

First Trustee's Remuneration – Regulations

1. Status of Regulations

- (a) These Regulations set out rules and processes for how Schedule 9 of the Trust Deed must be applied.
- (b) These Regulations must be read subject to Schedule 9 of the Trust Deed to the extent of any inconsistency.
- (c) These Regulations include the following Appendices:
 - (i) **Appendix A** – Routine Tasks;
 - (ii) **Appendix B** – Conditional Tasks;
 - (iii) **Appendix C** - Competitive Tender Process; and
 - (iv) **Appendix D** - Key Performance Indicators.

2. Definitions

- (a) Words and phrases used in these Regulations have the same meaning as in the Trust Deed, unless the context indicates otherwise.
- (b) In these Regulations, unless the context indicates otherwise, the following expressions have the following meanings:
 - (i) **Conditional Tasks** means any Tasks that are not Routine Tasks and includes those Tasks specified as Conditional Tasks in **Appendix B**, as amended in accordance with the process specified in these Regulations;
 - (ii) **Estimate** means an approximate calculation or judgment of the value, number, quantity, or extent of something;
 - (iii) **Excepted Expense** means anything the Trustee reasonably believes to be an expense which must be incurred to preserve the Trust property, comply with the terms of the Deed, the law or any other compliance requirement;
 - (iv) **Rate Card** has the meaning given in Schedule 9.
 - (v) **Reasonable and Proper** has the meaning given in Schedule 9.
 - (vi) **Routine Tasks** means the Tasks specified as Routine Tasks in **Appendix A**, as amended in accordance with the process specified in these Regulations.

3. Roles and Responsibilities

- (a) The Noongar Relationship Committee has an important role in overseeing the Trustee's compliance with clause 23 and Schedule 9 of the Trust Deed, and monitoring the Trustee's expenditure and use of Trust Funds.
- (b) The Remuneration Auditor supports the Noongar Relationship Committee by providing technical oversight of some areas of Schedule 9 and these Regulations.

4. Classification of Tasks

4.1 Annual Audit of Tasks

- (a) The Remuneration Auditor must audit the Trustee's completed and ongoing Conditional Tasks annually within 90 days of the end of each Financial Year, to ensure the Trustee has correctly identified any Conditional Tasks as Conditional Tasks.
- (b) The Trustee must provide to the Remuneration Auditor sufficient relevant information in writing to enable the Remuneration Auditor to undertake its audit.
- (c) The Trustee must promptly respond to requests from the Remuneration Auditor for additional information.
- (d) The Remuneration Auditor's Report must be provided to the Noongar Relationship Committee and the Trustee within 14 days of completion.

4.2 Review of Appendices

Appendix A and Appendix B of the Regulations:

- (a) may be refined and amended from time to time to clarify the nature and scope of tasks that are specified in **Appendix A** and **Appendix B**;
- (b) must be updated annually to include any new tasks or matters that have been classified as Routine Tasks or Conditional Tasks under item 4.3 during the relevant annual period;
- (c) must be reviewed by the Trustee following the end of each 3 year period, in consultation with the Noongar Relationship Committee and the Remuneration Auditor, to determine whether any Tasks should be reclassified; and
- (d) may only be varied with consent of the Noongar Relationship Committee.

4.3 Classifying New Tasks & Re-Classifying Tasks

- (a) If the Trustee is required to, or seeks to, undertake a task or matter (**Task**) that is not classified in **Appendix A** as a Routine Task or in **Appendix B** as a Conditional Task:
 - (i) the Trustee may determine that the Task is a Routine Task and may proceed to deliver the Task within the Fee; or
 - (ii) the Trustee may seek for the Task to be classified as a Conditional Task and, before the Trustee may charge the Trust for the relevant Expense, the Trustee must obtain the Remuneration Auditor's consent.
- (b) If the Trustee believes that a Routine Task should be re-classified as a Conditional Task the Trustee is required to seek a determination from the Remuneration Auditor that the Expense is a Conditional Task before the Trustee may charge it as a Conditional Task.
- (c) In order to manage the costs of the Trust, the Trustee must present all requests for classification or re-classification of Tasks as Conditional Tasks to the Remuneration Auditor a maximum of once per quarter, unless it is an Excepted Expense.

- (d) The Trustee must provide to the Remuneration Auditor sufficient relevant information in writing to enable the Remuneration Auditor to make an informed decision regarding classification of the Task.
- (e) The Trustee must promptly respond to requests from the Remuneration Auditor for additional information.
- (f) When making its determination, the Remuneration Auditor must consider why the task or matter should not form part of the Routine Tasks having regard to:
 - (i) whether the task or matter is necessary in carrying out, administering and discharging the Trust and in exercising any power or discretion or authority conferred on the Trustee by the Trust Deed or the law; and
 - (ii) whether the task or matter is consistent with the Trustee's obligations under the Trust Deed.
- (g) The Trustee may, in its discretion, undertake an unclassified task or matter before obtaining the Remuneration Auditor's consent to the classification, provided that the Trustee must not charge the Trust for the Expense unless and until the Trustee obtains the Remuneration Auditor's consent.

5. Reasonable and Proper Expenses

- (a) As part of the Remuneration Auditor's audit of the Trustee's Remuneration and Expenses, the Remuneration Auditor must review, assess and determine whether Expenses are Reasonable and Proper.
- (b) If the Remuneration Auditor determines that an Expense is not Reasonable and Proper, the Trustee may only charge such amount that the Remuneration Auditor determines is Reasonable and Proper in the circumstances.

6. Internal Cost Process

- (a) Before the Trustee incurs or pays an Internal Cost for a Conditional Task, the Trustee must Estimate the cost of such task or matter.
- (b) The Trustee must only incur the Internal Cost if the Trustee believes the Trusts' best interests are served by incurring the Internal Cost.
- (c) The Internal Cost must be within the Trustee Expense Budget unless otherwise approved in accordance with the Regulations and must be charged in accordance with the Rate Card.

7. External Procurement Process

7.1 General Requirements

- (a) The External Procurement Process must be used for all external providers of goods or services to the Trust including but not limited to:
 - (i) audit and account compliance;
 - (ii) investment management;
 - (iii) property development advice;

- (iv) property management for housing properties;
 - (v) land management;
 - (vi) property valuations;
 - (vii) legal;
 - (viii) meeting costs (eg facilitators, venue hire, catering, transport, security); and
 - (ix) consumables such as stationery and printing.
- (b) Expenses must be charged to the Trust at cost price only.
 - (c) Travel and accommodation expenses must not exceed the rates specified in the ATO Taxation Determination ruling TD 2015/14 or any ATO Tax Determination Ruling which replaces that ruling.
 - (d) All engagements of external third party providers of goods or services must be on the condition that rates are to be reviewed and negotiated on an annual basis.

7.2 Supporting Noongar Business

- (a) The Trustee must, as far as reasonably practicable, investigate whether there is a Noongar Business that can be engaged whenever an external provider of goods or services is used and:
 - (i) where there is only one eligible Noongar Business that seeks to be engaged, the Trustee may engage that Noongar Business incurring expenses of \$150,000 or less without undertaking a competitive selections process; and
 - (ii) if more than one eligible Noongar Business seeks to be engaged, the Trustee must undertake a competitive selection process to select the provider.

7.3 Procurement Process

- (a) The requirements in this item 7.3 are subject to item 7.2 in relation to Noongar Business engagement.
- (b) The Trustee must obtain a written quote for expenses of \$50,000 or less.
- (c) The Trustee must obtain a written quote from three different providers for expenses of \$50,001 to \$150,000.
- (d) Expenses above \$150,000 must be by competitive tender process in accordance with **Appendix C**.

8. Trustee Expense Budget

8.1 Exceeding the Trustee Expense Budget

- (a) Having regard to the Trustee's obligations under clause 23.3 of the Trust Deed, the Trustee must not be reimbursed from the Trust for any part of an Expense that is 10% percent more than the amount budgeted for that Expense unless:

- (i) it is an Excepted Expense;
 - (ii) the Trustee Expense Budget has been varied; or
 - (iii) the Noongar Relationship Committee and Noongar Advisory Company have been consulted.
- (b) The Trustee must comply with the review process specified in clause 23.3(e) of the Trust Deed for all expenditure over the Trustee's Expense Budget.
- (c) Each quarter the Trustee must provide a report to the Noongar Relationship Committee and the Remuneration Auditor of all Excepted Expenses which have been incurred for the prior quarter.

8.2 Varying the Trustee Expense Budget

- (a) The Trustee must consult with the Noongar Advisory Company and the Noongar Relationship Committee before varying the Trustee Expense Budget.

9. Key Performance Indicators

- (a) The Key Performance Indicators are set out in **Appendix D**.
- (b) The Key Performance Indicators must at all times require the Trustee to:
 - (i) develop a policy and strategy for Aboriginal workforce development and retention within the Trustee's organisation; and
 - (ii) set progressive annual targets for Aboriginal employment and retention within the Trustee's organisation.
- (c) Any changes to the Key Performance Indicators must be agreed between:
 - (i) the Trustee;
 - (ii) the Noongar Relationship Committee; and
 - (iii) the State, during the State Contribution Period.

10. Dispute Resolution

- (a) Notwithstanding clause 3.6 of the Trust Deed, any disputes in relation to the Trustee's Remuneration or Expenses must be resolved in accordance with a dispute resolution procedure that mirrors the procedure in Schedule 12 to the extent practicable.
- (b) For the purpose of this item 10, a dispute means a dispute between the Trustee and the Noongar Relationship Committee in relation to the Trustee's Remuneration or Expenses, either directly or indirectly.
- (c) In the event of a dispute, the Noongar Relationship Committee (**Complainant**) may give the Trustee written notice identifying the particulars of the dispute (**Dispute Notice**).
- (d) Upon receipt of a Dispute Notice, the Trustee must:
 - (i) facilitate meetings between representatives of the Trustee and the Complainant to try and resolve the dispute informally; and

- (ii) if not resolved informally, invoke the dispute resolution procedures in Schedule 12 as follows:
 - (A) firstly by invoking item S12.4 (Mediation) of Schedule 12, provided that the appointment of the Mediator must be agreed to by the Complainant; and
 - (B) if the Dispute is not resolved following mediation under item S12.4 of Schedule 12, then by invoking item S12.5 (Expert Determination) of Schedule 12, provided that the appointment of the Expert must be agreed to by the Complainant.

Appendix A – Routine Tasks

Routine Tasks			
No.	Timing	Area	Task
1.	Establishment of the Trust	Investment Policy	Prepare the Investment Policy.
2.	Upon acceptance of land into Cultural Land Fund	Cultural Land Fund	Identify land accepted into the Cultural Land Fund and give written notice to the Noongar Relationship Committee.
3.	Within 60 days of the date of the Trust Deed or such other time as agreed in writing with the State	State Contribution	Grant a security interest over the Trustee's right title and interest in the Noongar Future Fund and the Operations Fund in favour of the State.
4.	During the First Year of the Trust	Strategic Plan	Formulate a Strategic Plan for the next 3 years and make the finalised Strategic Plan available to: <ul style="list-style-type: none"> • Eligible Noongar Entities; • Investment Committee; • State; and • Noongar Advisory Company.
5.	On receipt of an ENE Nomination for an RC	Regional Corporations	If eligible under clause 4.5, appoint the nominated entity as the Regional Corporation for a Region by an ENE Appointment Notice.
6.	Where a Regional Corporation ceases to meet eligibility criteria	Regional Corporations	Issue an ENE Default Notice to the Relevant Regional Corporation and follow the procedure outlined in clause 4.2(a).
7.	Relevant Regional Corporation ceases to be eligible to act as a Regional Corporation	Regional Corporations	Issue an ENE Termination Notice to the Relevant Regional Corporation and ensure the Trustee complies with the State Contribution Condition in accordance with clause 6.4.
8.	Upon issuing an ENE Termination Notice	Regional Corporations	<ul style="list-style-type: none"> • Cease to maintain the ENE Operations Account for the Relevant Regional Corporation in accordance with clause 8.3(f). • Suspend payment of all Distributions to the Relevant Regional Corporation in accordance with clause 17.7. • Ensure the Relevant Regional Corporation's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7. • Ensure that any interest in Cultural Land granted to the Relevant Regional Corporation terminates and reverts back to the Trustee in accordance with clause 10.3(c). • Ensure that any Special Projects Funding that has not been used by the Relevant Regional Corporation will be

			repaid to the Trustee in accordance with clause 9.2(e).
9.	On receipt of an ENE Nomination for the CSC	CSC	If eligible under clause 5.4, appoint the nominated entity as the CSC by an ENE Appointment Notice.
10.	Where the CSC ceases to meet eligibility requirements	CSC	Issue an ENE Default Notice and follow the procedure outlined in clause 5.2(a).
11.	Upon issuing of an ENE Termination Notice	CSC	<ul style="list-style-type: none"> • Cease to maintain the ENE Operations Account for the outgoing CSC in accordance with clause 8.3(f). • Suspend payment of all Distributions to the outgoing CSC in accordance with clause 17.7. • Ensure the outgoing CSC's representatives do not participate in the Noongar Relationship Committee in accordance with clause 15.7. • Ensure that any Special Projects Funding that has not been used by the outgoing CSC will be repaid to the Trustee in accordance with clause 9.2(e).
12.	Upon receiving an ILUA Termination Notice prior to the Conditional Period Expiry Date	State Contribution	By no later than the date that is 120 days after receipt of the notice, pay to the State an amount equal to the ILUA Termination Amount specified in that notice.
13.	Upon receiving an Indemnified Amount Notice	State Contribution	By no later than 120 days after receipt of the notice, pay to the State an amount equal to the amount payable under the Indemnified Amount Notice.
14.	During the State Contribution Period	Noongar Future Fund	<p>Accumulate and hold in the Noongar Future Fund:</p> <ul style="list-style-type: none"> • all of the State Contributions received specifically for allocation to the Noongar Future Fund; • other money, property or benefits determined by the Trustee.
15.	As required but at least 9 years after the commencement of the Trust	Dedicated Trustee	Assist with the transition to a Dedicated Trustee in accordance with clause 13.2.4.
16.	At all times	Trustee General Requirements	<ul style="list-style-type: none"> • Satisfy the requirements set out in the definition of a Professional Trustee Company or the Dedicated Trustee Requirements (as the case may be). • Maintain and act in accordance with a Reconciliation Action Plan that includes an Indigenous employment strategy or policy. • Maintain a full time office in Perth.

			<ul style="list-style-type: none"> Provide a dedicated full time senior executive employee or officer.
17.	At all times	Trust Fund	Keep the Trust Fund entirely separate and distinct from any other trust fund.
18.	Ongoing	Regional Corporations	Support each Regional Corporation to undertake the Regional Corporation Core Functions in accordance with Schedule 3.
19.	Ongoing	CSC	Support the CSC to undertake the CSC Services listed in Schedule 2.
20.	Ongoing	Cultural Land	Hold and manage Cultural Land under clause 10, in consultation with the Relevant Regional Corporations.
21.	Ongoing	Development Land	Hold, manage, invest and develop the Development Land under clause 11, in consultation with the Investment Committee.
22.	Ongoing	Noongar Future Fund	Hold, manage and invest the Noongar Future Fund under clause 7.
23.	Ongoing	Operations Fund	Hold, manage and invest the Operations Fund under clause 8, in consultation with the Noongar Advisory Company.
24.	Ongoing	Housing Land Fund	Hold, manage, invest and develop the Housing Land Fund under clause 12, in consultation with the Investment Committee and the Noongar Advisory Company.
25.	Ongoing	Noongar Advisory Company	Manage and maintain the Noongar Advisory Company under clause 14.
26.	Ongoing	Noongar Relationship Committee	Manage and maintain the Noongar Relationship Committee under clause 15.
27.	Ongoing	Noongar Corporations Committee	Support the CSC to maintain the Noongar Corporations Committee.
28.	Ongoing	Investment Committee	Manage and maintain the Investment Committee under clause 20.
29.	Ongoing	Nominations Committee	Manage and maintain the Nominations Committee under clause 16.
30.	Ongoing	Governance	Support initiatives to improve, enhance and assist the development of the corporate governance practices of the Eligible Noongar Entities.
31.	Ongoing	Governance	Ensure that committee meetings are convened and held in an efficient, responsible, cost effective and culturally appropriate manner.
32.	Ongoing	Noongar Community	Support the Eligible Noongar Entities to develop appropriate mechanisms for participation, consultation and information dissemination regarding the Trust within the Noongar Community, through the Eligible Noongar Entities.
33.	Ongoing	Communication	All communications, reports, plans and other documentation required to be prepared that are provided to the Noongar Advisory Company, the Eligible Noongar Entities or the Noongar Community be prepared using plain English in a culturally appropriate

			manner, form and style, including diagrams where appropriate.
34.	Ongoing	Eligible Entities Noongar	Develop and maintain a process for direct communications with each Eligible Noongar Entity.
35.	Ongoing	Eligible Entities Noongar	Consult directly with each Eligible Noongar Entity regarding matters that relate solely to that Eligible Noongar Entity or its relevant Agreement Group or Region.
36.	Ongoing	Distributions	Review and assess every Distribution application and determine the nature and scope of the Distribution, including any relevant Payment Conditions.
37.	Ongoing	Land Sub	Ensure the Land Sub undertakes any action in respect of the interests or Management Orders in land it holds in accordance with clause 22.1(a)(i).
38.	Ongoing	Land Register	Maintain and regularly update the Land Register and make available to the Eligible Noongar Entities.
39.	Ongoing	Records and Accounts	Keep proper accounts.
40.	Ongoing	ENE Operations Account	Maintain an ENE Operations Accounts for each ENE.
41.	From time to time	Special Projects Fund	Accept monies, land or other property from a Contributor, to hold, manage and invest in the Special Projects Fund under clause 9.
42.	Annually	Special Projects Fund	Determine the Annual Special Projects Budget and distributions from the Special Projects Fund in accordance with clauses 17 and 18.
43.	From time to time	Distribution – Funding Guidelines	Prepare, maintain and modify Funding Guidelines.
44.	From time to time after State Contribution Period	Future Fund Capital Base	Adjust the Future Fund Capital Base in accordance with clause 7.4(b).
45.	From time to time	Operations Fund	Obtain the State and Noongar Advisory Company's prior written consent to modify the minimum percentage of the State Contribution to the Operations Fund available for allocation to the Regional Corporations under clause 18.3(d)(vi).
46.	Upon making a Distribution to an ENE	Distribution – ENE Distribution Accounts	Establish an ENE Distribution Account and deduct the distribution amount for Operations Funding from the relevant ENE Operations Account.
47.	When accessing the Future Fund Capital Base after the State Contribution Period	Future Fund Capital Base	Only Distribute the Future Fund Capital Base in accordance with clause 7.5.
48.	Transition to a Dedicated Trustee	Dedicated Trustee	Obtain the State's prior written consent for the Nominee Entity to be appointed as Dedicated Trustee under clause 13.
49.	Any time where there is a Dedicated Trustee	Dedicated Trustee	Obtain the State and Noongar Relationship Committee's consent that the Noongar Advisory Company is not required where there is a Dedicated Trustee.
50.	At the request of a Relevant Regional Corporation	Cultural Land	Grant the Relevant Regional Corporation an interest over the whole or any part of the Cultural Land and hold

			and manage the Cultural Land. Prior to making any Cultural Land Development Decision in relation to Cultural Land in a Region, the Trustee must consult with the Relevant Regional Corporation (if there is one).
51.	Prior to making	Development	Consult with the Relevant Regional Corporation in relation to Development Land.
52.	Prior to making any Decision to Proceed	Housing Land Fund	Consult with the Relevant Regional Corporation in relation to any interest in the Housing Land.
53.	Each Financial Year	Noongar Community	Consult with the Noongar Community at least once in each Financial Year (excluding the first Financial Year) regarding the Trust's activities.
54.	[no timeframe but linked to above]	Noongar Community	Seek recommendations of the Noongar Corporations Committee regarding the manner in which the Trustee will consult with the Noongar Community.
55.	Each Financial Year	Regional Corporations Core Functions	Be satisfied that a Regional Corporation is in a position to offer and deliver the Regional Corporation Core Functions in accordance with Schedule 3. Distribute Operations Funding to a Regional Corporation.
56.	Each Financial Year	CSC	Be satisfied that the CSC is in a position to deliver the CSC Core Services, and to offer and deliver the CSC Regional Services to the Regional Corporations in accordance with Schedule 2. Distribute Operations Funding to the CSC.
57.	Each Financial Year	Sub Funds	Compile separate reports and audited accounts for each of the sub funds in a similar manner and at least in the same detail required for the Trust Fund.
58.	Each Financial Year	Annual Budget	Determine the Annual Budget and the Annual ENE Allocation. Within 14 days of determining the Annual Budget and the Annual ENE Allocation provide copies to the Eligible Noongar Entities
59.	Each Financial Year	Audit	Provide copies of the audited financial statements as soon as reasonably practicable after receipt to the: <ul style="list-style-type: none"> • Eligible Noongar Entities; • Investment Committee; • State; and • Noongar Advisory Company.
60.	Each Financial Year	Assessment of CSC Service Delivery	Assess the CSC's delivery of the CSC Services and modify CSC Services and funding if required.
61.	Each Financial Year	Assessment of Regional Corporations Service Delivery	Assess each Regional Corporation's delivery of the Regional Corporation Core Functions and modify Regional Corporation Core Functions and funding if required.
62.	Each Financial Year	Committee Meetings	Committees must meet at least once each Financial Year or as otherwise directed by the Trustee.
63.	Each Financial Year	Development Land Fund – Regional Corporations	Consult with the Relevant Regional Corporation (if there is one) at least once each Financial Year in relation to

			all Development Land within the Region.
64.	Each Financial Year	Distribution – Trustee's Annual Report	Prepare the Trustee's Annual Report detailing all Distributions made in accordance with the Funding Guidelines.
65.	Each Financial	Trustee	Establish internal controls of expenditure and prepare the Trustee Expense Budget
66.	At the end of each Financial Year	Investment Policy	Provide a copy of the most recent Investment Policy to the: <ul style="list-style-type: none"> • Eligible Noongar Entities; • Investment Committee; • State; and • Noongar Advisory Company.
67.	As soon as practicable after the end of the Financial Year or at any other required time	Records and Accounts	Prepare financial statements of the Trust Fund and each separate management account (including each Sub Fund). This includes all financial statements, accounts and reports required in order to comply with the relevant laws, the Deed and any other agreement whereby the Trustee is obliged to provide reporting to a relevant body
68.	Within 3 months after the end of the Financial Year	Trustee's Annual Report	Prepare Trustee's Annual Report and make the report available to: <ul style="list-style-type: none"> • Auditor; • Eligible Noongar Entities; • State; and • Noongar Advisory Company.
69.	Quarterly	Operations Account – Operations Funding	Pay annual distributions for Operations Funding in 3 monthly instalments.
70.	Quarterly	Trustee Expense Budget	<ul style="list-style-type: none"> • Monitor the expenditure of the Trust to ensure Trust expenses do not exceed the Trustee Expense Budget. • If the Trustee's expenditure exceeds the Trustee Expense Budget, the Trustee must as soon as practicable: <ul style="list-style-type: none"> • examine the Trust accounts and the Trust's activities in an effort to reduce the Trustee's expenditure; • prepare a written report; and • provide a copy of the report to the Noongar Advisory Company and Noongar Relationship Committee.
71.	On or before 31 May each year	Operations Funding	Attempt to determine applications for Operations Funding for the forthcoming Financial Year on or before 31 May of the previous Financial Year.
72.	Every 3 years at the beginning of the relevant Financial Year	Strategic Plan	Consider and formulate a Strategic Plan for the next 3 years and make the finalised Strategic Plan available to: Eligible Noongar Entities;

			<ul style="list-style-type: none"> • Investment Committee; • State; and • Noongar Advisory Company.
73.	5 Years after the date of the Trust Deed	Strategic Review of the Trust	Undertake a strategic review of the Trust in consultation with the Eligible Noongar Entities, the State, the Noongar Relationship Committee and the Noongar Advisory Company.
74.	Every 10 Years after the date of the Trust Deed	Strategic Review of the Trust	Undertake a strategic review of the Trust in consultation with the Eligible Noongar Entities, the State, the Noongar Relationship Committee and the Noongar Advisory Company.
75.	Winding Up	Trust Deed – Winding up	<p>Wind up the Trust following consultation with the:</p> <ul style="list-style-type: none"> • Noongar Corporations Committee; • Investment Committee; and • Noongar Advisory Committee, <p>and obtain the prior written consent of the:</p> <ul style="list-style-type: none"> • Eligible Noongar Entities; and • State.
76.	Winding Up	Trust Deed – winding up	Pay or apply any assets of the Trust following consultation with the Noongar Advisory Company and with the consent of the Commissioner of Taxation and the State.
77.	Principally within first 5 year after establishment of the Trust	Property Transfer Deed and Funding Agreement	Undertake Trustee obligations under the Property Transfer Deed and Funding Agreement – Annexures P&Q ILUA
78.	As required	LandCorp Payment	Undertake Trustee obligations under clause 10 'LandCorp Payment' of Schedule 10 to the ILUA.

Brought across from Conditional Tasks

79.	If initial Regional Corporation is unlikely to be appointed within 6 months of establishment of the Trust	Regional Corporations	<p>Provide assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a)</p> <p>This shall not include all the Trustee's External Costs associated with rendering assistance including engaging an external consultant to work with the Agreement Group, travel and accommodation expenses, meeting expenses, professional advice for this purpose, which shall be recoverable as a Conditional Task.</p>
80.	Where a Regional Corporation has ceased to exist and until such time as a new Regional Corporation is appointed	Regional Corporations	<p>Provide assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region.</p> <p>This shall not include all the Trustee's External Costs associated with</p>

			rendering assistance including engaging an external consultant to work with the Agreement Group, travel and accommodation expenses, meeting expenses, and professional advice for this purpose, which shall be recoverable as a Conditional Task.
81.	If initial CSC is unlikely to be appointed within 6 months of establishment of the Trust	CSC	<p>During an Interim Period:</p> <ul style="list-style-type: none"> • establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 for the appointment as the CSC; and • in order to advance the vital operations of the Trust, appoint an entity as the Interim CSC. <p>This shall not include all the Trustee's External Costs associated with rendering assistance including engaging an external consultant to work with the Agreement Group, travel and accommodation expenses, meeting expenses, and professional advice for this purpose, which shall be recoverable as a Conditional Task.</p>
82.	Any time there is an Agreement Group but no Relevant Regional Corporation	Operations Fund – ENE Operations Account	Establish and maintain an ENE Operations Account with respect to that Agreement Group.
83.	From time to time	Governance	Update the Code of Conduct and Policies and Procedures Manual that apply to the operations of the Trustee, the Noongar Advisory Company and any other committee formed under the Trust Deed.
84.	From time to time	Contributions	Accept additional Contributions to be held as part of the Trust Fund.
85.	From time to time	Trust Deed – Modify Deed	<p>Modify the Trust Deed following consultation with the:</p> <ul style="list-style-type: none"> • Noongar Corporations Committee; • Investment Committee; and • Noongar Advisory Committee, <p>and obtain the prior written consent of the:</p> <ul style="list-style-type: none"> • Commissioner of Taxation; • Noongar Relationship Committee; and • State.
86.	From time to time	Special Projects Fund	Distribute Special Projects Funding.
87.	From time to time	Distribution –	Suspend payment of a Distribution to an Eligible Noongar Entity for a fixed period
88.	At the request of a Relevant Regional Corporation	Cultural Land	Reclassify Cultural Land other than land the subject of a Management Order as Development Land:

			<ul style="list-style-type: none"> • following consultation with the Noongar Advisory Committee; and • with an Agreement Group Endorsement.
89.	Each Financial Year	Distribution – Default Accumulation	Hold so much of the net income of the Trust Fund for each Financial Year (not the subject of a distribution or decision to accumulate) as part of the capital of the Trust Fund within the Operations Fund, and may use that amount for Distribution in accordance with clause 17.
90.	When accessing the Noongar Future Fund during the State Contribution Period	Noongar Future Fund	Distribute the income or capital of the Noongar Future Fund in accordance with clause 7.2(b): <ul style="list-style-type: none"> • for payment of the Trustee's remuneration / reasonable costs; or • with the consent of the entities specified in clause 7.2(b)(ii).
91.	Each Financial Year after the State Contribution Period	Noongar Future Fund	Transfer so much of the income or capital of the Noongar Future Fund that exceeds the Future Fund Capital Base for that Financial Year to the Operations Fund or Special Projects Fund for Distribution in accordance with clause 17.
92.	During the Financial Years to which the Strategic Plan relates	Strategic Plan	Modify the strategic plan provided the Trustee follows a similar procedure to the procedure outlined in clause 21.2.
93.	From time to time	Investment Policy	Review or modify the Investment Policy.
94.	As required	Land Register	Engage the CSC to establish, maintain and regularly update the Land Register by way of Service Agreement.
95.	Principally within first 5 years after establishment of the Trust	Noongar Land Base Strategy	Undertake Trustee obligations under the Noongar Land Base Strategy – Annexure J ILUA
96.	If required	State Contribution Condition and Charge and Security Deed	Undertake Trustee obligations under cl.6.4 and the Security Deed.

Appendix B – Conditional Tasks

Conditional Tasks			
No	Timing	Area	Task
1.	If initial Regional Corporation is unlikely to be appointed within 6 months of establishment of the Trust	Regional Corporations	<p>Provide assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a).</p> <p>Note that the Trustee's work for this purpose will be delivered under Routine Task 79. Conditional Task 1 relates to all the Trustee's External Costs associated with rendering assistance including but not limited to engaging an external consultant to work with the Agreement Group, travel and accommodation expenses, meeting expenses, and professional advice for this purpose,.</p>
2.	Where a Regional Corporation has ceased to exist and until such time as a new Regional Corporation is appointed	Regional Corporations	<p>Provide assistance to the relevant Agreement Group to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the Regional Corporation for that Region.</p> <p>Note that the Trustee's work for this purpose will be delivered under Routine Task 80. Conditional Task 2 relates to all the Trustee's External Costs associated with rendering assistance including but not limited to engaging an external consultant to work with the Agreement Group, travel and accommodation expenses, meeting expenses, and professional advice for this purpose,</p>
3.	If initial CSC is unlikely to be appointed within 6 months of establishment of the Trust	CSC	<p>During an Interim Period:</p> <ul style="list-style-type: none"> establish or support an entity in its endeavours to meet the eligibility requirements in clause 5.4 for the appointment as the CSC; and in order to advance the vital operations of the Trust, appoint an entity as the Interim CSC. <p>Note that the Trustee's work for this purpose will be delivered under Routine Task 81. Conditional Task 3 relates to all the Trustee's External Costs associated with rendering assistance including but not limited to engaging an external consultant to work with the Agreement Groups, travel and accommodation expenses, meeting expenses, and professional advice for this purpose,</p>
4.	Where the CSC has ceased to exist and until a new CSC is appointed	CSC	Provide assistance to the Agreement Groups to establish or support an entity in its endeavours to meet the eligibility requirements in clause 4.5(a) and nominate for appointment as the CSC.
5.	From time to time	Special Projects Fund	Develop specific Special Projects and Special Project Guidelines.
6.	As required	Development Land Fund – NBDC	In consultation with the Noongar Advisory Company, establish one or more NBDCs to undertake Property Development Activities.
7.	60 Business Days after the Trust Effective Date As Required	Capital Works Program	Undertake Trustee obligations under clause 15 'Capital Works Program' of Schedule 10 to the ILUA.

8.	All the time	Accounting	<p>Prepare specialised or tailored financial statements, accounts and reports that the Trustee reasonably believes are necessary to provide transparent and appropriate information to a body or committee in the Noongar Governance Structure.</p> <p>This item only relates to financial statements, accounts and reports over and above those required in order to comply with the relevant laws, the Deed and any other agreement whereby the Trustee is obliged to provide reporting to a relevant body, which must be delivered under Routine Task 67.</p>
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Appendix C – Competitive Tender Process

1. The Trustee must:

- a. Identify potential Service Providers by either advertising in local newspapers, on a website or targeted requests to at least 3 candidates;
- b. Clearly outline to the potential Service Provider the nature of the services required, that preference will be given to Noongar Businesses, the timeframe in which they must respond which must not be less than 14 days and the specific information which they must provide which may include:
 - i. their rates of pay and/or their Estimate to complete the service;
 - ii. capacity and capability to perform the services;
 - iii. details of how they would perform the services;
 - iv. details of how they will act in good faith and in the best interests of the Trust in performing the services;
 - v. insurance details;
 - vi. credentials as a Noongar Business;
 - vii. recommendations from other customers;
 - viii. current membership to relevant industry bodies;
 - ix. requesting confirmation whether the candidate, or if the candidate is a company or a business anyone in a senior position of that company or business, is Independent (as that term is defined in the Trust Deed), or is:
 1. a member of a Trust committee, a director of the Noongar Advisory Company, a member of the Noongar Relationship Committee, an employee or director a Noongar Corporation or has an interest in the Trust or is otherwise related to the Trustee; or
 2. a Related Party of any person outlined at 1 above; and
 - x. details of a Reconciliation Action Plan and/or how their organisation supports the Indigenous community.
- c. If the candidate discloses that they are *not* Independent, or fall into the description in item b.ix(1) or (2) above, then the consent of the Noongar Advisory Company must be obtained.
- d. In determining the successful candidate from the potential Service Providers, the Trustee must take into account the Expense Principles and the intention to support Noongar Businesses.
- e. Complete the competitive tender process within a reasonable amount of time, taking into account the nature of the services required and the number of potential Service Providers.

2. The Trustee may decide not to follow the process outlined in paragraph 1 where it or a related entity has engaged in a competitive tender process for services that are used

by the Trustee or a related entity across a number of different clients and the Trustee is satisfied the competitive tender process undertaken at an enterprise level provides the same level of transparency and competitiveness as if the process in paragraph 1 were followed.

3. Once a Service Provider has been selected by the Trustee, the services must not commence until the Trustee and the Service Provider have entered into a Services Contract which includes:
 - a. Details of the services to be provided and the agreed outcomes for those services including any Key Performance Indicators;
 - b. The agreed remuneration for those services including;
 - i. The timing and method of payment;
 - ii. Any expense recovery process which must be on a cost recovery basis reflecting the actual, bona fide, arm's length cost incurred by the Service Provider in supplying the Services provided that such costs or expenses are reasonable in the circumstances;
 - c. The term of the contract which is not to exceed 3 years;
 - d. The right by either party to terminate the Services Contract, the required notice period and the terms on which immediate termination is allowed;
 - e. Minimum requirements of the service provider which must be maintained to continue delivery of the services (eg. professional qualifications, registration, insurance, personnel requirements);
 - f. Requirements of any reports from the Service Provider which must be culturally appropriate, clear and accurate;
 - g. A review process which:
 - i. allows the Trustee to assess the performance of the Service Provider when compared to the services being provided, the agreed outcomes and any Key Performance Indicators;
 - ii. is conducted at regular intervals;
 - iii. determines whether the Estimated cost of those services has been met or exceeded;
 - iv. if the cost has exceeded the Estimate whether that is reasonable or not in the given circumstances and whether either the Estimate or the scope of services should be amended;
 - h. appropriate provisions concerning provision of materials, confidentiality, indemnities and releases.

Appendix D – Key Performance Indicators



South West Aboriginal
Land and Sea Council
Aboriginal Corporation

Trustee of the Noongar Boodja Trust

Key performance indicators

MARCH 2021

Acknowledgment of country

We wish to acknowledge the custodians of our land, the Whadjuk people of the Noongar nation and their elders past and present. We acknowledge and respect their continuing culture and the contribution they make to the life of our city and region. We extend that respect to Aboriginal and Torres Strait Islander peoples throughout Australia.



Noongar Boodja Trust key performance areas and indicators

Schedule 9 & Appendix D

Key foundation principles

1. One Noongar people
2. Trustee represents the interests of all members of the Noongar community
3. Recognition of cultural decision making processes
4. Trustee provides for effective participation and meaningful consultation with the Noongar community through their Eligible Noongar Entities
5. Transparency of the operations and decision making processes of the trust sub funds and special projects fund
6. Demonstrated intergenerational empowerment and socio-economic upliftment of each Noongar person
7. Mitigate duplication of processes and procedures and costs in support of principle 1 above, and to sustain the Future Capital Fund base
8. Building a culture of accountability for a sustainable future into year 13 and beyond

* These KPIs will be reviewed by the NRC within one year of its first meeting



1. Operational transparency, disclosure and reporting

Maximise the accountability and transparency of the administration of the Noongar Boodja Trust

KPI	Trust deed reference	Target
1.1 The trustee to conduct workshops with the Noongar Relationship Committee (NRC), Noongar Advisory Company (NAC) and the Investment Committee (IC) to formulate and review the three year strategic plans required in accordance with clause 21 of the trust deed.	Clause 21	→ Conduct triennial workshops
1.2 The trustee to conduct consultation workshops with the IC, NAC and NRC in relation to the preparation of budgets for the activities of the trust, including but not limited to the budgets required under clause 18 of the trust deed.	Clause 18 Clause 23	→ Hold annual budget workshop for consultation with the IC, NAC and NRC regarding the annual budget and trustee expense budget
1.3 The trustee will consult with the NRC prior to charging and paying out of any part of the capital of the Future Fund any trustee remuneration, costs and expenses in excess of the approved budget for the Future Fund.	Clause 23.1 & 23.2 Schedule 9	→ Consultation with the NRC prior to charging and paying out in excess of the approved budget for the Future Fund
1.4 The trustee to develop tailored reporting templates with the NRC for: (a) investment performance of the trust as against industry benchmarks across different asset classes (b) financial reporting in addition to the statutory financial reports, including: (i) details of distributions from each of the various funds of the trust (ii) funding provided to each eligible Noongar entity and the type of funding (iii) comparison of trust actual expenditure against the various budget components of the trust annual budget and the budget principles in clause 18.3 of the trust deed (c) land report for each agreement area held by the Noongar Boodja Trust, separated into categories—housing land, development land and cultural land (d) remuneration auditor report (annual report), including a breakdown of trustee fees and expenses by routine and conditional tasks and the various funds of the trust that the fees and expenses were charged to (e) trustee performance data (annual report) (f) simplified financial reports.	Clauses 15 & 15 (vi) Clause 18.3	→ Templates developed within six months of establishment of NRC
1.5 The trustee to provide to the IC, NAC and NRC the reports specified in KPI 1.4 and to conduct consultation to consider and discuss the reports and undertake an outcomes based assessment of the standard of services of the trustee.	Schedule 9 KPIs of the trustee	→ Quarterly or annual reporting as agreed between NRC and the trustee → Annual consultation with the NRC



2. Strategy

Sound engagement and partnerships with the eligible Noongar entities

KPI	Trust deed reference	Target
2.1 The trustee to conduct a workshop with the NRC to develop engagement principles and a partnership strategy for communication and consultation with the eligible Noongar entities.	Clause 3.4	→ Within six months of the NRC establishment
2.2 The trustee to co-develop with the NRC a joint trustee/NRC strategy for communication and engagement with Noongar people incorporating the principles enunciated in clause 3.3 of the trust deed. The strategy to include: (a) reporting against the annual budget, the trustee expense budget and the allocation and distribution for each subfund (b) reporting of trustee survey results (c) reporting of performance reviews of each trust subfund aligned to the aspirations of Noongar people in relation to investments, land use and culture (cultural advice policies) (d) tools for communication with Noongar people and eligible Noongar entities, including websites, publications, faceto face meetings and online interactive resources for monitoring and resolving queries (e) service level standards for responses to communication and correspondence from Noongar people and the eligible Noongar entities (f) reporting of performance of the trustee against these KPIs (g) compliance with and progress by the trustee against specific targets in its reconciliation action plan relevant to Noongar people (h) alignment of communications to ensure consistent messaging from the trustee and eligible Noongar entities.	Clause 3.3 Clause 3.4 Clause 25 Clause 26 Clause 17.12	→ Communication strategy developed and implemented within one year of the establishment of the NRC → Scheduled meetings with the NRC to include the implementation of the communications strategy → Positive feedback from Noongar people in relation to communication from the trustee, eligible Noongar entities



2.3 The trustee to co-develop with the NRC a strategy to build the capacity of the eligible Noongar entities and build collaboration and partnerships across the entities, including promoting training and development, and good governance and administration of the eligible Noongar entities.	Clause 3.5	→ Within one year of NRC establishment → Review the strategy each year
2.4 In consultation with the NRC develop a strategy for principles and processes to apply when the trustee is considering the issuance of a default notice under clause 4.2 (a) to an eligible Noongar entity	Clause 4.2	→ Within one year of NRC establishment
2.5 The trustee to co-develop with the NRC a culturally based conflict management strategy to manage relationship matters and disputes between the trustee and any eligible Noongar entity or trust committee.	Clause 3.6	→ Within one year of the NRC establishment
2.6 The trustee to consult with the NRC in relation to the development, approval or any amendment of the policies and procedures manual.	Clause 3.2(c)	→ Consultation regarding development, approval or any amendment the policies and procedures manual
2.7 The trustee to consult with the NRC in relation to the constitution and directorships of any Noongar Boodja Development Corporations developed for consultation with the NRC to ensure Noongar community feedback to inform decision making.	Clause 11.4	→ Consultation undertaken prior to the appointment or incorporation of a Noongar Boodja Development Corporations



3. Investment and transition to a dedicated trustee

Investment policy and developing the capacity of a Noongar entity to transition to a dedicated trustee

KPI	Trust deed reference	Target
3.1 The trustee (via the Nominations Committee) will consult with the NCC on the selection criteria for members of the Investment Committee members to be nominated by the NCC. A performance methodology and KPIs are to be co-developed by the NCC and trustee for the appointed members.	Clause 20 (a) (ii)	<p>→ The trustee to develop a letter of appointment including reference to annual review one month prior to any appointment.</p> <p>→ Annual review of performance</p>
3.2 Before modifying the default investment policy the trustee will consult with the NCC, the IC and the NAC and ensure the NCC can meaningfully participate in the development of the investment policy. The trustee will provide the NCC with information/education on the process and strategy for appointing Investment Managers, the process and strategy for developing an investment policy for development land, housing land and the future fund.	Clauses 19 & 22	<p>→ Aligned with timing of the Investment Committee in developing the Policy. Each time the Investment Policy is modified</p>
3.3 The trustee in consultation with the NCC to develop a nine year transition plan to a Noongar dedicated trustee. The transition plan to include KPIs and annual targets for specific training and development of Noongar capacity to meet the dedicated trustee requirements.	Clause 13.2.4 Schedule 7	<p>→ Strategy and high level project plan with firm timelines within one year of the NAC establishment</p> <p>→ Six monthly monitoring of targets</p>

4. Governance, capability and relationships

Clause 3.3 (d) All communications, reports, plans and other documentation required to be prepared by the trustee that are provided to the Noongar Advisory Company, the eligible Noongar entities or the Noongar community must be prepared using plain English in a culturally appropriate manner, form and style, including diagrams where appropriate.

KPI	Trust deed reference	Target
4.1 Consult with NRC when developing funding application policy and process and a template for reporting and acquitting.	Clause 7 sustainable capital value	→ Within six months of the NRC establishment
4.2 The trustee to co-develop with the CSC a Noongar specific financial training program for the eligible Noongar entities directors and emerging leaders.	Clause 13 2.2 (b) Reconciliation Action Plan (RAP)	→ Two workshops annually
4.3 The trustee to fund two Noongar people with Australian Institute of Company Directors (AICD) training and select participants in consultation with the NRC.		→ Two Noongar people each year
4.4 The trustee to consult with the NRC on its Noongar specific Noongar Engagement Strategy with targets and training programme to support the Noongar Boodja Trust.	Clause 13.2.2 RAP	→ Develop employment and training targets for the trustee within six months of the trust effective date consistent with the trustee's RAP
4.5 In consultation with the NRC develop, approve and update from time to time the following documents to apply to the operations of the trustee, the Noongar Advisory Company and each committee: (a) a code of conduct (b) a policies and procedures manual.	Clause 3.2	→ Co-develop a code of conduct with the NRC within 12 month → Policies and procedures are adopted by each committee of the trust within three months of approval or amendment by the trustee → Compliance with the policies and procedures and code of conduct
4.6 The trustee to ensure dedicated staff for the Noongar Boodja Trust are based in Perth to deliver the trustee's services in accordance with the trust deed and report on the level of resources, skill sets and experience of the staff in its annual report.	Clause 13.2.2	→ Annual reporting in the trustee's annual report
4.7 Remuneration auditor partner rotation every three years.	Schedule 9	→ Every three years



5. Economic

We want to build the opportunities for Noongar enterprises and entrepreneurs to access commercial opportunities of the trust and the trustee.

KPI	Trust deed reference	Target
5.1 The trustee to develop with NAC and NRC a procurement policy which builds on the regulations to prioritise Noongar businesses, which includes a weighting for local Noongar businesses based on the location of the services to be delivered and/or the recipient of the services, when procuring services and goods for the Noongar Boodja Trust.	Schedule 9 Annexure C	→ Develop a buy Noongar, include weighting for local Noongar businesses, within 12 months
5.2 The trustee to report on annual procurement spend on Noongar businesses and partnerships, and where possible report on spend by location.		→ Establish baseline spend in establishment year and seek to improve on spend every year.



6. KPI administrative efficiency

Develop trust application environment to prevent complicated forms and processes for all Trust sub funds application

Performing in the interest of the ENEs by ensuring meaningful consultation and timely processing of all matters.

KPI	Trust deed reference	Target
6.1 The trustee to develop plain English funding guidelines and application forms promoting ease of application and efficiency.	Clauses 17.4 and 17.9 Schedule 1	→ Develop a survey which measures the efficiency and effectiveness of the application and distribution process. → Report findings to NRC. See KPI 7.
6.2 The trustee with CSC to conduct annual information sessions on how to submit compliant applications and answer FAQs.		→ Annually



7. KPI performance and review

NRC will conduct a review of the performance of the trustee against KPIs.

KPI	Trust deed reference	Target
7.1 The trustee to develop an online beneficiary satisfaction survey codesigned with the NRC linked to the reporting and performance against these KPIs.		→ Within one year of NRC establishment → Annual online survey
7.2 The trustee in consultation with the NRC to develop an agreed procedure to trigger an independent performance review of the trustee.	Schedule 9	→ Within 12 months of the establishment of the NRC
7.3 The trustee's performance to meet a high level of satisfaction of the NRC, including but not limited to: i. financial reporting ii. application and distribution process iii. communication.		→ Establish baseline satisfaction rating in establishment year in consultation with the NRC and annual progressive improvements in subsequent years

