

SCHEDULE 14 – MANAGEMENT AGREEMENT FOR RESERVE 31165

Agreed Interest means a right or Interest in the Land, or any part of it, granted or agreed by the Management Body in accordance with the *Land Administration Act 1997* (WA) and includes the Leases.

Authority means Federal, State or local government, government department, instrumentality or authority, statutory body or agency, Court, tribunal, official acting under any written law, or other public body or authority of any kind.

Business Day means any day not being a Saturday, Sunday or public holiday in Western Australia.

Commencement Date has the meaning in clause 3.1.

Dawang means the country of a local (or estate) group within the broader country of the MG People;

Dawang Representative Member has the meaning in clause 6.1.

Dawawang means the members of the local (or estate) groups with primary responsibility for the Local Dawang according to the traditional laws and customs of the MG People;

Land means the area reserved as Reserve 31165 under section 41 of the *Land Administration Act 1997* (WA) over King Location 380, King Location 374, and Luman Location 12, as depicted on the map in Schedule 1.

Leases means grazing leases issued in accordance with the *Land Administration Act 1997* (WA) over the Land.

Local Dawang means the four (4) Dawang that are wholly or partly within the Land

Management Body means the WRC and MG Corporation.

Management Plan means the initial Management Plan created under the *Land Administration Act 1997* (WA) and any revised or replacement Management Plan current from time to time in respect of the Land under clause 5.

MG People means:

- (a) those Aboriginal persons who are common law holders under the MG#1 Determination, but not including those persons who are common law holders solely on the basis that they identify themselves as Balangarra (as defined in the MG#1 Determination) in relation to their native title rights and interests in Lacrosse Island and who are so identified by other members of the Balangarra group; and
- (b) the Native Title Claim Group and any other persons who hold native title in the land and waters the subject of the MG#4 Claim;

MG#1 Determination means the determination of native title made by the Full Court of the Federal Court by consent of the parties in proceedings WAG 6293, 6292, 6294, 6295 and 6296 of 1998;

MG#4 Claim means Federal Court of Australia native title determination application WAD 124 of 2004, or if such application is discontinued, dismissed or struck out, any other application which replacing application WAD 124 of 2004.

Ord Final Agreement means a deed entitled Ord Final Agreement entered into by the State of Western Australia, the Western Australian Land Authority, the Conservation

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Commission of Western Australia, the Miriuwung and Gajerrong #1 (Native Title Prescribed Body Corporate) Aboriginal Corporation, Ben Ward, Kim Aldus, Frank Chulung, Sheba Dignari, Maggie John, Chocolate Thomas, Danny Wallace, Carol Hapke, Nancy Dilyai, Pamela Simon, Jerry Moore and Paddy Carlton, Kimberley Land Council Aboriginal Corporation, Consolidated Pastoral Company Pty Ltd, Carlton Hill Pty Ltd, Crosswalk Pty Ltd, Baines River Cattle Co Pty Ltd, Ord River District Cooperative Ltd and JJ McDonald and Sons Engineering Pty Ltd on *[insert date]*.

Parties means the WRC and the MG Corporation and **Party** means any one of them.

Purpose means the purpose of Reserve 31165 as provided under section 41 of the *Land Administration Act 1997*.

R31165 Management Committee means the R31165 Management Committee comprised from time to time under clause 6.1.

Term means the term of this Agreement specified in clause 3.1(b).

various written laws includes the *Country Areas Water Supply Act 1947 (WA)*, *Metropolitan Water Authority Act 1982 (WA)*, *Metropolitan Water Supply, Sewerage, and Drainage Act 1909 (WA)*, *Rights in Water and Irrigation Act 1914 (WA)* and *Waterways Conservation Act 1976 (WA)*.

WRC Member has the meaning in clause 6.2.

1.2 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 legal personal representatives, 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 force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmissions;
- (h) an obligation of two or more persons binds them jointly and severally;
- (i) an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (j) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

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- (k) references to a person or body which has been reconstituted, amalgamated, reconstructed or merged, or which has ceased to exist and the functions of which have become exercisable by any other person or body in its place, are deemed to refer to the person or body as so reconstituted, amalgamated, reconstructed or merged, or the person or body by which its functions have become exercisable;
- (l) references to this Agreement include its recitals, schedules and annexures (if any);
- (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.

2. MANAGEMENT OF THE LAND

2.1 Joint management

- (a) The WRC and the MG Corporation on behalf of the MG People agree that the Land shall be jointly managed by them in accordance with this Agreement
- (b) The MG Corporation must ensure that the Dawang Representative Members and Dawang Alternative Members:
 - (i) where applicable, have been appointed in accordance with this Agreement;
 - (ii) are available to carry out their functions as set out in this Agreement; and
 - (iii) carry out their functions in accordance with this Agreement.
- (c) WRC must ensure that the WRC Members and WRC Proxy Members:
 - (i) are available to carry out their functions as set out in this Agreement; and
 - (ii) carry out their functions in accordance with this Agreement.

2.2 Land

Throughout the Term the Parties may, by written agreement, add to or subtract from the Land the subject of this Agreement, provided that at all times the land the subject of this Agreement includes all the Land.

2.3 Use of the Land by MG People

The Parties agree that MG People from time to time have the right to go on to and use the Land in accordance with the traditional laws acknowledged and traditional customs

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and cultural practices observed by the MG People, in a manner not inconsistent with this Agreement, the Management Plan, any Agreed Interest, the *Water and Rivers Commission Act 1995 (WA)* and various written laws and the *Land Administration Act 1997 (WA)*.

3. TERM AND TERMINATION

3.1 Commencement and term

- (a) This Agreement commences on the day the care, control and management of Land for the Purpose has been jointly placed in the Parties under section 46 of the *Land Administration Act 1997 (WA)* ("**Commencement Date**").
- (b) The Term of this Agreement is the period of ninety-nine years (99) years commencing on the Commencement Date.

3.2 Termination

- (a) This Agreement may only be terminated by the agreement in writing of the Parties.
- (b) Where an area of the Land is removed from the operation of this Agreement in accordance with clause 2.2, this Agreement shall cease to apply in respect of that area of the Land but shall continue to apply in respect of the whole of the remaining area of the Land
- (c) The Parties agree that no breach of the terms of this Agreement will give to any other Party the right to terminate or rescind this Agreement.
- (d) If a Party considers that the terms of this Agreement have been breached:
 - (i) the Party must give notice in writing to the other Party setting out the details of the alleged breach; and
 - (ii) the Parties must use their best endeavours to resolve that dispute between themselves.
- (e) If the Parties fail to resolve the dispute within 21 days after the service of the notice under clause 3.2(d)(i) the Parties agree that the breach will not give a Party the right to terminate or rescind this Agreement, but subject to clause 3.2(d) the Party may exercise any right or remedy otherwise available to in it respect of such breach.

3.3 Severance

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal in any jurisdiction, it shall be read down so as to be valid and enforceable or if it cannot be so read down, then in an appropriate case a Court may sever that provision or where possible the offending words and the remaining parts not so severed shall remain in full force and effect and be unaffected by the severance.

3.4 Review

Within 10 years of the commencement date, and every 10 years thereafter or from time to time as agreed by the Parties in writing, the Parties will undertake a review of the terms for the purposes of assessing matters including its operation, implementation and the aspiration of the MG People to assume sole responsibility for management of the Land.

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4. MANAGEMENT PRINCIPLES

The WRC and the MG Corporation, on behalf of the MG People, will jointly manage the Land for the Purpose:

- (a) in accordance with the Management Plan, the *Land Administration Act 1997* (WA), the *Water and Rivers Commission Act 1995* (WA) and various written laws; and
- (b) consistently with any Agreed Interest.

5. MANAGEMENT PLAN

- (a) The WRC and the MG Corporation will use their best endeavours to ensure that the R31165 Management Committee develop an initial Management Plan consistent with the management principles in clause 4 in respect of the Land and to ensure that a Management Plan is current in respect of the Land at all times during the Term
- (b) In developing a Management Plan in accordance with clause 5(a) the R31165 Management Committee may consult with any organisation or body it thinks appropriate and will consult with the holders of any Agreed Interest.
- (c) Until the initial Management Plan has been finalised the R31165 Management Committee will manage the Land in accordance with the *Water and Rivers Commission Act 1995* (WA) and various written laws, the *Land Administration Act 1997* (WA) the applicable provisions of this Agreement and any Agreed Interest

6. R31165 MANAGEMENT COMMITTEE

6.1 Establishment and role

- (a) The management of the Land under this Agreement shall be administered by the Parties through the R31165 Management Committee comprised of up to three (3) WRC Members and two representatives from each of the four Local Dawang ("*Dawang Representative Members*").
- (b) Membership of the R31165 Management Committee is for a period of 3 years (or the balance of the relevant 3 year period in the case of a person filling a vacancy) and a R31165 Management Committee member is eligible for subsequent appointment.
- (c) The primary role of the R31165 Management Committee shall be the development and review of the Management Plan and policies that apply to the Land.

6.2 WRC Membership

- (a) The WRC Members shall be appointed from time to time by the WRC and advised in writing to MG Corporation ("*WRC Members*").
- (b) The WRC shall appoint a proxy representative for each WRC Member ("*WRC Proxy Member*") and advise the MG Corporation in writing of the appointment. A list of the first three (3) WRC Members and WRC Proxy Members is at Schedule 2.
- (c) If at any time there is a WRC Member who temporarily cannot perform his or her responsibilities as a member of the R31165 Management Committee:

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- (i) the WRC must notify the MG Corporation in writing as soon as practicable; and
 - (ii) the WRC Proxy Member shall replace the WRC Member on the R31165 Management Committee until the MG Corporation is notified in writing by WRC that the WRC Member has resumed his or her responsibilities as a member of the R31165 Management Committee.
- (d) If at any time a WRC Member cannot perform his or her responsibilities as a member of the R31165 Management Committee permanently or he or she vacates their position:
- (i) the WRC must notify the MG Corporation in writing as soon as practicable of the vacancy; and
 - (ii) the WRC Proxy Member shall replace that WRC Member as a member of the R31165 Management Committee until the MG Corporation is notified in writing by the WRC that a new WRC member has been appointed.
- (e) If at any time a WRC Proxy Member cannot perform his or her responsibilities as a WRC Proxy Member or vacates their position the WRC may appoint a WRC Proxy Member to replace a current WRC Proxy Member and the WRC must advise the MG Corporation in writing of the appointment.
- (f) Prior to the end of each 3 year period, the WRC must facilitate the making of appointments for new WRC Members under clause 6.2(d).

6.3 Dawang Representative Members

- (a) The Dawang Representative Members shall be appointed by the Dawawang for each Local Dawang and must be members of that Local Dawang and the MG Corporation. Where possible, the Dawang Representative Members shall include a senior person and a younger person.
- (b) The Dawawang of each Local Dawang must also appoint an alternative Dawang Representative Member for each Dawang Representative Member ("Dawang Alternative Member") and the MG Corporation must advise the WRC in writing of the appointment. A list of the first Dawang Representative Members and Dawang Alternative Members is at Schedule 3.
- (c) If at any time a Dawang Representative Member temporarily cannot perform his or her responsibilities as a member of the R31165 Management Committee:
 - (i) the MG Corporation must notify the WRC in writing as soon as practicable and the Dawang Alternative Member shall replace that Dawang Representative Member; and
 - (ii) the Dawang Alternative Member shall be a member of the R31165 Management Committee until the WRC is notified in writing by the MG Corporation that the Dawang Representative Member has resumed his or her responsibilities as a member of the R31165 Management Committee.
- (d) If at any time a Dawang Representative Member cannot perform his or her responsibilities as a member of the R31165 Management Committee permanently or he or she vacates their position:

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- (i) the MG corporation must notify the WRC in writing as soon as practicable of the vacancy;
 - (ii) the Dawang Alternative Member shall replace that Dawang Representative Member as a member of the R31165 Management Committee until the WRC is notified in writing by the MG Corporation that a new Dawang Representative Member has been appointed; and
 - (iii) the MG Corporation shall facilitate, as soon as practicable, the appointment of a new Dawang Representative Member by the relevant Dawawang.
- (e) If at any time a Dawang Alternative Member cannot perform his or her responsibilities as a Dawang Alternative Member or vacates their position the MG Corporation shall facilitate as soon as practicable the appointment of a new Dawang Alternative Member by the relevant Dawawang and shall notify the WRC in writing of the appointment.
- (f) Prior to the end of each 3 year period, the MG Corporation must facilitate the making of appointments for new Dawang Representative Members under clause 6.3(d).

7. MEETINGS OF THE R31165 MANAGEMENT COMMITTEE

7.1 R31165 Management Committee to make decision at meetings

Unless otherwise determined by the R31165 Management Committee, all decisions of the R31165 Management Committee must be made at a meeting convened and conducted in accordance with clauses 7 and 8.

7.2 Convening meetings

- (a) The WRC must convene the first meeting of the R31165 Management Committee within forty five days of the Commencement Date.
- (b) The R31165 Management Committee must meet to attend to its business as often as it considers necessary, but at least once every year.
- (c) The WRC may, on request from a WRC Representative or otherwise, call a meeting of the R31165 Management Committee by giving at least twenty-one (21) days notice in writing to the MG Corporation
- (d) The MG Corporation may, on request from a Dawang Representative Member or otherwise, call a meeting of the R31165 Management Committee by giving at least twenty-one (21) days notice in writing to the WRC.

7.3 Chairperson and secretary

- (a) The R31165 Management Committee shall elect a Chairperson and a Secretary from among their number at the first meeting of the R31165 Management Committee and on each anniversary of that meeting. The Chairperson and Secretary are eligible for re-election.
- (b) The Chairperson will 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 R31165 Management Committee may elect a member to chair the meeting.

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- (c) The Secretary shall keep proper minutes of all meetings of the R31165 Management Committee.

7.4 Procedure at meetings

- (a) Each R31165 Management Committee member shall have one vote in person at a meeting of the R31165 Management Committee
- (b) The R31165 Management Committee shall adopt such rules and procedures as it considers necessary to enable it to carry out its functions under this Agreement, but subject to the provisions of this Agreement
- (c) The R31165 Management Committee may invite other persons to attend meetings of the R31165 Management Committee or to advise it on any matter it thinks fit.

7.5 Committees

The R31165 Management Committee may appoint committees (comprising R31165 Management Committee members and other persons) to investigate, consider, and advise or recommend such matters to the R31165 Management Committee as it thinks fit.

8. QUORUM, CONSENSUS AND VOTING

8.1 Quorum

- (a) The quorum for a meeting of the R31165 Management Committee shall be one Dawang Representative Member from each Local Dawang and at least one (1) WRC Member.
- (b) If a quorum is not satisfied at two (2) consecutive meetings of the R31165 Management Committee, the business which was proposed to be discussed at the meetings for which the quorum was not satisfied ("**Referred Business**") may be referred to the Minister for Lands by either the MG Corporation or the WRC and clause 8.3 applies

8.2 Voting

- (a) Decisions of the R31165 Management Committee must be made by those members in attendance at a meeting of the R31165 Management Committee voting on a motion.
- (b) The R31165 Management Committee will, as far as possible, require a motion to be supported by the consensus votes of all those members in attendance at the meeting of the R31165 Management Committee.
- (c) If a motion is not supported by the consensus votes of all those members in attendance at a meeting of the R31165 Management Committee, but:
 - (i) one (1) WRC Member; and
 - (ii) a majority of the Dawang Representative Members,in attendance voted in support of that motion, then the motion is deemed to be passed and is a duly made decision of the R31165 Management Committee.
- (d) If the same motion is not passed and clause 8.2(c) does not apply, at three (3) consecutive meetings of the R31165 Management Committee then the business which is the subject of that motion ("**Referred Business**") may be referred to the

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Minister for Lands by either the MG Corporation or the WRC and clause 8.3 applies

8.3 Referred Business

- (a) The Minister for Lands shall, in respect of the Referred Business, consult with the Minister Assisting the Minister for Water Resources, the Minister for the Environment, WRC and the MG Corporation regarding how the Referred Business is to be determined, and:
 - (i) decide as to how the Referred Business is to be determined;
 - (ii) make a determination on the Referred Business; or
 - (iii) a combination of both paragraphs 8.3(a)(i) and 8.3(a)(ii).
- (b) A determination of the Referred Business by the Minister for Lands shall be deemed to be a final and binding decision of the R31165 Management Committee.

9. FUNDING OF JOINT MANAGEMENT

- (a) All monies paid to the Management Body in relation to an Agreed Interest must be used solely for the purpose of joint management in accordance with this Agreement, including but not limited to:
 - (i) subject to approval by the Minister for Lands, payment of attendance fees for the Dawang Representative Members at R31165 Management Committee meetings;
 - (ii) costs associated with convening meetings of the R31165 Management Committee; and
 - (iii) costs of development, implementation and review of Management Plans.
- (b) Unless otherwise agreed by the Management Body all monies paid to the Management Body in relation to an Agreed Interest shall be received and administered by Waters and Rivers Commission by and on behalf of the Management Body.

10. INDEMNITY

- (a) The State agrees to indemnify and keep indemnified the MG Corporation against all proceedings actions suits claims demands costs and losses (Losses) suffered or incurred by the MG Corporation to the extent such Losses are incurred by the MG Corporation 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 WRC or any of either 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.
- (b) The MG Corporation agrees to indemnify and keep indemnified the State and the WRC against all proceedings actions suits claims demands costs and losses (Losses) suffered or incurred by the State or the WRC or both of them to the extent such Losses are incurred by the State or the WRC or both of them or any of either of their employees, agents or contractors, as a result of the negligent or other tortious act or omission of the MG Corporation or any of its members, officers, employees, agents, or contractors in the purported exercise of its or their rights or obligations under this Management Agreement or the Management Plan.

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11. NOTICES

- (a) Notices under this Agreement shall be in writing and may be delivered by hand delivery, pre-paid post or facsimile transmission.
- (b) Notice shall be deemed to be received:
 - (i) in the case of hand delivery, on delivery to the address of the Party set out below or as otherwise notified from time to time;
 - (ii) in the case of pre-paid post, five (5) Business Days after posting; and
 - (iii) in the case of facsimile transmission, upon receipt by the sender of a transmission form indicating successful transmission of the entire facsimile.
- (c) Notices to be given to:
 - (i) the MG Corporation shall be addressed to:
Facsimile No:
 - (ii) the WRC shall be addressed to:
Facsimile No:

12. NO PARTNERSHIP ETC

Nothing in this Agreement shall be taken to constitute a partnership, agency, joint venture or any other form of legal relationship between the Parties by which any Party may bind any other Party or Parties to contracts, agreements, deeds or any other document creating binding legal obligations. Without limiting the foregoing, no Party may enter into any employment contract or contract for the provision of works, materials or services on or in respect of the Land purporting to bind any other Party or Parties.

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This Agreement was executed by the Parties on the date first hereinbefore appearing.

Signed for and on behalf of the)
STATE OF WESTERN AUSTRALIA)
by)
)

THE COMMON SEAL of)
the WATER AND RIVERS)
COMMISSION was hereunto)
affixed by in the presence of :)

THE COMMON SEAL of)
the MINISTER FOR LANDS was hereunto)
affixed by in the presence of :)

THE COMMON SEAL of)
[MG Corporation] was)
hereunto affixed by)
in the presence of :)
