

**JOINT MANAGEMENT AGREEMENT**

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**THIS JOINT MANAGEMENT AGREEMENT** is made on the 25th day of February 2010

**BETWEEN:**

**THE STATE OF WESTERN AUSTRALIA "The State")**

and

**MINISTER FOR LANDS**

and

**MINISTER FOR ENVIRONMENT**

and

**CONSERVATION COMMISSION OF WESTERN AUSTRALIA ("CCWA")**

and

**MARINE PARKS AND RESERVES AUTHORITY ("MPRA")**

and

**THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY ("CEO")**

and

**BROOME SHIRE COUNCIL ("BSC")**

and

**YAWURU NATIVE TITLE HOLDERS ABORIGINAL CORPORATION RNTBC ("Yawuru RNTBC")**

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**Department** has the same meaning as in the CALM Act.

**FRM Act** means the *Fish Resources Management Act 1994 (WA)*.

**Freehold Areas** means all of those areas that pursuant to the Yawuru PBC ILUA are to be granted in fee simple pursuant to section 75 of the LA Act to the high water mark to Yawuru RNTBC for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment.

**ILUA Register** means the Register of Indigenous Land Use Agreements established under section 199A of the *Native Title Act 1993 (Cth)*.

**Intertidal Zone Reserves** means collectively the Cable Beach Intertidal Zone Reserves and the Roebuck Bay Intertidal Zone Reserves.

**Kunin RNTBC** means the Kunin Aboriginal Corporation RNTBC.

**Kunin Restricted Access Area** means that area of the Coastal Park that immediately surrounds the area of the Kunin UCL which is a Culturally Sensitive Area.

**Land** means all of the Freehold Area and the Townsite Areas (excluding the Culturally Sensitive Areas).

**LA Act** means the *Land Administration Act 1997 (WA)*

**Lease** means the lease of the Freehold Areas by the Yawuru RNTBC as lessor to the State as lessee referred to in clause 3.3.

**Lease Exclusion Areas** means those areas identified by the Yawuru RNTBC as being Culturally Sensitive Areas and that are to be excluded from the lease to the State of the Freehold Areas.

**Management Plan** means the initial Management Plan prepared under clause 8 and created in accordance with Part V Division 1 of the CALM Act and/or section 49 of the LA Act, as appropriate, and any revised or replacement Management Plan current from time to time in respect of the Coastal Park and/or the Marine Park.

**Marine Park** means that part of the Conservation Estate described in clause 10.1 of the Yawuru AA ILUA.

**Park Council** means the Park Council formed from time to time under clause 9.1.

**Party** means a party to this Agreement and **Parties** means all or some of them as identified in particular clauses.

**Referred Business** means those items of business that have been referred to the relevant Minister by any of the Yawuru RNTBC, Department or BSC pursuant to clause 2.7 of the Terms of Reference and dealt with in accordance with clause 2.8 of the Terms of Reference.

**Registration Date** means the latter of the dates on which the Yawuru AA ILUA and the Yawuru PBC ILUA are registered and entered on the ILUA Register.

**Representative Member** means an employee or officer of the Department or BSC or a person appointed by the Yawuru RNTBC who has been nominated to represent their respective entities and authorised to vote on matters and make decisions relevant to the management of the Coastal Park and the Marine Park, as appropriate.

**Roebuck Bay Intertidal Zone Reserves** means those areas seaward of the high water mark down to the lowest astronomical tide adjacent to the Freehold Areas south of the Broome Townsite, but excluding intertidal zone areas vested in the Minister for Transport by proclamation published in the *Government Gazette WA* on 5 February 1982 for the purpose of the Broome Port Area pursuant to section 9 of the *Marine and Harbours Act 1981 (WA)*, that are to be reserved under section 41 of the LA Act with orders under section 46 of the LA Act placing the care control and management with the Yawuru RNTBC and the CCWA.

**Determination** means the determination of native title made by Justice Merkel on 28

**Yawuru PBC ILUA** means the Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome entered into pursuant to Part 2, Division 3, Subdivision B of the *Native Title Act 1993 (Cth)* executed on 25 February 2010.

**Yawuru Restricted Access Areas** means that area of the Coastal Park that immediately surrounds Culturally Sensitive Areas in the vicinity of Willie Creek.

## **2. Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations;
- (d) references to a person include the successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in

- (m) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, that day or the day of that event is to be excluded;
- (p) references to currency are to Australian currency unless stated otherwise;
- (q) no rule of construction applies to the disadvantage of a party on the basis that that party put forward this Agreement or any part of this Agreement;
- (r) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (s) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the next following Business Day in the place where that act is to be done.

### **3. Tenure Arrangements**

#### **3.1 Conservation Estate**

In accordance with its obligations in the Yawuru PBC ILUA and the Yawuru AA ILUA, as soon as reasonably practicable after the Registration Date, the State will create the Conservation Estate, comprising the:

- (a) Freehold Areas;
- (b) Townsite Areas;
- (c) Cable Beach Intertidal Zone Reserves;
- (d) Roebuck Bay Intertidal Zone Reserves; and
- (e) Marine Park

#### **3.2 Freehold Areas and Roebuck Bay Intertidal Zone Reserves**

- (a) From the date of the registration of the Yawuru PBC ILUA until the earlier of:
  - (i) the fourth anniversary of the registration date or another date as agreed; and
  - (ii) the CALM Act being amended to allow for joint management of alienated land and Crown land which will include the Freehold Areas and the Roebuck Bay Intertidal Zone Reserves;

the Minister for Lands will reserve the Freehold Areas and Roebuck Bay Intertidal Zone Reserves referred to in clause 3.1 (a) and (d) for the purposes



of conservation, recreation and traditional and customary Aboriginal use and enjoyment under section 41 of the LAA, with an order placing care, control and management of those reserves jointly with Yawuru RNTBC and the CCWA under section 46 of the LAA.

- (b) Upon the earlier of the events stipulated in clause 3.2(a) occurring, the State will do all things necessary to facilitate the transfer of the Freehold Areas in fee simple to Yawuru RNTBC including but not limited to the cancellation under section 51 of the LA Act of the reserve referred to in clause 3.2(a).
- (c) Upon the earlier of the events stipulated in clause 3.2(a) occurring, the State will revoke the order placing care, control and management of the Roebuck Bay Intertidal Zone Reserves with Yawuru RNTBC and the CCWA under section 50 of the LA Act and will make an order under section 46 of the LA Act placing care, control and management of the Roebuck Bay Intertidal Zone Reserves with Yawuru RNTBC.

### **3.3 Lease of Freehold Areas**

Upon transfer in fee simple to Yawuru RNTBC of the Freehold Areas under section 75 of the LA Act, Yawuru RNTBC will grant a lease to the State for a term of 99 years for a rental of \$1 per annum, with the exception of the Lease Exclusion Areas, which areas will be surrounded by either the Yawuru Restricted Access Area or the Kunin Restricted Access Area, as appropriate, and managed in accordance with an appropriate cultural management plan developed in accordance with clause 7.

### **3.4 CALM Act Amendments Impact**

If the amendment to the CALM Act referred to in clause 3.2(a) has not been effected within 4 years of the registration of the Yawuru PBC ILUA, then:

- (a) The Freehold Areas will be transferred in fee simple under section 75 in accordance with clause 3.2(b);
- (b) The care, control and management of the Roebuck Bay Intertidal Zone Reserves will be placed with Yawuru RNTBC unless otherwise agreed;
- (c) The State will not be granted a lease of the Freehold Areas;
- (d) The CEO will enter into a contract with Yawuru RNTBC for the provision of services under s33 of the CALM Act for the Freehold Areas and, unless otherwise agreed, the Roebuck Bay Intertidal Zone Reserves similar to the services to be provided by the CEO under a CALM Act section 33 agreement for the Townsite Areas;
- (e) The management plan for the Freehold Areas and Roebuck Bay Intertidal Zone Reserves, unless otherwise agreed, will be further developed by Yawuru RNTBC solely, but the implementation of the management plan for the Coastal Park will not otherwise be interfered with or impacted upon; and

- (f) The level of funding contributed by Yawuru RNTBC and the State as set out in the Yawuru PBC ILUA for the management of the Conservation Estate, will be maintained for the balance of the 5 year period.

### **3.5 Access**

- (a) The State covenants with Yawuru RNTBC that it will ensure that there is access to the Coastal Park, in particular to the Freehold Areas, from the time the Coastal Park is created, by the creation of easements or reserves over existing pastoral lease access roads.
- (b) Access to the Coastal Park comprising the 2015 excision areas and other areas adjacent to the Thangoo Pastoral Lease shall be restricted to members of the Yawuru community, DEC and BSC employees, other State and Commonwealth employees or agents in the performance of their statutory or common law duties and other persons as agreed by Yawuru RNTBC and the CEO.

## **4. Management of the Conservation Estate**

### **4.1 Joint Management**

The Parties agree that the Conservation Estate shall be managed as follows:

- (a) Freehold Areas are to be jointly managed in the interim period of reservation



- (ix) the implementation, monitoring, assessment and audit of the effectiveness of the Management Plan; and
  - (x) the provision, construction, repair, maintenance and replacement of buildings and infrastructure in the Coastal Park for any of the foregoing purposes.
- (b) In managing the Conservation Estate, Yawuru RNTBC and the CEO, and the BSC (as appropriate) will consider the need for any or all of the following:
- (i) provision of fencing;
  - (ii) creation of vehicular tracks and roads, and walking and cycling trails and pathways;
  - (iii) provision of firebreaks, fire control and carrying out of prescribed burning;
  - (iv) erection of signage;
  - (v) construction of public conveniences, parking areas and other public facilities, including the provision of access ways to the beach;
  - (vi) weed and feral animal control;
  - (vii) restriction or prohibition of access for protection of Culturally Sensitive Areas, Yawuru Restricted Access Areas, Kunin Restricted Access Areas and other culturally significant sites, or for safety, cultural or conservation purposes; and
  - (viii) monitoring commercial and recreational activities in the Marine Park to ensure that all such uses are consistent with the proper conservation and restoration of the natural environment, protection of indigenous flora and fauna and preservation of features of archaeological, historic or scientific interest.

#### **4.3 CALM and FRM Act Regulations**

- (a) The CALM Regulations apply to those parts of the Conservation Estate comprising the Freehold Areas and the CALM Regulations and the FRM Act Regulations apply to those parts of the Conservation Reserve comprising the Intertidal Zone Reserves.
- (b) The CEO shall not grant sub-leases, licences for use of the Land or permits under the CALM Act or CALM Regulations unless Yawuru RNTBC provides its written consent to any such grant.
- (c) The CEO agrees to waive any fees that would otherwise be payable by members of the Yawuru Community in

Council upon receipt by the Park Council of a written recommendation by the Yawuru RNTBC.

#### **4.4 Conservation Areas the subject of this Agreement**

Throughout the Term of this Agreement the Parties may, by written agreement, add to or subtract from the total area of the Land comprised of the Coastal Park, provided that any agreed changes to Freehold Areas covered by the Lease are reflected by a variation to the Lease.

### **5. Funding**

#### **5.1 Yawuru State and Department Funding Commitments**

- (a) Pursuant to the Yawuru PBC ILUA, Yawuru RNTBC and the State will provide funds in equal contributions to the CEO to administer for the park management program for the Conservation Estate on the recommendation of the Park Council.
- (b) During the term of the joint funding by Yawuru RNTBC and the State, in accordance with clause 5.1(a), the CEO, BSC and Yawuru RNTBC agree to work co-operatively to source additional funding for the joint management of the Conservation Estate through State and Federal funding programs and any other relevant third parties.
- (c) After the initial funding described in clause 5.1(a) has ended, Yawuru RNTBC, BSC and the CEO agree that they will work co-operatively to ensure a sufficient level of funding is obtained from the State Government and Federal Government or any other relevant third parties, for the purpose of continuing the joint management arrangements applicable to the Conservation Estate entered into pursuant to this Agreement for the duration of the Lease term.

#### **5.2 BSC Funding Commitments – Townsite Areas**

BSC will be responsible for costs it incurs in relation to the joint management and maintenance of the Townsite Areas, including its participation in the Park Council, from the date of registration of the Yawuru PBC ILUA, including its costs of public indemnity and other insurances relevant to the Townsite Areas.

#### **5.3 Reservation of Economic Rights**

- (a) The Parties acknowledge that Yawuru RNTBC reserves all rights and interests in respect to any activities it undertakes in the Conservation Estate.
- (b) The Parties acknowledge and agree that, to the extent not altered by legislation, all rights and interests, including economic rights and interests, associated with any carbon trading activities or any other environmental

incentive schemes realised or undertaken in connection with the

- (d) The Cultural Management Plans will inform the development of the Management Plans for the Conservation Estate.

**7.3 Yawuru RNTBC and Kunin RNTBC Responsibilities**

- (a) Yawuru RNTBC will engage Kunin RNTBC to develop the specific management requirements applicable to the Kunin Restricted Access Area.
- (b) Yawuru RNTBC acknowledges that culturally the law bosses of the Kunin RNTBC have authority to stipulate the management requirements for the Kunin Restricted Access Area.

**7.4 Restricted Access Areas**

- (a) The Yawuru Restricted Access Areas and Kunin Restricted Access Area are to be treated as restricted access areas under both the Cultural

~~Management Plan and the Yawuru RNTBC Management Plan (the Management Plan) as a sub-unit of the Yawuru RNTBC Management Plan.~~

of the CALM Act they will be submitted to the Minister by CCWA under section 60 of the CALM Act.

## **8.2 Composition**

The Management Plans shall comprise:

- (a) Cultural Management Plans; and
- (b) Management Plans for the Conservation Estate under the CALM Act and the LA Act, as appropriate.

## **8.3 Relationship between Cultural Management Plan and Management Plan**

- (a) The Parties agree that the policies, visions and requirements set out in the Cultural Management Plan must be taken into account during the development of the Management Plans.
- (b) The management requirements stipulated by the Yawuru RNTBC and the Kunin RNTBC in respect to Restricted Access Areas in accordance with clause 7.4 are to be adhered to by the Parties at all times.



## **9. Park Council**

### **9.1 Formation & Administration**

- (a) A Park Council will be formed no later than 45 days after the Registration Date comprising Representative Members from Yawuru RNTBC, the Department and BSC and operated in accordance with the Terms of Reference attached at Schedule 2 to develop, implement, monitor and review the Management Plan.
- (b) The management of the Conservation Estate shall be administered jointly by the CEO, the Yawuru RNTBC and the BSC through the Park Council, as appropriate having regard to the differing joint management arrangements set out in clause 4.1.

### **9.2 Role of the Park Council**

The Park Council's role shall be:

- (a) to prepare Management Plans under Part V of the CALM Act and section 49 of the LA Act (as appropriate) and related policies for the management of the Conservation Estate;
- (b) to ensure that the Management Plans for the Conservation Estate are consistent with the visions and policies set out in the Cultural Management Plan for these areas;
- (c) to ensure that all Management Plans overseen by and developed with the Park Council are, to the greatest extent possible, taking into account different legislative frameworks, consistent.
- (d) to make decisions consistent with the Cultural Management Plan and Management Plans;
- (e) to strategically monitor the management of the Conservation Estate including the implementation of the Management Plans, but not to undertake day to day management of the Conservation Estate;
- (f) to give advice to the CEO, the CCWA, the MPRA and the BSC (as appropriate) on all aspects of the use, management and development of the Conservation Estate; and
- (g) to determine priorities for any matters required to be done in accordance with or in furtherance of the Management Plans.

### **9.3 Composition**

- (a) In accordance with the Terms of Reference, the Park Council will be comprised of equal numbers of Representative Members from each of Yawuru RNTBC, the Department and BSC as applicable and in accordance with their respective management obligations as set out in clause 4.1.

- (b) The Chairperson must be one of the Yawuru Representative Members unless another Representative Member is elected to chair a meeting in the absence of the Chairperson.
- (c) The Parties must ensure that their Representative Members and proxies are available and authorised to carry out their functions as set out in this Agreement and the Terms of Reference.
- (d) Associate Members shall also be entitled to attend meetings of the Park Council.

#### **9.4 Administrative Responsibility**

- (a) The Department shall provide all administrative and secretarial support for the Park Council.
- (b) The Department shall be responsible for convening all meetings of the Park Council, including preparing and circulating meeting notices, agendas and papers.
- (c) Draft agendas will be provided to Yawuru RNTBC and BSC for input prior to finalisation and circulation.

#### **9.5 Funding**

In accordance with the Yawuru PBC ILUA, funding provided to the Department shall be used for:

- (a) the joint management of the Conservation Estate under this Agreement (including for the development, implementation and monitoring of the Cultural Management Plan and the Management Plans);
- (b) the provision of resources, including suitably qualified Departmental staff and trainees;
- (c) the administration and operation of the Park Council; and
- (d) at the rate determined by the Minister for Environment from time to time, the costs of meeting attendance fees for Yawuru Representative Members of the Park Council.

#### **9.6 Reporting & Consultation**

- (b) Until the initial Cultural Management Plan and Management Plans for the Conservation Estate have been finalised the Park Council must manage the Conservation Estate in accordance with the provisions of this Agreement and the CALM Act and LA Act as relevant.

## **9.7 Conflict Resolution**

In the event of a conflict between the Representative Members of the Park Council, the procedures set out in clause 2.7 of the Terms of Reference will apply.

## **10. GST**

### **10.1 Interpretation**

Any reference in this clause 10 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

### **10.2 Amounts exclusive of GST**

Unless otherwise expressly provided to the contrary, all amounts fixed or determined under or referred to in this Agreement are exclusive of GST.

### **10.3 GST payable**

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Agreement to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (d) If a Supplier makes a taxable supply under this Agreement to a Recipient the consideration for which is a supply by the Recipient which is not taxable, the additional amount is not payable by the Recipient to the Supplier unless the Recipient is entitled to an input tax credit for the taxable supply.

#### **10.4 Taxable Supplies made to Yawuru RNTBC**

Where clause 10.3 requires Yawuru RNTBC to pay an additional amount to a Supplier equal to the GST imposed on a supply, the State shall, on behalf of Yawuru RNTBC, pay to the Supplier an amount equal to the GST imposed on the Supply.

#### **10.5 Indemnity**

The State agrees to indemnify and keep indemnified Yawuru RNTBC from and against any losses and damages, including penalties or interest, which may arise in respect of a breach of clause 10.4 by the State.

### **11. General**

#### **11.1 Intellectual Property**

- (a) No change of ownership which may exist in any Yawuru intellectual property in cultural or heritage information will occur by its being made available to the Park Council, the Department, the State, BSC or any other party pursuant to this agreement; and
- (b) Copyright in the Cultural Management Plans will be owned by the Yawuru

- (b) This Agreement may be terminated in so far as it relates to the Freehold Areas by the Yawuru RNTBC if the Lease is not entered into, or is terminated as a result of the State ceasing to provide an acceptable minimum level of funding for management of the Coastal Park after the initial 5 year period, which minimum level will be no more than the amount committed for management under this Agreement for each 5 year period
- (c) The obligations of the CEO with respect to the Freehold Areas survive termination of this Agreement in accordance with clauses 11.5(b) by the Yawuru RNTBC, and the process described in clause 3.4 comes into effect.
- (d) Where a part of the Land is removed from the operation of this Agreement in accordance with clause 3.4, this Agreement will cease to apply in respect to that area of the Land but shall continue to apply in respect to the whole of the remaining area of the Land.

#### **11.6 Breach**

- (a) If a Party considers that the terms of this Agreement have been breached by another Party:
  - (i) the aggrieved Party must give notice in writing to the Party considered to be in Breach setting out the details of the alleged breach;
  - (ii) the aggrieved Party must provide a copy of the notice issued under clause 11.6(a)(i) to all other Parties;
  - (iii) the Parties in dispute must use their reasonable endeavours to resolve the dispute.
- (b) If the Parties fail to resolve a dispute within 21 days after the service of a notice under clause 11.6(a)(i), the Parties agree that the breach will not give a Party the right to terminate or rescind this Agreement, but subject to clause 11.6(a)(iii) the dispute will be treated as Referred Business under clause 2.8 of the Terms of Reference – Park Council set out at Schedule 2 to this Agreement.

#### **11.7 Indemnity**

- (a) By the State:

The State agrees to indemnify and keep indemnified the Yawuru RNTBC and BSC against all proceedings, actions, suits, claims, demands, costs and losses ("Losses") suffered or incurred by the Yawuru RNTBC and BSC to the extent such Losses are incurred by the Yawuru RNTBC or BSC or any of its members, employees, agents or contractors, as a result of the negligent or other tortious act or omission of the State, the CEO or any of their officers, employees, agents, or contractors in the purported exercise of its or their

rights or obligations under this Management Agreement or the Management Plan.







## **14. Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

## Schedule 1

### Party Details

|      |                                       |
|------|---------------------------------------|
| Name | <b>The State of Western Australia</b> |
|------|---------------------------------------|

|            |   |
|------------|---|
| Name       | <b>The Executive Body of Conservation and Land Management</b> |
| Address    | Locked Bag 104, Bentley Delivery Centre, Perth WA 6983        |
| Facsimile  | (08) 6467 5562  |
| Email      | Kieran.McNamara@dec.wa.gov.au                                 |
| Contact    | Keiran McNamara   |
| Short name | <b>CEO</b>  |

|            |                            |
|------------|----------------------------|
| Name       | <b>Shire of Broome</b>     |
| Address    | PO Box 44, Broome, WA 6725 |
| Facsimile  | (08) 9191 3455             |
| Email      | shire@broome.wa.gov.au     |
| Contact    | Kenn Donohoe               |
| Short name | <b>Shire</b>               |

|            |   |
|------------|---|
| Name       | <b>Yawuru Native Title Holders Aboriginal Corporation RNTBC</b> |
| Address    | PO Box 425, Broome, WA 6725                                     |
| Facsimile  | (08) 9193 7352  |
| Email      | Jacki.turfrey@klc.org.au  |
| Contact    | Jacquelyn Turfrey   |
| Short name | <b>Yawuru RNTBC</b>   |

## **Schedule 2**

### **1. Park Council Role and Structure**

#### **1.1 Role**

The Park Council's primary role shall be to:

- (a) prepare Management Plans and related policies for the management of the Conservation Estate in accordance with the Joint Management Agreement;
- (b) ensure that the Management Plans for the Conservation Estate are consistent with the visions and policies set out in the Cultural Management Plan for these areas;
- (c) ensure that all Management Plans prepared by the Park Council are, to the greatest extent possible taking into account different legislative frameworks, consistent.
- (d) make decisions consistent with the Cultural Management Plan and Management Plans;
- (e) monitor the management of the Conservation Estate including the implementation of the Management Plans;
- (f) give advice to the CEO, the CCWA, the BSC, the Yawuru Community and MPRA (as appropriate) on all aspects of the use, management and development of the Conservation Estate; and

- (c) Cable Beach Intertidal Zones Reserves to be jointly managed by the CCWA, BSC and Yawuru RNTBC;
- (d) Townsite Areas (including intertidal areas adjacent to the town) to be jointly managed by Yawuru RNTBC and BSC ;

in to replace an absent Yawuru Representative Member at a meeting with the effect that the Yawuru RNTBC does not have more than three (3) Representative Members with voting rights at any given meeting; and

- (ii) Up to three (3) Department Representative Members, who, where possible all, but at least one, are involved in the day to day management of Conservation Estate; and
- (iii) Up to three (3) BSC Representative Members.
- (iv) A maximum of one (1) representative from each Associate Member.

#### **1.5 Representative Member appointment**

- (a) Three (3) Yawuru Representative Members and up to three (3) Alternate Members will be appointed from time to time by the Yawuru RNTBC to be members of the Park Council and the Yawuru RNTBC will advise the CEO and BSC in writing of the appointments. A Yawuru person who is an employee or contractor of the Department or BSC is ineligible to be a Yawuru Representative Member or an Associate Member.
- (b) Up to three (3) Department Representatives will be nominated from time to time by the CEO to be members of the Park Council and the CEO will advise the Yawuru RNTBC and the BSC in writing of the nominations.
- (c) Up to three (3) BSC Representative Members will be nominated from time to time by the BSC to be members of the Park Council and the BSC will advise the Yawuru RNTBC and the CEO in writing of the nominations.

#### **1.6 Associate Members**

- (a) Organisations or other persons that in the opinion of the Park Council have an integral role to play in the operation and management of the Conservation Estate or in providing advice to the Park Council on any matter the Park Council thinks fit may be invited by the Park Council to nominate one Associate Member to attend and participate in Park Council meetings.
- (b) The Park Council may at its absolute discretion determine which organisations or persons have the right to attend and participate from time to time as Associate Members of the Park Council and may confer or remove Associate Member status accordingly.

#### **1.7 Availability and Authority of Representative Members**

- (a) Yawuru RNTBC must ensure that the Yawuru Representative Members and Yawuru Alternate Members or proxies:
  - (i) make themselves available to participate in the Park Council; and

- (ii) are authorised to carry out their functions and to make decisions as required and in accordance with the Joint Management Agreement and these Terms of Reference.
- (b) The CEO must ensure that Department Representative Members and Department proxies:
  - (i) are available to carry out their functions on the Park Council; and
  - (ii) are authorised to carry out their functions and make decisions as required and in accordance with the Joint Management Agreement and these Terms of Reference.
- (c) The BSC must ensure that the BSC Representative Members and BSC proxies:
  - (i) are available to carry out their functions on the Park Council; and
  - (ii) are authorised to carry out their functions and make decisions as required and in accordance with the Joint Management Agreement and these Terms of Reference.

## **2. Conduct of meetings**

### **2.1 Convening meetings**

- (a) The CEO must convene the first meeting of the Park Council within forty-five days of the formation of the Park Council.
- (b) The Park Council must meet to attend to its business as often as it considers necessary, but at least once every three (3) months.
- (c) The Yawuru RNTBC may, on request from a Yawuru Representative Member or otherwise, call a Park Council meeting by giving at least twenty-one (21) days notice in writing to the CEO and BSC.
- (d) The CEO or BSC may, on request from a Department Representative or BSC Representative or otherwise, call a Park Council meeting by giving at least twenty-one (21) days notice in writing to the Yawuru RNTBC and the other Party.

### **2.2 Chairperson and Secretary**

- (a) The Park Council shall elect a Chairperson and a Secretary from among their number at the first meeting of the Park Council and on each anniversary of that meeting. The Chairperson must be one of the Yawuru Representative Members.
- (b) The Chairperson and Secretary are eligible for re-election each anniversary.
- (c) The Chairperson shall be the Chairperson of all meetings at which he or she is present, but if he or she is not present or does not wish to chair the

meeting the members present at the meeting of the Park Council may elect another Representative Member to chair the meeting.

- (d) The Secretary shall keep proper minutes of all meetings of the Park Council.

### **2.3 Procedure at meetings**

The Park Council may adopt such rules and procedures from time to time as it considers necessary to enable it to carry out its functions under and in accordance with the provisions of the Joint Management Agreement and these Terms of Reference.

### **2.4 Quorum**

- (a) The quorum for a meeting of the Park Council shall be:



- (b) Associate members do not have a vote with respect to any proceedings under this Agreement.
- (c) Alternate Representative Members only have a voting right if they are required to stand in for an absent Yawuru Representative Member at a meeting.

## **2.6 Decisions**

- (a) Decisions of the Park Council must be made by those members in attendance at a meeting of the Park Council who are entitled to vote voting on a motion.
- (b) The Park Council will, as far as possible, require a motion to be supported by the consensus of all those members in attendance at the meeting of the Park Council who are entitled to vote.
- (c) If a motion is not supported by the consensus of all those members in attendance at a meeting of the Park Council who are entitled to vote, subject to clause 2.5(a), if:  
  
Either two (2) Department Representative Members or two (2) BSC Representatives, as applicable; and  
  
two (2) of the Yawuru Representative Members,  
  
vote in support of that motion, then the motion is deemed to be passed and is a duly made decision of the Park Council.
- (d) If the same motion is not passed at three (3) consecutive meetings of the Park Council then the business which is the subject of that motion may be referred to the relevant Minister as Referred Business.

## **2.7 Conflict Resolution**

- (a) In the event of a conflict between the Representative Members of the Park Council:
  - (i) Either the Yawuru RNTBC, BSC or the CEO may give 21 days written notice to the others, of a joint meeting of the Park Council and all or any of the Associate Members, if applicable, to be held no sooner than 21 days after the notice is given, for the purpose of attempting to resolve the conflict;
  - (ii) the conflict must be resolved by a resolution of the Park Council passed by a three-quarters majority of the joint meeting convened pursuant to clause 2.7(a)(i) and that majority must include two Department Representatives and two Yawuru RNTBC Representatives or if appropriate, two Yawuru RNTBC Representatives and two BSC Representatives; and

- (iii) in the event that the conflict is not resolved by a resolution of the Park Council in accordance with clause 2.7(a)(ii) the matter to which the advice and recommendations relate will become Referred Business to the Minister for Environment or the Minister for Lands, depending upon whether the conflict relates to the Freehold areas, Intertidal Zone Areas and Marine Park or the Townsite Areas for a determination by the relevant Minister.
- (b) If the Department is served with a notice under clause 2.7(a)(i) but refuses or unreasonably fails to convene the requested meeting, the Yawuru RNTBC or BSC may rely on the provisions set out in clause 2.7(a)(iii) and treat the matter as Referred Business.

## **2.8 Referred Business**

- (a) The Minister for Environment or the Minister for Lands shall (as appropriate) in respect of Referred Business:
  - (i) consult with the CEO or the BSC and the Yawuru RNTBC regarding how Referred Business is to be determined; and
  - (ii) do one or both of the following:
    - (a) decide as to how Referred Business is to be determined; or
    - (b) make a determination of Referred Business.
- (b) A determination of Referred Business by the relevant Minister shall be deemed to be a determination of the Park Council.

## **3. Vacancy**

### **3.1 Single Meeting Proxies**

- (a) The CEO or BSC may nominate a proxy in the event a Representative Member is unable to attend any one meeting of the Park Council, subject to first notifying in writing the other Parties of the nomination and the name of the Representative Member they are attending in lieu of.
- (b) The Yawuru RNTBC may nominate a proxy in the event a Yawuru Representative Member and an Alternate Member is unable to attend a meeting of the Park Council, subject to first notifying in writing the CEO

### **3.2 Temporary Vacancies**

- (a) If at any time there is a Department Representative Member or a BSC Representative Member who temporarily cannot perform his or her responsibilities as a member of the Park Council:
  - (i) the CEO or the BSC, as relevant, must notify the Yawuru RNTBC and the other Party in writing as soon as practicable of the name of the proxy and the absent Representative Member; and
  - (ii) the nominated proxy shall replace the Representative Member on the Park Council, until such time as the other Parties are notified in writing by the CEO or the BSC, as relevant, that their Representative Member has resumed his or her responsibilities as a Representative Member of the Park Council.
- (b) If at any time a Department Representative Member or BSC Representative Member cannot perform his or her responsibilities as a member of the Park Council permanently, or he or she vacates their position:
  - (i) the CEO or BSC as relevant, must notify the Yawuru RNTBC and the other Party in writing as soon as practicable of the vacancy and nominate a proxy to attend the Park Council meeting instead; and
  - (ii) the proxy shall replace that Representative Member as a member of the Park Council, until the Yawuru RNTBC and the other Party are notified in writing by the CEO or BSC as relevant, that a permanent Representative Member has been nominated to the Park Council.
- (c) If at any time a proxy nominated pursuant to this clause 3.2(a) or (b) cannot perform his or her responsibilities as a proxy or vacates their position, the CEO or BSC, as relevant, may nominate another proxy to replace them provided that the Yawuru RNTBC and the other Party are notified in writing of any such nomination.

### **3.3 Yawuru representatives**

- (a) If at any time a Yawuru Representative Member temporarily cannot perform his or her responsibilities as a member of the Park Council:
  - (i) Any one of the Alternative Members can take the place of the permanent Yawuru Representative Members for the duration of the

- (iii) The Yawuru RNTBC may appoint a proxy to fill in for the Alternate Member for the duration of that person acting in the role of Yawuru Representative Member subject to notifying the other Parties in writing of the nomination.
- (b) If at any time a Yawuru Representative Member cannot perform his or her responsibilities as a Yawuru Representative Member permanently or he or she vacates their position:
  - (i) the Yawuru RNTBC must notify the other Parties in writing as soon as practicable of the vacancy;
  - (ii) one of the Alternate Member will replace the permanent Yawuru Representative Member unless the other Parties are notified in writing by the Yawuru RNTBC that a new Yawuru Representative Member has been appointed as a Yawuru Representative Member of the Park Council; and
  - (iii) the Yawuru RNTBC shall facilitate, as soon as practicable, the appointment of a new Alternate Member if the Yawuru RNTBC deems it necessary to do so.
- (c) If at any time an Alternate Member cannot perform his or her responsibilities as an Alternate Member or vacates their position if the Yawuru RNTBC deems it necessary, it will facilitate as soon as practicable the appointment of a new Alternate Member and shall notify the other Parties in writing of the appointment.

#### **4. Term of appointment**

- (a) Membership of the Park Council is for a period of two and a half years for 2 of the Yawuru Representative members, five (5) years for each of the other Yawuru Representative Members, Department Representative Members and BSC Representative Members (or the balance of the relevant 5 year period in the case of a person filling a vacancy).
- (b) Representative Members are eligible to apply to their respective responsible entity for re-appointment for unlimited subsequent terms.
- (c) If at the commencement of this Agreement a Park Council has been formed under a prior agreement containing terms consistent with this clause, then those members are deemed to be members of the Park Council under this Agreement for the balance of the relevant 5 year period.

## **5. Committees**

The Park Council may appoint committees (comprising Park Council members and other persons) to investigate, consider, and advise or recommend such matters to the Park Council as it thinks fit.

## **6. Variation**

These Terms of Reference may be amended from time to time as appropriate or necessary with the consent of the parties to the Joint Management Agreement.

**Signing page**

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EXECUTED as an agreement

**SIGNED** for and on behalf of **THE** )  
**STATE OF WESTERN** )  
**AUSTRALIA** by the )  
**HONOURABLE C. CHRISTIAN** )  
**PORTER MLA**, in the presence )  
of:

---

**HON C. CHRISTIAN PORTER MLA**

---

Signature of Witness

---

Date

---

Full name of Witness (print)

---

The **Common Seal** of the )  
**MINISTER FOR LANDS**, a body )  
corporate continued under section )  
7 of the *Land Administration Act* )  
1997 (*WA*), was hereunto affixed )  
in the presence of:

---

**HON BRENDON GRYLLS**  
**MLA, MINISTER FOR LANDS**

---

Signature of Witness

---

Date

---

Full name of Witness (print)

**SIGNED** by the **MINISTER FOR)**  
**ENVIRONMENT, THE HON.)**  
**DONNA FARAGHER MLA** in the)  
presence of:

**HON DONNA FARAGHER MLA,**  
**MINISTER FOR ENVIRONMENT**

Executed by the )  
**CONSERVATION COMMISSION** )  
**OF WESTERN AUSTRALIA** by )  
an authorized member in )  
accordance with section 26AB of )  
the *Conservation and Land* )  
*Management Act 1984* in the )  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name of Witness (printed)

\_\_\_\_\_  
Signature of Authorised Member

\_\_\_\_\_  
Full Name of Authorised Member  
(printed)

\_\_\_\_\_  
Date

Executed by the )  
**CONSERVATION AND LAND** )  
**MANAGEMENT EXECUTIVE** )  
**BODY** by the Chief Executive )  
Officer in accordance with section )  
38 of the *Conservation and Land* )  
*Management Act 1984* in the )  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name of Witness (printed)

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Date



The **Common Seal** of the **SHIRE OF BROOME**, a body corporate established under section 2.5 of the *Local Government Act 1995* (WA) was hereto affixed in the presence of:

---

**GRAEME CAMPBELL**  
**PRESIDENT**

---

Signature of Witness

---

**KENA DONOHOE**  
**CHIEF EXECUTIVE OFFICER**

---

Full name of Witness (print)

---

Date

**EXECUTED** in accordance with s99-5 )  
of the *Corporations (Aboriginal and* )  
*Torres Strait Islander) Act 2006* (Cth) )  
on behalf of **THE YAWURU NATIVE** )  
**TITLE HOLDERS (RNTBC)** )  
**ABORIGINAL CORPORATION** )

\_\_\_\_\_  
Director (Signature)

\_\_\_\_\_  
Director/ Company Secretary (Signature)

\_\_\_\_\_  
Director (Print Full Name)

\_\_\_\_\_  
Director / Company Secretary (Print Full Name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date