

Execution Provisions

EXECUTED as a Deed

The **Common Seal** of the)
KIMBERLEY LAND COUNCIL)
ABORIGINAL CORPORATION)
was hereunto affixed with the authority of its)
Board in the presence of:



[Signature]
CHIEF EXECUTIVE OFFICER

[Signature]
BOARD MEMBER

WAYNE BERGMANN
Print full name

THOMAS BIRCH
Print full name

Date: 25/2/2010

SIGNED by the said)
FRANK SEBASTIAN for and on behalf of)
YAWURU NATIVE TITLE GROUP)
in the presence of:

[Signature]
Victoria McKenna White
THOMAS EDGAR Witness

[Signature]
J Edge

[Signature]

SIGNED by the said)
PATRICK DODSON for and on behalf of)
YAWURU NATIVE TITLE GROUP)
in the presence of:

Micko Copus
SUSAN EDGAR - *[Signature]*
Witness

[Signature]

[Signature]

EXECUTED in accordance with s127(1))
of the *Corporations Act 2001* (Cth) on)
behalf of)
NYAMBA BURU YAWURU LTD)
ABN 87 137 306 917

Debra Pigram
Director (Signature)

[Signature]
Director/ Company Secretary (Signature)

Debra Pigram
Director (Print Full Name)

Peter Yu
Director / Company Secretary (Print Full Name)

25/2/10

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

CCP
HON C. CHRISTIAN PORTER MLA
25.02.10
Date

[Signature]
Signature of Witness

GARY HAMLBY
Full name of Witness (print)

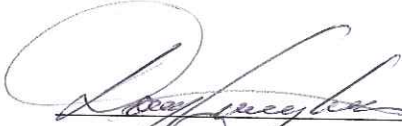
197 ST GEORGES TCE PERTH
Address of Witness

EXEC DIR OFFICE OF NATIVE TITLE
Occupation of Witness


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 23/02/10


Full name of Witness (print)


Address of Witness


Occupation of Witness

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:

P Barblett AM.

Signature of Authorised Member

R.D. Flugg
Signature of Witness

PATRICIA M BARBLETT AM.
Full Name of Authorised Member
(printed)

24-2-2010.

REGINA DALE FLUGGE
Full name of Witness (printed)

DEPUTY CHAIR CONSERVATION COMMISSION OF WA
Occupation of Witness

7 CERE RISE WOODVALE WA
Address of Witness

24/02/2010
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:

J. Rayner
Signature of Witness

Janet Rayner
Full name of Witness (printed)

Public Servant
Occupation of Witness

297 Salvado Rd, Floreat WA
Address of Witness

24 February 2010
Date

K. J. McNamara
Signature of Chief Executive Officer
24/2/10

SIGNED by and on behalf of the)
MARINE PARKS AND)
RESERVES AUTHORITY, an)
authority established under section)
26A of the *Conservation and Land*
Management Act 1984 (WA) in the
presence of:

Jane Young
Signature of Witness

EXECUTIVE ASSISTANT
Full name of Witness (printed)

JANE YOUNG
Occupation of Witness

Christopher Daeful
Signature Christopher Daeful
Deputy Chairman
MPRA 24/02/2010

47 MORRIS CIRCLE "VICTORIA HEIGHTS"
Address of Witness EAST VIC PARK WA 6101

24/2/10
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:



[Handwritten signature of Graeme Campbell]

**GRAEME CAMPBELL
PRESIDENT**

[Handwritten signature of Darryl Butcher]
Signature of Witness

[Handwritten signature of Kenn Donohoe]
**KENN DONOHOE
CHIEF EXECUTIVE OFFICER**

DARRYL BUTCHER
Full name of Witness (print)

5 LEE COURT, CABLE BEACH, WA
Address of Witness

DIRECTOR, DEVELOPMENT SERVICES 25 / 2 / 10
Occupation of Witness Date

JOINT MANAGEMENT AGREEMENT

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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Parties

Parties set out in Schedule 1

The parties agree as follows:

1. Definitions

In this document unless expressed or implied to the contrary:

Agreement means this joint management agreement as may be varied or replaced from time to time by consent in writing by all of the Parties.

Alienated land has the same meaning as in the LA Act.

Alternate Member means a person who is nominated by the Yawuru RNTBC to be a standing replacement for any of its Representative Members who are otherwise unable to attend a meeting of the Park Council.

Associate Member means a person agreed from time to time by the Yawuru RNTBC, the CEO and BSC to become an associate member of the Park Council with no voting rights.

Business Day means Monday to Friday excluding public holidays in Western Australia.

Cable Beach Intertidal Zone Reserves means those areas seaward of the high water mark down to the lowest astronomical tide adjacent to the Freehold Areas north of the Broome Townsite 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, the CCWA and BSC.

CALM Act means the *Conservation and Land Management Act 1984* (WA).

CALM Regulations means the regulations made under Part X of the CALM Act.

Coastal Park means that part of the Conservation Estate described in clause 11.1(a), (b) and (c) of the Yawuru PBC ILUA (excluding Culturally Sensitive Areas).

Conservation Estate means areas described in clause 11.1 of the Yawuru PBC ILUA together with the areas described in clause 10.1 of the Yawuru AA ILUA.

Crown land has the same meaning as in the LA Act.

Cultural Management Plan means the cultural management plan prepared by the Yawuru RNTBC which will address Yawuru customs and practices as well as Yawuru customary law.

Culturally Sensitive Areas means those areas of cultural significance referred to in clauses 7.3 and 7.4 of this Agreement.

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 April 2006 as varied by the Full Court of the Federal Court on 18 July 2008.

Term means the term of this Agreement specified in clause 11.2.

Terms of Reference means the terms of reference for the Park Council attached at Schedule 2.

Townsite Areas means all of those areas, including intertidal zone areas adjacent to the townsite, that are to be reserved under s41 of the LA Act for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment, some of which are to be classified as Class A reserves under section 42 with an order placing the care control and management jointly with the Yawuru RNTBC and the BSC under s46 of the LA Act and an Assistance Agreement under s33 of the CALM Act with the CEO.

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

Yawuru Culture means the living body of traditions, observances, customs, beliefs and cultural practices of the Yawuru People, as adapted to contemporary means of practice, as evidenced by but not limited to:

- (a) the use of land and waters in accordance with the traditional laws and customs acknowledged and observed by the Yawuru People; and
- (b) the native title rights and interests of the Yawuru People in the Land as determined by the Federal Court in the Determination.

Yawuru People means those Aboriginal persons who are the holders of native title rights and interests under the Determination.

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 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;
- (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.

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 by the CEO and Yawuru RNTBC pursuant to a management order made under section 46 of the LA Act, then on grant of freehold by the CEO and Yawuru RNTBC pursuant to the relevant provisions of the CALM Act as if the area were a conservation park.
- (b) Roebuck Bay Intertidal Zone Reserves are to be jointly managed in the interim period of reservation by the CCWA and Yawuru RNTBC, pursuant to a management order made under section 46 of the LA Act with the assistance of the CEO under a section 33(1)(f) CALM Act agreement. Following amendment to the CALM Act, unless otherwise agreed, the Roebuck Bay Intertidal Zones Reserves will be jointly managed by the CEO and Yawuru RNTBC pursuant to the relevant provisions of the CALM Act as if the areas were a conservation park.
- (c) Cable Beach Intertidal Zone Reserves are to be jointly managed by Yawuru RNTBC, BSC and the CCWA pursuant to a management order made under section 46 of the LA Act with the assistance of the CEO under section 33(1)(f) of the CALM Act.
- (d) Townsite Areas are to be jointly managed by Yawuru RNTBC and BSC pursuant to a management order made under section 46 of the LA Act and

with the assistance of the CEO under a section 33(1)(f) CALM Act agreement. The Assistance Agreement is attached at Schedule 9 of the Yawuru PBC ILUA.

- (e) Marine Park is to be jointly managed by the MPRA, Yawuru RNTBC and the CEO under the relevant provisions of the CALM Act

4.2 Management Principles

- (a) The Conservation Estate will be jointly managed by Yawuru RNTBC, the CEO and BSC, as appropriate and in accordance with clause 4.1, for the purposes of conservation, recreation and traditional and customary Aboriginal use and enjoyment and to the extent consistent with the CALM Act, the LA Act, the FRM Act and/or reserve purposes for the following objectives:
 - (i) the preservation and promotion of the aboriginal cultural and heritage values of the Conservation Estate;
 - (ii) the preservation and promotion of the natural environmental values of the Conservation Estate, including indigenous flora and fauna;
 - (iii) the preservation and promotion of the archaeological values of the Land;
 - (iv) the provision of recreational facilities and facilitation of recreational activities in the Conservation Estate, particularly in the Townsite Areas;
 - (v) the regulation of public access to the Freehold Areas, Intertidal Zone Reserves and Marine Park areas of the Conservation Estate to fulfil so much of the demand for recreation by members of the public as is fitting having regard to the matters set out in this paragraph 4.2(a)(i), (ii) and (iii);
 - (vi) access to and occupation and use of the Conservation Estate by the Yawuru People for purposes consistent with Yawuru Culture and tradition and to preserve and sustain the native title rights and interests recognised in the Determination;
 - (vii) employment, service provision and training opportunities for the Yawuru People in the administration, management and control of the Conservation Estate;
 - (viii) commercial and economic opportunities being made available to the Yawuru Community and the Yawuru RNTBC in preference to any other applicants, subject to such activities being consistent with the management of the Conservation Estate.

- (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 accordance with Regulation 104 of the CALM Regulations only if the CEO is advised to do so by the Park

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 Conservation Estate are reserved to Yawuru RNTBC.

- (c) The Parties agree that other than any monies received pursuant to clauses 5.3(a) and (b), any monies received in connection with any activities undertaken in the Freehold Areas, Intertidal Zone Reserves and Marine Park area of the Conservation Estate will be reinvested back into the Conservation Estate, and any such monies will be in addition to the funding provided by Yawuru RNTBC, the State or a third party for management of the Conservation Estate.

6. Management of Marine Park

- (a) The Parties acknowledge that the Marine Park cannot be reserved for that purpose until an indicative management Plan has been developed and the process for public notification and submissions has been undertaken under section 14 of the CALM Act.
- (b) The Parties agree that a Marine Park indicative Management Plan will be developed as a matter of priority.
- (c) The Parties agree that if any aspects of the Cultural Management Plan subsequently impact on the Management Plan for the Marine Park, the Marine Park Management Plan will be amended or adjusted as necessary in accordance with the notification, submission and referral processes of Part V of the CALM Act.

7. Cultural Management Plan

7.1 Development Responsibility

Cultural Management Plans for the Conservation Estate will be developed and authored by Yawuru RNTBC and will address both Yawuru customs and practices as well as Yawuru customary law.

7.2 Yawuru RNTBC Responsibilities

- (a) Subject to clause 7.3, Yawuru RNTBC will develop Cultural Management Plans relevant to the Conservation Estate.
- (b) It is the intention of the Parties that the Cultural Management Plan for the Marine Park will be prepared prior to the indicative Management Plan for the Marine Park.
- (c) Cultural issues impacting the Marine Park will be considered by Yawuru RNTBC as a priority with a Cultural Management Plan specific to the Marine Park being produced prior to the Cultural Management Plan for the Coastal Park.

- (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 Management Plan.
- (b) The Yawuru Restricted Access Areas and Kunin Restricted Access Area must prohibit public access, with access being restricted to only those persons approved by the Yawuru RNTBC and the Kunin RNTBC as being authorised to enter into those areas.
- (c) Only those Department employees and rangers, and other State government employees in the course of their employment, who have been duly authorised in accordance with clause 7.4(b) will have access to the Yawuru Restricted Access Areas and the Kunin Restricted Access Area.
- (d) The Cultural Management Plan and Management Plan must prohibit access to the Culturally Sensitive Areas by anyone with the exception only of the Yawuru Law Bosses or persons authorised by the Yawuru Law Bosses.

8. Management Plan

8.1 Responsibility for Development

- (a) Yawuru RNTBC, CEO, CCWA and MPRA will work collaboratively to develop all Management Plans in accordance with the CALM Act and the LA Act where applicable, with input from the BSC in relation to the Townsite areas and Cable Beach Intertidal Zone Reserves. Funding for the development of all Management Plans will be as provided at clause 9.5.
- (b) Once the Management Plans for the Townsite areas are developed, Yawuru RNTBC and BSC will submit the Plans to the Minister for Lands pursuant to section 49 of the LA Act for approval.
- (c) Once the Management Plans for the Freehold Areas and for the Intertidal Zone Reserves have been prepared and notified in accordance with Part V

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.

8.4 Timing for Development of Management Plans

- (a) The Cultural Management Plan will be developed prior to the Management Plan and within 12 months of the Registration Date.
- (b) The Parties agree that the Cultural Management Plan relevant to the Marine Park will be prepared first to assist with the prompt development of an indicative Management Plan for the Marine Park.
- (c) An indicative Management Plan for the Marine Park for public notification under s14 of the CALM Act will be developed within 18 months of the Registration Date
- (d) The Management Plan for the Coastal Park will be developed within 2 years of the date of the provision of the Cultural Management Plan.

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

- (a) The CEO shall:
 - (i) provide annual reports to the Yawuru RNTBC and the Park Council on the implementation and operation of the Management Plans for the Conservation Estate; and
 - (ii) consult with the Yawuru RNTBC and the Park Council in relation to any budgets for the implementation and ongoing operation of the Management Plan for the Conservation Estate.

- (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 RNTBC as the employer of their authors.

11.2 Term

The term of this Agreement is 99 years from the date of execution of this Agreement unless terminated earlier in accordance with clause 11.5.

11.3 Review

- (a) The Parties agree that within 5 years of execution of this Agreement and every 10 years thereafter, the Parties must undertake a review of its terms for the purpose of assessing without limitation the operation and implementation of the Agreement and to determine whether Yawuru RNTBC has aspirations to assume responsibility for sole management of the Freehold Areas.
- (b) In the event the CEO and Yawuru RNTBC agree that Yawuru RNTBC will assume sole responsibility for the management of the Freehold Areas, the Lease will be surrendered upon the acceptance by Yawuru RNTBC to take on responsibility for sole management of the Freehold Areas.

11.4 Amendment

This Agreement may only be varied or replaced by the agreement of the Parties, evidenced by a document duly executed by the Parties.

11.5 Termination

- (a) This Agreement may be terminated by the agreement of the Parties in writing.

- (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.

(b) By the Yawuru RNTBC:

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

(c) By the Broome Shire Council

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

11.8 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

11.9 Stamp Duty

If any transaction entered into pursuant to this Agreement attracts a stamp duty liability, the State must pay all stamp duty (including all fines and penalties except those arising from the default of another party) in respect of any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this document.

11.10 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No Party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

11.11 Assignment

- (a) A Party must not:
 - (i) sell, transfer, assign, license; or
 - (ii) mortgage, charge or otherwise encumber,any right under this Agreement to any person (Proposed Assignee), or permit a Proposed Assignee to assume any obligation under this document without the prior written consent of the other Parties to this Agreement (Other Parties).
- (b) The Other Parties must not unreasonably withhold consent under this clause.
- (c) The assigning party must pay all fees and expenses (including legal fees on a solicitor/own client basis) incurred by the Other Parties in connection with the proposed assignment and the investigation of the Proposed Assignee, whether or not consent is granted.
- (d) The assigning party must deliver to the Other Parties:
 - (i) the name, address and occupation of the Proposed Assignee;
 - (ii) two written references as to financial circumstances of the Proposed Assignee acceptable to the other Parties;
 - (iii) an agreement in a form approved by the Other Parties, executed by the Proposed Assignee, in which the Proposed Assignee agrees to perform the obligations of the assigning party under this Agreement; and
 - (iv) if required by the Other Parties, a guarantee in a form approved by the Other Parties executed by persons approved by the Other Parties, guaranteeing the performance of the Proposed Assignee's obligations.

11.12 No Relationship

No Party to this Agreement has the power to obligate or bind any other Party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the Parties. Nothing in this Agreement will be deemed to authorise or empower any of the Parties to act as agent for or with any other Party.

11.13 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the Party preparing the document on the basis that it prepared or put forward this document or any part of it.

12. Notices

12.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a Party must be in writing and may be served:

- (a) personally on the Party;
- (b) by leaving it at the Party's current address for service;
- (c) by posting it by prepaid post addressed to that Party at the Party's current address for service;
- (d) by facsimile to the Party's current number for service; or

12.2 Particulars for Service

- (a) The particulars for service of each Party are set out in Schedule 1.
- (b) Any Party may change the address, or facsimile number for service by giving notice to the other Parties.
- (c) If the Party to be served is a company, the notice or other communication may be served on it at the company's registered office.

12.3 Time of Service

A notice or other communication is deemed served:

- (a) if served personally or left at the Party's address, upon service;
- (b) if posted within Australia to an Australian address, ten Business Days after posting and in any other case, ten Business Days after posting;
- (c) if served by facsimile, subject to clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- (d) if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

13. Governing law

This document is governed by and is to be construed in accordance with the laws of Western Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and waives any right to object to proceedings being brought in those courts.

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	The State of Western Australia
Address	c/- Office of Native Title, Department of the Attorney General, 2nd Floor, 197 St George's Terrace, Perth, WA 6000
Facsimile	(08) 9222 9877
Email	Gary.hamley@justice.wa.gov.au
Contact	Gary Hamley, Executive Director
Short name	State

Name	Minister for Regional Development and Lands
Address	c/- 1 Midland Square, Midland, WA 6936
Facsimile	(08) 9347 5017
Email	Murray.raven@lands.rdl.wa.gov.au
Contact	Murray Raven
Short name	Minister for Lands

Name	Minister for Environment
Address	10 Dumas House, 2 Harold Street, West Perth, WA 6005
Facsimile	(08) 9213 7255
Email	peter.sharp@dec.wa.gov.au
Contact	Peter Sharp
Short name	Minister for Environment

Name	Conservation Commission of Western Australia
Address	Corner Australia II Drive and Hackett Drive, Crawley, WA 6009
Facsimile	(08) 9389 8603
Email	gordong@conservation.wa.gov.au
Contact	Gordon Graham
Short name	Conservation Commission

Name	Marine Parks and Reserves Authority
Address	Suite 3, Level 3, Queensgate Building, 10 William Street, Fremantle, WA 6160
Facsimile	(08) 9430 5408
Email	Alena.kessell@dec.wa.gov.au
Contact	Alena Kessell
Short name	Marine Authority

Name	The Executive Body of Conservation and Land Management
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	CEO

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

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

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
- (g) determine priorities for any matters required to be done in accordance with or in furtherance of the Management Plans.

1.2 Structure

The Park Council is responsible for the management of the Conservation Estate and is comprised of Yawuru RNTBC Representatives, Department Representatives and BSC Representatives who are responsible to jointly administer the management of the Conservation Estate in accordance with their respective areas of responsibility as set out clause 4.1.

1.3 Joint Management Responsibility

The Conservation Estate is to be jointly managed by the Yawuru RNTBC and the CEO or BSC as set out in clause 4.1 of the Joint Management Agreement and as summarised below:

- (a) Freehold Areas to be jointly managed by the CEO and Yawuru RNTBC;
- (b) Roebuck Bay Intertidal Zones Reserves to be jointly managed by the CCWA and Yawuru RNTBC;

- (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 ;
- (e) Marine Park, to be jointly managed by the MPRA, Yawuru RNTBC.and the CEO.

1.4 Membership

The Park Council is to be comprised of:

- (a) Freehold Areas, Roebuck Bay Intertidal Zone Reserves and the Marine Park
 - (i) Not less than three (3) Yawuru Representative Members and up to three (3) Alternate Members who only have voting rights if they step 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.
 - (iii) A maximum of one (1) representative from each Associate Member, except for BSC who may have all three (3) of its Representative Members present in an Associate Member capacity in respect to the Freehold Areas of the Conservation Estate.
- (b) Town Site Areas
 - (i) Not less than three (3) Yawuru Representative Members and up to three (3) Alternate Members who only have voting rights if they step 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) BSC Representative Members.
 - (iii) A maximum of one (1) representative from each Associate Member, except for the Department who may have all three (3) of its Representative Members present in an Associate Member capacity in respect to the Townsite Areas of the Conservation Estate.
- (c) Cable Beach Intertidal Zone Reserves
 - (i) Not less than three (3) Yawuru Representative Members and up to three (3) Alternate Members who only have voting rights if they step

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:

For Freehold Areas, Roebuck Bay Intertidal Zone Reserves and Marine Park matters:

two (2) Yawuru Representative Members and two (2) Department Representative Members.

For Townsite Area matters:

two (2) Yawuru Representative Members and two (2) BSC Representative Members.

For Cable Beach Intertidal Zone Reserves matters:

two (2) Yawuru Representative Members, two (2) BSC Representative Members and two (2) Department Representative Members.

- (b) If a quorum is not satisfied at two (2) consecutive meetings of the Park Council, the business which was proposed to be discussed at the meetings for which the quorum was not satisfied will be deemed to be Referred Business and may be referred to the relevant Minister.

2.5 Voting

- (a) Each Park Council representative member who has a voting right will have one vote in person at a meeting of the Park Council subject to:

only Yawuru RNTBC Representative Members and Department Representative Members have voting rights in respect to the Freehold Areas, Roebuck Bay Intertidal Zone Reserves and Marine Park;

only the Yawuru RNTBC Representative Members and BSC Representative Members have voting rights in respect to the Townsite Areas, and

only Yawuru RNTBC Representative Members, Department Representative Members and BSC Representative Members have voting rights in respect to the Cable Beach Intertidal Zone Reserves

- (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 and BSC of the nomination and the name of the Yawuru Representative Member they are attending in lieu of.
- (c) All proxies appointed under this clause 3.1 have the same voting rights as the Representative Members they are notified to be replacing.

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 period in which that permanent Yawuru Representative Member is unavailable to attend meetings of the Park Council;
 - (ii) the Alternate Member shall be entitled to act as the Yawuru Representative Member until the permanent Yawuru Representative Member has resumed his or her responsibilities as a Yawuru Representative Member; and

- (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

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:

CCP

HON C. CHRISTIAN PORTER MLA

25/02/10

Date

[Signature]

Signature of Witness

GARY HAMLEY

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:



[Signature]

HON BRENDON GRYLLS
MLA, MINISTER FOR LANDS

23/02/10

Date

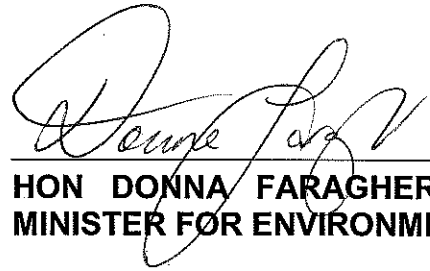
[Signature]

Signature of Witness

DOUGLAS ARTHUR CROOKS/HAS

Full name of Witness (print)

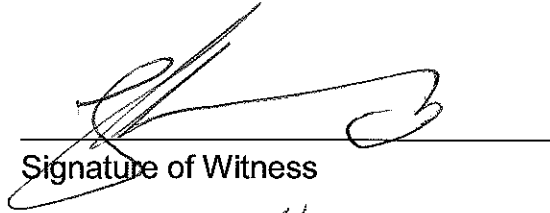
SIGNED by the MINISTER FOR)
ENVIRONMENT, THE HON.)
DONNA FARAGHER MLC in the)
presence of:



HON DONNA FARAGHER MLC,
MINISTER FOR ENVIRONMENT

25/2/2010

Date

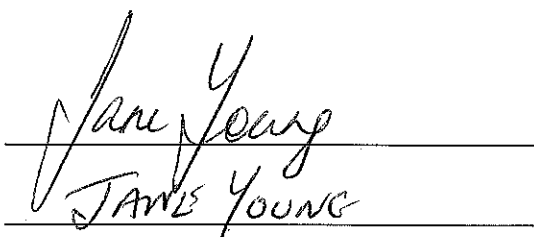


Signature of Witness

GARY HAMLEY

Full name of Witness (print)

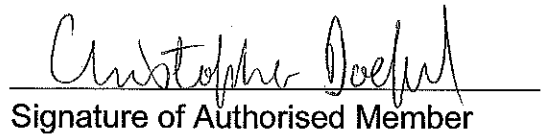
SIGNED for and on behalf of)
the MARINE PARKS AND)
RESERVES AUTHORITY, an)
authority established under section)
26A of the *Conservation and Land*
Management Act 1984 in the
presence of:



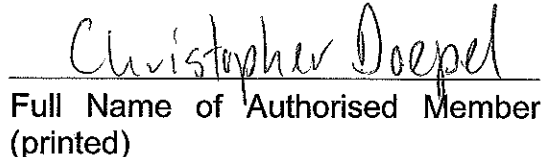
Signature of Witness

24/2/10

Full name of Witness (print)



Signature of Authorised Member



Full Name of Authorised Member
(printed)

Date

24/02/2010

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:

R.D. Flugge
Signature of Witness

REGINA DALE FLUGGE
Full name of Witness (printed)

P. Barlett
Signature of Authorised Member

Full Name of Authorised Member
(printed)

PATRICIA M. BARBLETT AM
Date 24-2-2010.

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:

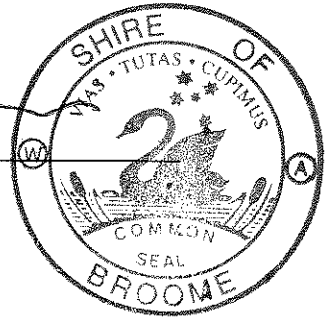
Rayner
Signature of Witness

Janet Rayner
Full name of Witness (printed)

K. J. McNamara
Signature of Chief Executive Officer

24/2/10
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



KENN DONOHOE
CHIEF EXECUTIVE OFFICER

Date

25 / 2 / 10

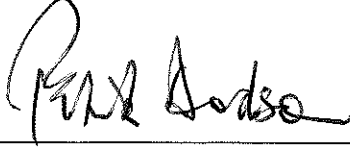


Signature of Witness

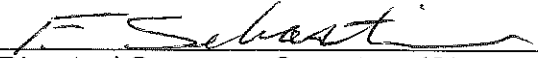
DARRYL BUTCHER

Full name of Witness (print)

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)

PATRICK DODSON

Director (Print Full Name)

FRANK SEBASTIAN

Director / Company Secretary (Print Full Name)

25/2/10

Date

25/2/10

Date

Maudiey - witness

Susan Edgar - witness

J Edgar - WITNESS

J Edgar - witness

ASSISTANCE AGREEMENT
Section 33(1)(f) CALM Act 1984 (WA)

THIS DEED is made on the 25th day of February 2010

BETWEEN:

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

and

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY ("Executive Body")

and

BROOME SHIRE COUNCIL ("BSC")

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Parties

Name Yawuru Native Title Holders Aboriginal Corporation RNTBC (**Yawuru RNTBC**)

Name The Conservation and Land Management Executive Body of Western Australia,
a body corporate established under section 36 of the *Conservation and Land
Management Act 1984* (WA) (**Executive Body**)

Name Shire of Broome, a local government under the *Local Government Act 1995*
(WA) (**Shire**)

Recitals

- A The Shire, the Yawuru RNTBC and the Executive Body are parties to the Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome ("Yawuru PBC ILUA") and to the Yawuru Area Agreement Indigenous Land Use Agreement - Broome ("Yawuru Area ILUA") under the *Native Title Act 1993* (Cth) which were executed on 25 February 2010 respectively.
- B Under clause 11 of the Yawuru PBC ILUA and clause 10 of the Yawuru Area ILUA a Conservation Estate and Marine Park are established, comprising areas of land to be granted in fee simple and areas of land to be reserved under Part 4 of the *Land Administration Act 1997* (WA) for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment and a Marine Park area. The care, control and management of those areas within Broome township that are reserved under Part 4 of the LA Act is to be placed jointly with the Yawuru RNTBC and the Shire of Broome.
- C This agreement is made between the Yawuru RNTBC, the Shire of Broome and the Executive Body to enable the Executive Body to provide advice to, and supply services to, the Yawuru PBC and the Shire of Broome under section 33(1)(f) of the CALM Act.

Agreed terms

The Parties covenant and agree as follows

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Agreement means this agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the notice is sent to or a public holiday in Western Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

CALM Act means *Conservation and Land Management Act 1984 (WA)*

Conservation Estate means the coastal park and marine park described in clause 11 of the Yawuru PBC ILUA and clause 10 of the Yawuru Area ILUA.

Details means the Parties' respective details contained in Schedule 1.

Execution Date means the date of the execution of this Agreement by the last of the Parties to execute it.

Executive Body means the Conservation and Land Management Executive Body of Western Australia established under section 36 of the CALM Act.

ILUA Register means the Register of Indigenous Land Use Agreements established under section 199A of the NTA.

Joint Management Agreement means the Joint Management Agreement for the management of the Conservation Estate executed on 25 February 2010.

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

LEADR means the dispute resolution organisation of that name. If LEADR ceases to exist as an organisation, then **LEADR** shall be taken to mean any other dispute resolution organisation with similar objects agreed by a majority of the Parties to the relevant dispute or, if no majority agreement can be reached, decided by the Party that first notified the relevant dispute.

Native Title Registrar is the Registrar appointed under section 95 of the NTA.

NNTT means the National Native Title Tribunal established by section 107 of the NTA.

Notice has the meaning given in clause 9.

NTA means the *Native Title Act 1993 (Cth)*.

Party means a Party to this Agreement and **Parties** means two or more of them as the case requires.

Townsite Areas means those areas referred to in clause 3(b).

Yawuru Area ILUA means the Yawuru Area Agreement Indigenous Land Use Agreement – Broome executed on 25 February 2010.

Yawuru PBC ILUA means the Yawuru Prescribed Body Corporate Indigenous Land Use Agreement - Broome executed on 25 February 2010.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words and expressions defined in the NTA have the same meaning where used;
- (b) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this Agreement and a reference to this Agreement includes any recital, schedule or addendum;
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (g) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any written law includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (h) a reference to dollars or \$ is to Australian currency;
- (i) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (j) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty-four hours later;
- (m) references to time are to time in Western Australia;

- (n) headings in this Agreement are inserted for convenience and do not affect the interpretation of this Agreement;
- (o) words of inclusion are not words of limitation; and
- (p) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any schedule or addendum to this Agreement, the terms and conditions of the clauses of this Agreement prevail.

2. Term of Agreement and early termination

2.1 Term

The term of this Agreement is the period of ninety nine (99) years commencing on the Execution Date.

2.2 Agreement to terminate

This Agreement can only be terminated if all Parties consent and the termination is effected in writing and executed by all of the Parties to this Agreement.

2.3 Consequences of termination

Unless otherwise agreed in writing by all Parties, if this Agreement is terminated in accordance with clause 2.2 then:

- (a) other than this clause 2.3, this Agreement ceases to have any force or effect on and from the date of termination;
- (b) any act done under or in accordance with this Agreement shall remain, to the extent permitted by law, valid; and
- (c) all rights and obligations under this Agreement which accrued before or on the date of termination of this Agreement shall remain binding and enforceable by or against each Party.

3. Conditions Precedent to Implementation of this Agreement

This Agreement will not become operative until the following events have occurred:

- (a) Yawuru PBC ILUA and Yawuru Area ILUA are registered on the ILUA Register maintained by the Native Title Registrar;
- (b) those areas referred to in clause 11.5 of the Yawuru PBC ILUA and clause 10.4 of the Yawuru Area ILUA are reserved for the purpose of conservation, recreation and traditional and customary Aboriginal use and enjoyment under section 41 of the LA Act and, where appropriate, an order classifying an area as a Class A reserve has been made under section 42 of the LA Act; and
- (c) the care, control and management of the areas referred to in clause 3(b) above has been placed with Yawuru RNTBC and the Shire of Broome jointly under section 46 of the LA Act.

4. Section 33(1)(f) Assistance

4.1 Assistance to be provided

The Parties agree that the nature of the services to be provided by the Executive Body shall comprise the following:

- (a) advice as to the scope and content of the management plan to be prepared under section 49(2) LA Act (management plan);
- (b) day to day management of the Townsite Areas in accordance with the management plan;
- (c) provision of qualified rangers to undertake the day to day management of the Townsite Areas in accordance with the management plan;
- (d) training and supervision of trainee rangers appointed pursuant to the program referred to in clause 11.8 of the Yawuru PBC ILUA; and
- (e) administrative support for the day to day management of the Townsite Areas.

4.2 Conditions on which Assistance is to be provided

The Executive Body shall be subject to the direction of the Park Council being the management committee for the Townsite Areas established under the Joint Management Agreement in undertaking tasks under sub-clauses 4.1(b) and (e).

4.3 Timeframes for provision of assistance

When the events in clause 3 have occurred, the assistance set out at clause 4.1 will commence, and will continue until funding for joint management of the Townsite Areas ceases.

4.4 Funding for Assistance

Funding for the assistance provided by the Executive Body is to be taken from the funds provided for joint management whilst those funds are available.

5. Variation of this Agreement

This Agreement may not be varied unless the variation is effected in writing executed by all of the Parties to this Agreement.

6. Default

6.1 Notice of default

If any Party believes that another Party has defaulted in fulfilling an obligation arising from this Agreement, then the first Party shall immediately notify the defaulting Party, specifying the nature of the default and what action the notifying Party requires.

6.2 Failure to remedy

If the alleged defaulting Party:

- (a) by written notice within ten (10) business days of receipt of the notice of default denies that it has committed a default; or
- (b) does not remedy the alleged default within ten (10) Business Days of receipt of notice of default, or such longer time as specified in the notice of default,

then either Party may invoke the dispute resolution provisions of clause 7.

6.3 Compliance with dispute resolution

A Party must comply with the dispute resolution provisions of clause 7.2 to 7.3 in respect of an alleged default to which clause 6.2 applies before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

7. Dispute resolution

7.1 No arbitration or court proceedings

If a dispute arises under this Agreement including a dispute in respect of clause 6 (Dispute), a Party must comply with clauses 7.2 to 7.4 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief).

7.2 Notification

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

7.3 Parties to resolve Dispute

During the ten (10) Business Days after a notice is deemed to have been served under clause 7.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable endeavours to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, any Party to the Dispute may request that the Dispute be referred to a mediator and, if a Party so requests, the Dispute must be referred to mediation in accordance with clause 7.4.

7.4 Mediation

- (a) If the Parties to the Dispute cannot agree on a mediator within ten (10) Business Days after a request under clause 7.3, the chairman of LEADR or the chairman's nominee will appoint a mediator at the request of either Party.
- (b) The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in advance in writing.
- (c) Any information or documents disclosed by a Party under this clause 7:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Dispute.
- (d) Each Party to a Dispute must pay its own costs of complying with this clause 7. The Parties to the Dispute must equally pay the costs of any mediator.

- (e) The Parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute. If the Parties fail to achieve a resolution of the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator under this clause, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate, including (subject to clause 7.5) referring the matter to arbitration or commencing legal proceedings.

7.5 Arbitration

- (a) If the Parties to a Dispute have complied with clauses 7.1 to 7.4 then, if all those Parties agree, they may refer the Dispute to arbitration under the *Commercial Arbitration Act 1985 (WA)*.
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the Parties.
- (c) The Parties will appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the Parties fail to agree on a person to be the arbitrator under clause 7.5(c), then the Parties must request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.

7.6 Breach of this clause

If a Party to a Dispute breaches any of the provisions of clauses 7.1 to 7.4, the other Parties to the Dispute do not have to comply with those clauses in relation to the Dispute before starting court proceedings.

8. Confidentiality

From Execution Date, nothing in this Agreement shall be considered confidential.

9. Notices and other communications

9.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (Notice) must be:

- (a) in writing and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for notices specified in Schedule 1 as varied from time to time by any Notice given by the recipient to the sender.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post, on the tenth Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day in the place that it is received, the Notice is taken to be received at 9.00 am on the next Business Day.

10. Goods and services tax

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 by the date Yawuru RNTBC would be required to pay the GST.

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. Costs and duties

11.1 Duties, taxes and government charges

Subject to clause 10, the State must pay all duties or taxes of a similar nature on and in relation to:

- (a) this Agreement;
- (b) any instrument, document or transaction contemplated by this Agreement; and
- (c) any instrument or document required under any relevant law in connection with any transaction contemplated by this Agreement,

even if another Party is primarily liable for payment of the duty.

11.2 Recovery

If the State fails to perform its obligations under this clause, any other Party may pay the duties or other taxes of a similar nature and recover the amount paid from the State as a debt due on demand.

11.3 Effect of termination

Termination of this Agreement does not affect the operation of this clause 11.

12. General

12.1 Severability

If any provision of this Agreement is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it can not be so read down, the provision (or where possible the offending words), shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement which will continue in full force and effect.

12.2 Waiver

A right or power under this Agreement shall only be deemed to be waived by notice in writing, signed by the Party waiving the right or power, and:

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one

Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;

- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived; and
- (c) the exercise of a right or power does not prevent any further exercise of that right or power or of any other right or power.

12.3 Further action

Each Party must use its reasonable endeavours to do all things necessary or desirable to give full effect to this Agreement.

12.4 Governing law and jurisdiction

- (a) This Agreement is governed by the law applicable in Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

12.5 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, will constitute one instrument. A Party may execute this Agreement by signing any counterpart.

Schedule 1 – Party Details (clause 1.1)

Name	Yawuru Native Title Holders Aboriginal Corporation RNTBC
Address	PO Box 425, Broome, WA 6725
Facsimile	(08) 9193 7432
Email	Jacki.turfrey@klc.org.au
Contact	Jacquelyn Turfrey
Short name	Yawuru RNTBC

Name	The Executive Body of Conservation and Land Management
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	CEO

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

Execution Provisions

EXECUTED as an agreement

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:

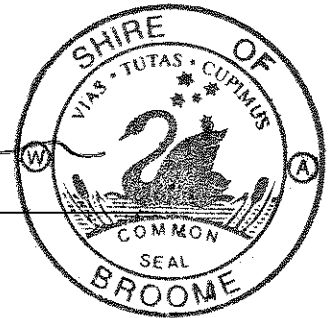
R. J. McNamara
Signature of Chief Executive Officer

Rayner
Signature of Witness

Janet Rayner
Full name of Witness (print)

Date 24/2/10

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
GRAEME CAMPBELL
PRESIDENT

Daryl Butcher
Signature of Witness

Kenn Donohoe
KENN DONOHOE
CHIEF EXECUTIVE OFFICER

DARRELL BUTCHER
Full name of Witness (print)

Date 25/2/10

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)
)

Debra Pigram
Director (Signature)

[Signature]
Director/ Company Secretary (Signature)

Debra Pigram
Director (Print Full Name)

Peter Yu
Director / Company Secretary (Print Full Name)

[Signature]
FRANK SEBASTIAN DIRECTOR

Date 25/2/10

[Signature]
PATRICK DODSON DIRECTOR.

28/02/2010