits under this deed

- (2) The MG Corporation must notify the State in writing as soon as practicable if an MG Entity which has been nominated to receive benefits under this deed is insolvent, or an administrator or liquidator is appointed for the MG Entity, or the MG Entity is otherwise ordered to be wound up.
- (3) If at any time an MG Entity which has been nominated to receive benefits under this deed:
 - (a) is insolvent, or an administrator or liquidator is appointed for the MG

- (1) As soon as practicable following the Execution Date, the State must establish the Ord Enhancement Scheme in accordance with this clause 30.

30.2 Purpose of the Ord Enhancement Scheme

- (1) The purpose of the Ord Enhancement Scheme is to address the impact of the Ord Stage 1 irrigation scheme on the MG People by the implementation of the recommendations of the ASEIA Report.

30.3 Duration

- (1) The Ord Enhancement Scheme will operate until the later of the following:
 - (a) the date four (4) years after the Execution Date; or
 - (b) the date upon which all of the funding under clause 30.9(1) is expended.

- (c) that person nominated as a replacement for the purpose of that meeting shall be deemed to be a member under clause 30.4(1) for the purpose of that meeting only.
- (6) If at any time there is a representative of the MG Corporation who cannot perform his or her responsibilities as a member of the Ord Enhancement Scheme Management Committee permanently:
 - (a) that representative must inform the Chairperson of the Ord Enhancement Scheme Management Committee; and
 - (b) the MG Corporation shall nominate a person for the purpose of

~~(7) Resolutions of the Ord Enhancement Scheme Management Committee will be~~

decided by majority with each member having one vote.

- (8) The quorum for a Ord Enhancement Scheme Management Committee meeting will be 1 representative of the Kimberley Development Commission and 4 representatives of the MG Corporation.
- (9) If a quorum is not satisfied at 2 consecutive meetings of the Ord Enhancement Scheme Management Committee, the business which was proposed to be discussed at the meetings for which the quorum was not satisfied ("*Referred*

- (e) report annually on the progress of action with reference to performance indicators established in accordance with clause 30.5(1)(b) to the Minister for the Kimberley; and
- (f) inform the MG People about the operation of the Ord Enhancement Scheme and the work of the Ord Enhancement Scheme Management Committee by meeting with the MG Corporation at least three times a year.

30.6 Guiding Principles

30.6.1 The Guiding Principles are set out in clause 30.6.2 and the following

principles:

- (a) Collaboration: A commitment to Indigenous and non-Indigenous peoples working together to address their mutual concerns arising out of a

recognition that the issues cannot be solved by working in isolation.

(2) The Ord Enhancement Scheme Committee shall:

- (a) liaise with government and non-government agencies for the purpose of the Ord Enhancement Scheme;
- (b) seek initiatives for the purpose of the Ord Enhancement Scheme that do

not require approval of funding under clause 30.8;

- (c) seek funding from government and non-government agencies for the development of joint initiatives with government and non-government

Enhancement Scheme Committee in the development of those initiatives;

- (d) seek the retention of existing funding by government agencies or other bodies; and
- (e) seek reports from service delivery agencies on a bi-annual basis on

- (a) providing administrative support for the Ord Enhancement Scheme Management Committee;
 - (b) employing staff and consultants and otherwise securing services to administer the Ord Enhancement Scheme; and
 - (c) purchasing equipment and materials for use in the administration of the Ord Enhancement Scheme.
- (5) Subject to clause 30.9(2), the funds provided to the Kimberley Development Commission under clause 30.9(1) shall be used to meet the costs associated with administering the Ord Enhancement Scheme