

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 7**

Conservation Estate*Parna Tirtu Kanyilku*

TABLE OF CONTENTS

1. Overview	661
1.1 What this Schedule contains	661
2. Definitions and Interpretation	661
2.1 General Definitions	661
2.2 Specific Definitions	662
2.3 Interpretation – General	665
3. Creation of Tjiwarl Conservation Estate	666
3.1 Expansion of Original Wanjarri Nature Reserve	666
3.2 Access to Reserve 12207	666
3.3 Joint vesting of Wanjarri Nature Reserve	667
3.4 Creation of public access easement to Wanjarri Nature Reserve	667
3.5 Exclusion of areas from Yeelirrie Lake Mason Reserve	667
3.6 Effect of exclusion of areas from Yeelirrie Lake Mason Reserve	668
3.7 Naming of Yeelirrie Lake Mason Reserve	668
3.8 Creation and Joint Vesting of Yeelirrie Lake Mason Reserve	668
3.9 Effect of Joint Vesting of Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve	669
3.10 Creation and Joint Vesting of Future Conservation Reserves	669
4. Joint Management of Tjiwarl Conservation Estate	670
4.1 Management Plan and Joint Management Agreement for Tjiwarl Conservation Estate	670
4.2 Approach to Joint Management	671
4.3 Interim Joint Management Body	672
4.4 Expenditure for the Joint Management of Tjiwarl Conservation Estate	672
4.5 Priority joint management projects	674
4.6 Unexpended joint management money	674
4.7 Joint management of Tjiwarl Conservation Estate after 10 years	674
4.8 Ending or suspending Joint Management	675
5. Variation	677
6. Notices	678
6.1 Notices under this Schedule	678

Tjiwarl (Palyakuwa) Agreement – Schedule 7 – Conservation Estate / <i>Parna Tirtu Kanyilku</i>	660
6.2 Addresses for Service	678
Annexure 1 – Map of Wanjarri Nature Reserve	680
Annexure 2 – Map of the Yeelirrie Lake Mason Reserve	682
Annexure 3 – Map of Wanjarri Nature Reserve Access Easement	684
Annexure 4 – Joint Management Agreement	686

1. Overview

1.1 What this Schedule contains

This Schedule outlines:

- (a) the processes for the creation, joint vesting and joint management of the Tjiwarl Conservation Estate (see clause 3) the subject of the future act consents in clause 8 of this Agreement; and
- (b) the Parties' obligations in relation to joint management of the Tjiwarl Conservation Estate (see clause 4), including the State's obligations in relation to funding joint management of the Tjiwarl Conservation Estate (see clauses 4.4 to 4.6).

2. Definitions and Interpretation

Throughout this Schedule there are terms that are capitalised and they are given a specific meaning that is set out clauses 2.1 and 2.2.

Clause 2.3 sets out the interpretation rules which help explain the way in which this Schedule should be read to avoid any confusion.

2.1 General Definitions

In this Schedule unless it is a defined term in a clause or the context otherwise requires:

- (a) Words and expressions defined in the CALM Act including **CEO, Commission, conservation park, management plan, national park, nature reserve** and **responsible body** have the same meaning when used in this Schedule.
- (b) Words and expressions defined in the Native Title Act, including **act, applicant, approved determination of native title, attributable, body corporate agreement, determination of native title, future act, indigenous land use agreement, native title, Native Title Registrar, native title representative body, native title rights and interests, non-extinguishment principle, public work, Register of Indigenous Land Use Agreements, registered native title body corporate, and representative body** have the same meaning when used in this Schedule.

- (c) Words and expressions defined in the LA Act and *Land Administration Regulations 1998* (WA), including **interest**, **management order** and **survey** have the same meaning when used in this Schedule.

2.2 Specific Definitions

In this Schedule, unless the context requires otherwise:

Agreement means the Tjiwarl Palyakuwa (Agreement) and includes the Schedules to that agreement.

Agreement Area has the meaning given in clause 2 of this Agreement.

Amended or New Management Plan has the meaning given in clause 4.8(g)(i).

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

Conclusive Registration Date has the meaning given in clause 1.2 of this Agreement.

Conservation Estate State Parties means the Minister for Lands, the Minister for Environment, the Commission and the CEO.

DBCAs means the means the department of the public service principally assisting the Minister for Environment in the administration of the CALM Act which, at the Execution Date, is the Department of Biodiversity, Conservation and Attractions of the State.

Execution Date means the date on which this Agreement is executed by all the Parties.

Financial Year means the period commencing on 1 July in a year and ending on 30 June in the following year.

FTE means full-time equivalent.

Funding Period means 10 years on and from the Conclusive Registration Date.

Future Conservation Reserves means any land outside Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve, but within the Agreement Area, that the Parties agree from time to time should be:

- (a) reserved under section 41 of the LA Act for the purposes of a conservation park, national park or nature reserve; and
- (b) added to the Tjiwarl Conservation Estate.

Geographic Names Committee means the committee responsible for administering the *Policies and Standards for Geographical Naming in Western Australia* for and on behalf of the State in accordance with sections 26 and 26A of the LA Act.

Indicative Plan of Works has the meaning given in clause 4.8(f)(iii)(B).

Interim Joint Management Body has the meaning given in clause 4.3(a).

Joint Management Agreement means the agreement for the management, by the Joint Management Body, of an area of land that includes the Tjiwarl Conservation Estate, executed as soon as practicable after the relevant management plan is approved by the Minister for Environment under section 60 of the CALM Act.

Joint Management Body means the body established pursuant to an agreement under section 56A of the CALM Act giving effect to a requirement in any of the management plans prepared under section 54 of the CALM Act for any part of the Tjiwarl Conservation Estate to be jointly managed by the CEO and Tjiwarl AC.

Joint Vesting means a joint vesting of land as provided for in section 8AA(2) of the CALM Act.

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

Land Assembly Actions means the land assembly activities required to give effect to the creation of the Tjiwarl Conservation Estate as provided for in this Schedule which may include:

- (a) the cancellation of any existing encumbrances;
- (b) the acquisition of any interests;
- (c) the continuation of any existing encumbrances and interests;
- (d) the creation of any new encumbrances or interests;
- (e) amending responsible agencies;
- (f) revocation of any existing management orders; and
- (g) surveys for the creation of deposited or interest only plans.

Land Estate Schedule means Schedule 6 to this Agreement.

Minister for Environment means the Minister of the State to whom the administration of the CALM Act is for the time being committed by the Governor.

Minister for Lands means the body corporate established under section 7(1) of the LA Act and being the Minister in the Government for the time being responsible for the administration of the LA Act.

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

Original Wanjarri Nature Reserve Area means all that land and water comprising Reserve 30897 being Lot 569 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 538, being an area that was excluded from the area the subject of the Tjiwarl Determination by reason of extinguishment, generally shown on the map at Annexure 1 to this Schedule.

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

Report has the meaning given in clause 4.8(f)(iii)(A).

Reserve 12207 means all that land and water comprising Reserve 12207, for the purpose of Water, shown on the map at Annexure 1 to this Schedule.

Restoring Rights to Country Schedule means Schedule 8 to this Agreement.

State means the Crown in right of the State of Western Australia, including its departments, agencies and instrumentalities.

Tjiwarl AC means Tjiwarl (Aboriginal Corporation) RNTBC (ICN: 8628) of unit 6, 524 Abernethy Road, Kewdale, Western Australia in its capacity as a registered native title body corporate holding native title on trust for the Tjiwarl People.

Tjiwarl Business means a business approved by the Board of Tjiwarl AC as a "Tjiwarl Business" for the purposes of this Agreement.

Tjiwarl Conservation Estate means such of Wanjarri Nature Reserve, the Yeelirrie Lake Mason Reserve and any Future Conservation Reserves that are from time to time jointly vested in accordance with this Agreement.

Tjiwarl Country means the land and waters the subject of the Agreement Area.

Tjiwarl Determination means the determination of native title made by the Federal Court of Australia on 27 April 2017 in WAD 228 of 2011 and WAD 302 of 2015, as amended by the Full

Court of the Federal Court on 1 February 2018 in WAD 217 of 2017 and WAD 218 of 2017 and as further amended by the High Court of Australia on 17 April 2019 in P 38 of 2018.

Tjiwarl People means the native title holders described in Schedule 2 of the Tjiwarl Determination.

Wanjarri Nature Reserve means all that land and water comprising Reserve 30897 for the purpose of Conservation of Flora and Fauna, which is classified under the LA Act as a class A reserve, being the Original Wanjarri Nature Reserve Area, as expanded to include the Wanjarri Nature Reserve Addition as provided for in clause 3.1 of this Schedule.

Wanjarri Nature Reserve Access Easement means an easement to be granted by the Minister for Lands under the LA Act, of such type and for such purposes as may be required to give access from the Goldfields Highway to Wanjarri Nature Reserve for:

- (a) the Parties, their employees, agents, contractors and invitees; and
- (b) the general public,

generally along the proposed route which is indicatively shown on the map at Annexure 3 to this Schedule.

Wanjarri Nature Reserve Addition means Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537, generally shown on the map at Annexure 1 to this Schedule.

Yeelirrie Lake Mason Reserve means all that land and water comprising a new reserve for the purpose of National Park, to be classified under the LA Act as a class A reserve, to be created within the Agreement Area as provided for in this Schedule including, as the context requires, that reserve when created, being the area generally shown on the map at Annexure 2 to this Schedule.

2.3 Interpretation – General

- (a) References to clauses are references to clauses in this Schedule unless otherwise indicated.
- (b) For the avoidance of doubt, unless the contrary intention appears, the principles of interpretation contained in clause 1.3 of this Agreement apply to this Schedule.

3. Creation of Tjiwarl Conservation Estate

This clause outlines the processes for the naming of the Yeelirrie Lake Mason Reserve, the expansion of Wanjarri Nature Reserve and the creation of an easement to that reserve from the Goldfields Highway. It also outlines a process for the joint vesting of Wanjarri Nature Reserve and the creation and joint vesting of the Yeelirrie Lake Mason Reserve.

3.1 Expansion of Original Wanjarri Nature Reserve

The Conservation Estate State Parties agree that they will, as soon as practicable after the Conclusive Registration Date, use best endeavours to arrange for the Wanjarri Nature Reserve Addition to be:

- (a) surrendered from Yakabindie Pastoral Lease H859693L (unless this has already occurred before the Conclusive Registration Date); and
- (b) added to Wanjarri Nature Reserve, which may be subject to Land Assembly Actions.

3.2 Access to Reserve 12207

Each Party acknowledges and agrees that:

- (a) Reserve 12207 is one of the First Stage Lands that is subject to the process set out in the Land Estate Schedule;
- (b) if, as a condition of any grant of an interest in that land to Tjiwarl AC, it is necessary for the State to create a right of access to Reserve 12207, the process set out in the Land Estate Schedule will apply; and
- (c) for the purposes of this Schedule, the right of access may be created:
 - (i) as a Land Assembly Action before the addition of the Wanjarri Nature Reserve Addition to the Original Wanjarri Nature Reserve; or
 - (ii) after the addition of the Wanjarri Nature Reserve Addition to the Original Wanjarri Nature Reserve under clause 3.1(b), which may require compliance with the provisions of Part 4 of the LA Act.

3.3 Joint vesting of Wanjarri Nature Reserve

In accordance with section 8AA of the CALM Act:

- (a) Tjiwarl AC consents to the Joint Vesting of Wanjarri Nature Reserve;
- (b) the Commission acknowledges that it has been consulted by the Minister for Environment about the Joint Vesting of Wanjarri Nature Reserve in the Commission and Tjiwarl AC, and consents to the Joint Vesting; and
- (c) the Minister for Environment will, as soon as practicable after the Conclusive Registration Date, do all things necessary and within his respective statutory powers to make a written determination that Wanjarri Nature Reserve is to vest jointly in the Commission and Tjiwarl AC.

3.4 Creation of public access easement to Wanjarri Nature Reserve

- (a) The Conservation Estate State Parties agree that they will, as soon as practicable after the Conclusive Registration Date, use best endeavours to arrange for the creation of the Wanjarri Nature Reserve Access Easement, which may be subject to Land Assembly Actions.
- (b) The Parties acknowledge and agree that:
 - (i) the proposed route of the Wanjarri Nature Reserve Access Easement shown on the map at Annexure 3 to this Schedule is indicative only; and
 - (ii) they will, as soon as practicable after the Conclusive Registration Date, use best endeavours to agree the route of the Wanjarri Nature Reserve Access Easement.

3.5 Exclusion of areas from Yeelirrie Lake Mason Reserve

- (a) The State agrees to, as soon as practicable after the Conclusive Registration Date, invite Tjiwarl AC to nominate, in writing to the State within 3 months of receiving the State's invitation, up to 2,000 hectares of land to be excluded from the area proposed to be set aside for the Yeelirrie Lake Mason Reserve.
- (b) The State will consider such nomination and advise Tjiwarl AC, acting reasonably and without delay, as to whether it objects to the exclusion of any area nominated from the Yeelirrie Lake Mason Reserve.

- (c) If the State objects to the exclusion of any area in accordance with clause 3.5(b), the Parties agree to negotiate in good faith with a view to reaching agreement regarding an area of up to 2,000 hectares of land to be excluded from the area proposed to be set aside for the Yeelirrie Lake Mason Reserve.
- (d) If the Parties cannot agree on the area to be excluded in accordance with clause 3.5(c), the matter becomes a dispute for the purposes of clause 23 of this Agreement.

3.6 Effect of exclusion of areas from Yeelirrie Lake Mason Reserve

Each Party acknowledges and agrees that any area excluded from the Yeelirrie Lake Mason Reserve in accordance with clause 3.5 will be subject to the process set out in the Land Estate Schedule.

3.7 Naming of Yeelirrie Lake Mason Reserve

The State, acting through the CEO, and Tjiwarl AC agree to:

- (a) liaise with each other in relation to Tjiwarl People's preferred name for the Yeelirrie Lake Mason Reserve; and
- (b) subject to Tjiwarl People's preferred name for the Yeelirrie Lake Mason Reserve being acceptable to the CEO (acting reasonably), make a joint submission to the Geographic Names Committee with respect to a proposal to name the Yeelirrie Lake Mason Reserve.

3.8 Creation and Joint Vesting of Yeelirrie Lake Mason Reserve

- (a) Subject to:
 - (i) the area of the Yeelirrie Lake Mason Reserve being determined in accordance with clause 3.5; and
 - (ii) a name for the Yeelirrie Lake Mason Reserve being determined in accordance with clause 3.7,the Conservation Estate State Parties agree that they will use best endeavours to effect the reservation of the Yeelirrie Lake Mason Reserve pursuant to section 41 of the LA Act, which may be subject to Land Assembly Actions.
- (b) In accordance with section 8AA of the CALM Act:
 - (i) Tjiwarl AC consents to the Joint Vesting of the land that comprises the Yeelirrie Lake Mason Reserve set aside in accordance with clause 3.8(a);

- (ii) the Commission acknowledges that it has been consulted by the Minister for Environment about the Joint Vesting of the land that comprises the Yeelirrie Lake Mason Reserve in the Commission and Tjiwarl AC, and consents to the Joint Vesting; and
- (iii) the Minister for Environment will, as soon as practicable after the Conclusive Registration Date, do all things necessary and within his respective statutory powers to make a written determination that the land comprising the Yeelirrie Lake Mason Reserve is to vest jointly in the Commission and Tjiwarl AC.

3.9 Effect of Joint Vesting of Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve

The Parties acknowledge and agree that an effect of the Joint Vesting in clauses 3.3 and 3.8 is that the Restoring Rights to Country Schedule, which sets out a process to enable Tjiwarl People to seek a determination of exclusive native title, applies in relation to Wanjarri Nature Reserve and part of the Yeelirrie Lake Mason Reserve.

3.10 Creation and Joint Vesting of Future Conservation Reserves

- (a) The Parties agree they will use best endeavours to:
 - (i) effect the reservation of the Future Conservation Reserves under section 41 of the LA Act for the purposes of a conservation park, national park or nature reserve, which may be subject to Land Assembly Actions; and
 - (ii) jointly vest the Future Conservation Reserves in the Commission and Tjiwarl AC as provided for in section 8AA(2) of the CALM Act.
- (b) Tjiwarl AC consents to the Joint Vesting of the Future Conservation Reserves.

4. Joint Management of Tjiwarl Conservation Estate

This clause outlines the processes for the joint management of Wanjarri Nature Reserve and the Yeelirrie Lake Mason Reserve and includes commitments in relation to expenditure for joint management.

4.1 Management Plan and Joint Management Agreement for Tjiwarl Conservation Estate

- (a) Subject to:
- (i) Wanjarri Nature Reserve being jointly vested in accordance with clause 3.33.2; and
 - (ii) the Yeelirrie Lake Mason Reserve being jointly vested in accordance with clause 3.8, the responsible body for all of the land comprising the Tjiwarl Conservation Estate, being the Commission and Tjiwarl AC, through the agency of the CEO, will prepare a management plan or management plans, in accordance with Part V, Division 1 of the CALM Act, that:
 - (iii) requires the CEO to manage the Tjiwarl Conservation Estate jointly with Tjiwarl AC; and
 - (iv) in accordance with section 56A(3) of the CALM Act, has attached to it an agreement for the joint management of the Tjiwarl Conservation Estate.
- (b) The agreement referred to in clause 4.1(a)(iv) will be substantially in the terms of the joint management agreement at Annexure 4 to this Schedule and be signed as soon as practicable after the management plan referred to in clause 4.1(a) is approved under Part V Division 1 of the CALM Act.
- (c) Until a management plan is prepared and approved under Part V, Division 1 of the CALM Act for the Tjiwarl Conservation Estate, the CEO will manage the Tjiwarl Conservation Estate in accordance with the CALM Act and clause 4.2 and with advice from the Interim Joint Management Body.
- (d) Subject to clause 4.8 of this Schedule and clause 26.2 of this Agreement, the Commission and Tjiwarl AC (if it is the responsible body) or the Commission (if it is the responsible body), will:

- (i) continue to ensure that the management plan referred to in clause 4.1(a)(iv) and any management plan substituting the management plan will continue to require the CEO to manage the Tjiwarl Conservation Estate jointly with Tjiwarl AC; and
- (ii) continue to jointly manage the Tjiwarl Conservation Estate in accordance with clause 4.1(d)(i) for at least 10 years from the Conclusive Registration Date, unless otherwise agreed by the Commission and Tjiwarl AC (acting with the consent of the Tjiwarl People).

4.2 Approach to Joint Management

The Parties acknowledge and agree that, subject to any management plan and management agreement applicable to the Tjiwarl Conservation Estate and the CALM Act:

- (a) joint management of the Tjiwarl Conservation Estate is to be conducted in a manner which works towards and advances the social, economic and cultural benefit of the Tjiwarl People, which includes:
 - (i) the avoidance of and restriction of access by the public to sites, places and areas of high cultural sensitivity;
 - (ii) identification of existing roads or tracks which need to be closed or re-routed to avoid impacting sites, places and areas of high cultural sensitivity;
 - (iii) strategies to facilitate culturally appropriate visitation and usage by tourists and commercial operators;
 - (iv) identification of opportunities for the grant of permits, licences and leases to Tjiwarl AC, Tjiwarl People and/or Tjiwarl Businesses under the CALM Act for Tjiwarl People's social, economic or cultural benefit; and
 - (v) consideration of any other areas of land for addition to the Tjiwarl Conservation Estate from time to time; and
- (b) while activities connected to the Tjiwarl Conservation Estate are its priority, the Joint Management Body may, acting reasonably, allocate resources to the conduct of, or participation of Tjiwarl People or Tjiwarl Businesses in, projects, training or events outside of the Tjiwarl Conservation Estate which are connected with conservation and restoration of the natural environment, traditional ecological knowledge, indigenous cultural intellectual property, land management, and management of places of cultural significance.

4.3 Interim Joint Management Body

- (a) Until the Joint Management Body is established pursuant to a management plan referred to in clause 4.1(a) that is approved in accordance with Part V, Division 1 of the CALM Act for the Tjiwarl Conservation Estate, the CEO and Tjiwarl AC will appoint an 'interim joint management body' using the same process as set out under clause 4 of the joint management agreement at Annexure 4 to this Schedule for the appointment of the Joint Management Body, to act as an interim advisory body (**Interim Joint Management Body**) for the purpose of providing advice and making recommendations to the CEO in respect of that land in the manner set out in the Joint Management Agreement.
- (b) A reference to the Joint Management Body in this Agreement includes a reference to the Interim Joint Management Body unless the context requires otherwise.

4.4 Expenditure for the Joint Management of Tjiwarl Conservation Estate

The State agrees to expend \$19,500,000 over the Funding Period for the joint management of the Tjiwarl Conservation Estate, in accordance with the Joint Management Agreement, as follows:

- (a) no less than \$11,200,000 for the benefit of Tjiwarl People in the joint management of the Tjiwarl Conservation Estate in the manner, and for the purposes, set out below:
 - (i) the following specific funding allocations:
 - (A) over the first two Financial Years of the Funding Period:
 - (I) a total of \$240,000 for field visits, heritage and cultural mapping to inform the management plan referred to in clause 4.1(a);
 - (II) a total of \$200,000 for the expansion of a ranger base for accommodation and workshop purposes; and
 - (III) a total of \$600,000 for additional workshop infrastructure in the Tjiwarl Conservation Estate;
 - (B) in each Financial Year of the Funding Period:
 - (I) \$45,000.00, adjusted for CPI in accordance with clause 10.9 of this Agreement, payable to Tjiwarl AC for the purposes of participation by members of the Joint Management Body appointed by Tjiwarl AC at meetings of the Joint Management Body; and

(II) \$50,000, adjusted for CPI in accordance with clause 10.9 of this Agreement, payable to Tjiwarl AC to support the cost of Tjiwarl people attending on-country trips; and

(ii) the following general funding allocations:

- (A) subject to clause 4.4(a)(ii)(B), up to 6 FTE trainee ranger positions, as designated positions for Tjiwarl People under section 50(d) of the *Equal Opportunity Act 1984* (WA), relating to the joint management of the Tjiwarl Conservation Estate;
- (B) some or all of the allocation set out in clause (A) may be applied as fees for services to be provided by Tjiwarl People to DBCA in the joint management of the Tjiwarl Conservation Estate;
- (C) 1 FTE senior ranger, as a designated position for a Tjiwarl person under section 50(d) of the *Equal Opportunity Act 1984* (WA), relating to the joint management of the Tjiwarl Conservation Estate;
- (D) up to two vehicles dedicated for Tjiwarl ranger use;
- (E) accredited training programs, such as TAFE courses, with ‘on the job’ training modules for Tjiwarl trainee rangers;
- (F) initiatives which develop the capacity of Tjiwarl AC and Tjiwarl People in relation to land management activities;
- (G) interpretive signage to promote, educate and protect Tjiwarl Country and its cultural values; and
- (H) any other purposes in the joint management of the Tjiwarl Conservation Estate as determined by the Joint Management Body from time to time,

(Tjiwarl Joint Management Funding).

- (b) no less than \$7,600,000 on departmental support for joint management of the Tjiwarl Conservation Estate which may, at the Department’s discretion, including funding for:
 - (i) employment of one or more of a ranger team works coordinator, an assistant operations officer and a project officer;
 - (ii) on-ground maintenance and implementation works; and
 - (iii) up to two vehicles dedicated for use in the joint management of the Tjiwarl Conservation Estate,

(Departmental Joint Management Implementation Support Funds).

- (c) Subject to clause 4.4(d), the State agrees to expend \$700,000 on capital works in the Tjiwarl Conservation Estate as follows:
- (i) \$400,000 over the first two Financial Years of the Funding Period to upgrade existing infrastructure in Wanjarri Nature Reserve to establish a ranger base; and
 - (ii) \$300,000 over the first four Financial Years of the Funding Period to fence the Yeelirrie Lake Mason Reserve boundary or any part of it,
- (Capital Works).**
- (d) The dates for the expenditure in clauses 4.4(c)(i) and 4.4(c)(ii) may be extended with the agreement of the Joint Management Body.

4.5 Priority joint management projects

In addition to the expenditure set out in clause 4.4, the State agrees to expend \$1,000,000 during the Funding Period on particular works, infrastructure, equipment, goods or services identified by the Joint Management Body as a priority for joint management of the Tjiwarl Conservation Estate and for the benefit of Tjiwarl People.

4.6 Unexpended joint management money

After the end of the Funding Period, any money to be expended on:

- (a) Tjiwarl Joint Management Funding, Departmental Joint Management Implementation Support Funds and Capital Works in accordance with clause 4.4; and
 - (b) funding for priority joint management projects in accordance with clause 4.5,
- that has not been committed to those purposes will be made available for future joint management of the Tjiwarl Conservation Estate.

4.7 Joint management of Tjiwarl Conservation Estate after 10 years

The Parties acknowledge and agree that, as at the Execution Date, it is their intention that:

- (a) joint management of the Tjiwarl Conservation Estate in accordance with the Joint Management Agreement and any management plan applicable to the Tjiwarl Conservation Estate should continue after the Funding Period;
- (b) no later than 9 months before the end of the Funding Period, the CEO and Tjiwarl AC will meet to discuss how further funding for ongoing joint management of the Tjiwarl Conservation Estate is to be secured;

- (c) the Parties will work together and use their best endeavours to secure, to their mutual satisfaction, further funding for ongoing joint management of the Tjiwarl Conservation Estate; and
- (d) if, no later than 3 months before the end of the Funding Period, further funding for ongoing joint management of the Tjiwarl Conservation Estate is not secured to their mutual satisfaction, the Parties will negotiate in good faith in relation to the options for the future management of the Tjiwarl Conservation Estate.

4.8 Ending or suspending Joint Management

- (a) The management plan referred to in clause 4.1(a) and any management plan substituting the management plan may be amended or made so as not to require joint management where the CEO and Tjiwarl AC agree that joint management of the Tjiwarl Conservation Estate is no longer practicable.
- (b) The management plan referred to in clause 4.1(a) and any management plan substituting the management plan will not be revoked without ensuring a new plan requiring joint management is substituted for it, except where the CEO and Tjiwarl AC agree that joint management of the Tjiwarl Conservation Estate is no longer practicable.
- (c) Where the CEO and Tjiwarl AC have agreed that:
 - (i) joint management of the Tjiwarl Conservation Estate is no longer practicable, or
 - (ii) following a dispute it is determined that joint management is no longer practicable, the Parties responsible for preparing an amended or substituted management plan for the Tjiwarl Conservation Estate under the CALM Act will cooperate and take all necessary steps to prepare an amended or substituted management plan as soon as possible under the CALM Act providing that joint management is no longer required.
- (d) Without limiting what is 'no longer practicable', where under the Joint Management Agreement or any joint management agreement attached to any management plan substituting the management plan referred to in clause 4.1(a):
 - (i) there have been five (5) or more Events of Default (as defined in the relevant joint management agreement) within any 12 month period; or
 - (ii) there have been five (5) or more Party Disputes (as defined in the relevant joint management agreement) within any 12 month period,

the CEO and Tjiwarl AC will consider whether joint management is 'no longer practicable' for the purposes of clause 4.8(a) and clause 4.8(b).

- (e) If the CEO and Tjiwarl AC cannot agree that joint management is no longer practicable, the matter becomes a dispute for the purposes of clause 23 of this Agreement.
- (f) Where, in respect of the Tjiwarl Conservation Estate or any part of it, the CEO and Tjiwarl AC have agreed that:
 - (i) joint management is no longer practicable; or
 - (ii) following a dispute it is agreed (including following mediation under clause 23.4 of this Agreement) or determined that joint management is no longer practicable, the CEO will, until the CEO and Tjiwarl AC agree or it is determined (including under clause 23 of this Agreement) that joint management has again become practicable under clause 4.8(h) and a new joint management body is functional:
 - (iii) by 31 December each year following joint management no longer being practicable, submit to Tjiwarl AC:
 - (A) a report on the implementation of the management plan in respect of the Tjiwarl Conservation Estate for the previous 12 months, or, if there is no plan, on the general management of the Tjiwarl Conservation Estate (**Report**); and
 - (B) an indicative plan of works in respect of the Tjiwarl Conservation Estate (**Indicative Plan of Works**);
 - (iv) invite written submissions from Tjiwarl AC in respect of the Report and Indicative Plan of Works, to be provided within 90 days of the request;
 - (v) take into account Tjiwarl AC's written submissions, if any, in implementing the management plan or in managing the Tjiwarl Conservation Estate, or any part of the Tjiwarl Conservation Estate, for the following 12 months after 31 December; and
 - (vi) invite comments from Tjiwarl AC, to be provided within 90 days, in respect of any proposed management actions in respect of the Tjiwarl Conservation Estate, or any part of the Tjiwarl Conservation Estate, which are neither required operations nor covered by the Indicative Plan of Works, except where management action is urgent and a 'necessary operation' or 'compatible operation' as defined in section 33A(1) or (2) of the CALM Act.
- (g) If under clause 4.8(a) or clause 4.8(b) or in resolution of a dispute for the purposes of clause 4.8(e), the management plan referred to in clause 4.1(a), or any management plan

substituting the management plan, is amended or made so as to no longer require joint management and subsequently the CEO and Tjiwarl AC agree that joint management has again become practicable:

- (i) the management plan for the Tjiwarl Conservation Estate will be further amended or a new management plan prepared, requiring joint management with Tjiwarl AC (**Amended or New Management Plan**);
 - (ii) in accordance with section 56A(3) of the CALM Act, the Amended or New Management Plan will have attached to it an agreement for the joint management of the Tjiwarl Conservation Estate; and
 - (iii) this Agreement continues to apply to the Amended or New Management Plan.
- (h) In relation to clauses 4.8(e) and 4.8(g), joint management may become practicable again in the following circumstances:
- (i) 12 months have elapsed since the time at which joint management became no longer practicable;
 - (ii) if joint management was made no longer practicable by the occurrence of Events of Default or Party Disputes as provided for in clause 4.8(d), those Events of Default or Party Disputes (as the case may be) are resolved; or
 - (iii) where Tjiwarl AC and the CEO agree that joint management has again become practicable.

5. Variation

This clause sets out when the Parties may change the Schedule. Parties cannot change the Schedule unless everyone agrees.

Notwithstanding clause 20.1(a) of this Agreement, this Schedule may be varied by the agreement of Conservation Estate State Parties and Tjiwarl AC, with the variation put in writing and executed by each of the Conservation Estate State Parties and Tjiwarl AC.

6. Notices

This clause sets how the parties must send notices to each other under this Schedule.

6.1 Notices under this Schedule

Notwithstanding clause 29.1 of this Agreement, any notice or other communication that may or must be under this Schedule:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving the notice;
- (c) must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 6.2, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 6.1(e), is taken to be given or made:
 - (i) for delivery in person, when delivered;
 - (ii) for delivery by post, on the fifth Business Day after posting; and
 - (iii) for e-mail, on receipt of an automated message confirming delivery or 4 hours after the e-mail is sent; and
- (e) if received after 4.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

6.2 Addresses for Service

The Parties' addresses for any notice or other communication that may or must be under this Schedule are those set out below, or as varied from time to time by any notice given by a Party to the other Parties

- (a) **For Tjiwarl AC:**
 - (i) By email: compliance@tjiwarl.org.au
 - (ii) By post: The CEO, Tjiwarl (Aboriginal Corporation) RNTBC
Unit 6, 524 Abernethy Road
Kewdale WA 6105

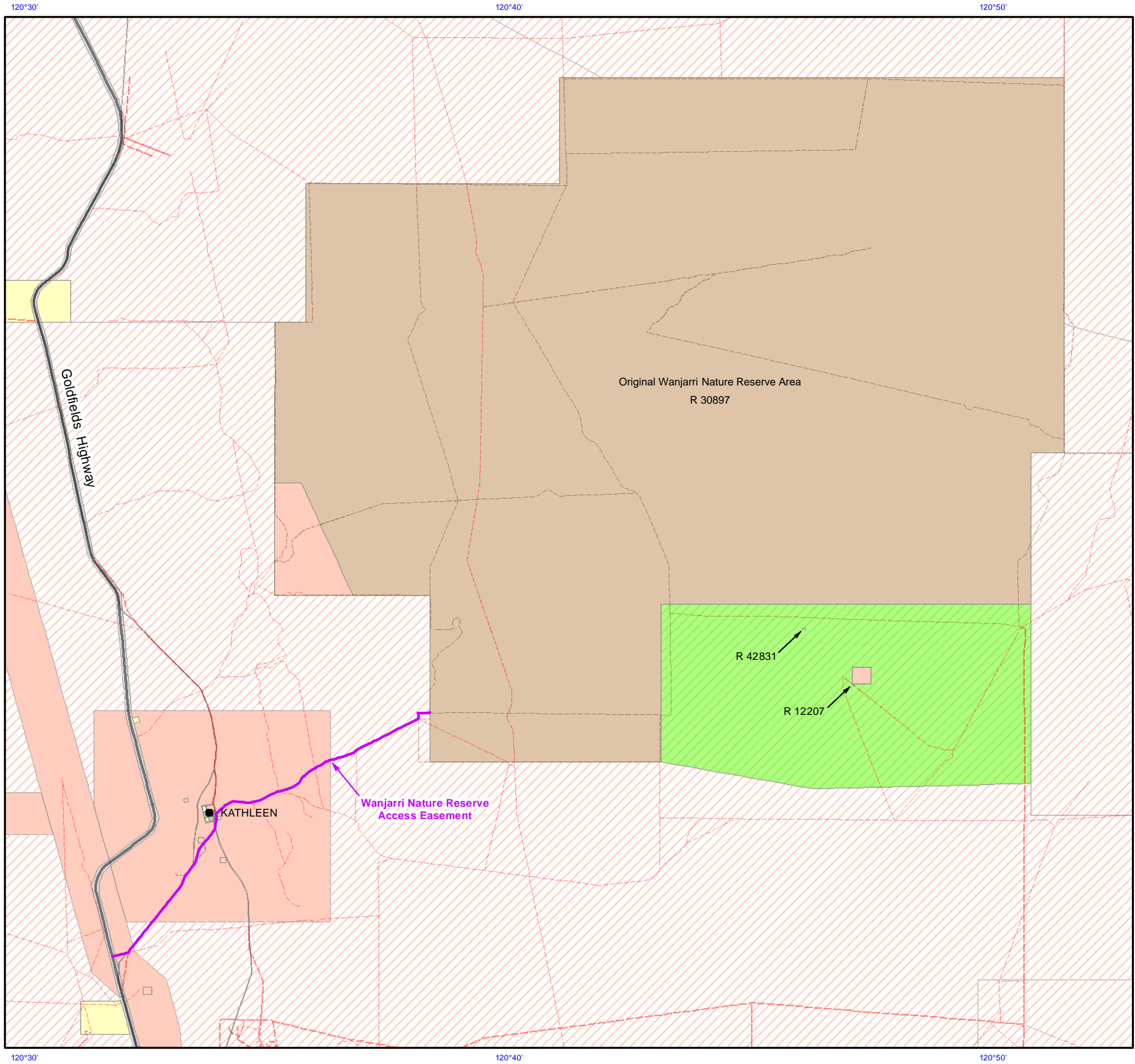
(b) **For the State:**

- (i) By post: C/- DBCA
17 Dick Perry Avenue
Kensington WA 6151

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 7 – Annexure 1

Map of the Original Wanjarri Nature Reserve Area and the
Wanjarri Nature Reserve Addition

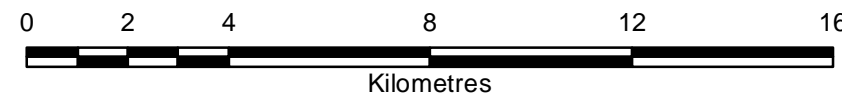


Original Wanjarri Nature Reserve Area & Wanjarri Nature Reserve Addition

- Legend**
- Original Wanjarri Nature Reserve Area
 - Wanjarri Nature Reserve Addition
 - Crown Reserve
 - Leases
 - UCL
 - Public Roads/Other Public Lands
 - Wanjarri Nature Reserve Access Easement



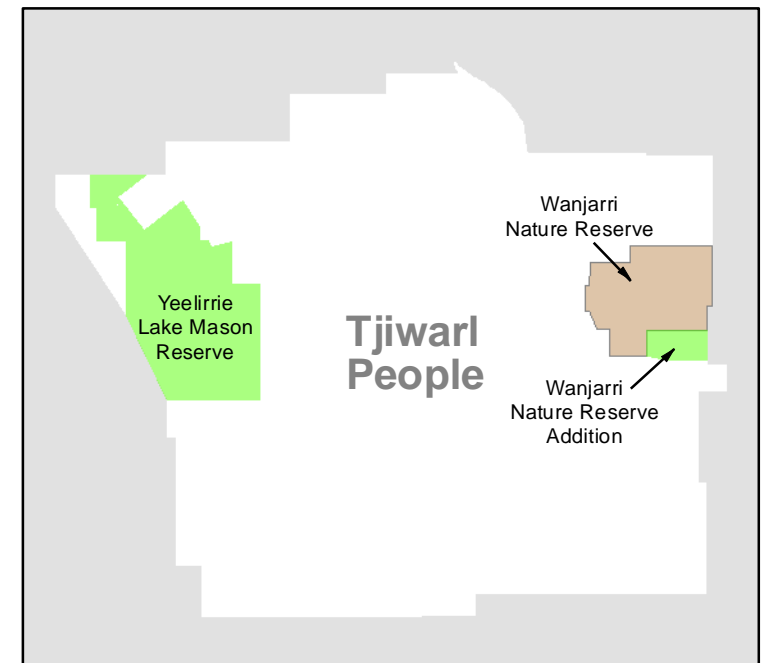
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Longitude and Latitude based on Geocentric Datum of Australia 1994



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TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 7 – Annexure 2**

Map of the Yeelirrie Lake Mason Reserve

119°30'

119°40'

119°50'

120°

-27°10'

-27°10'

-27°20'

-27°20'

-27°30'

-27°30'

119°30'

119°40'







119°50'

120°

Tjiwarl Palyakuwa (Agreement)³ Schedule 7 - Annexure 2

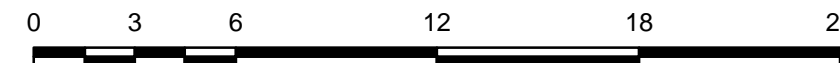
Yeelirrie Lake Mason Reserve

Legend

-  Yeelirrie Lake Mason Reserve
-  Crown Reserve
-  Leases
-  UCL
-  Public Roads/Other Public Lands
-  Native Title Boundary



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(A3)



Kilometres

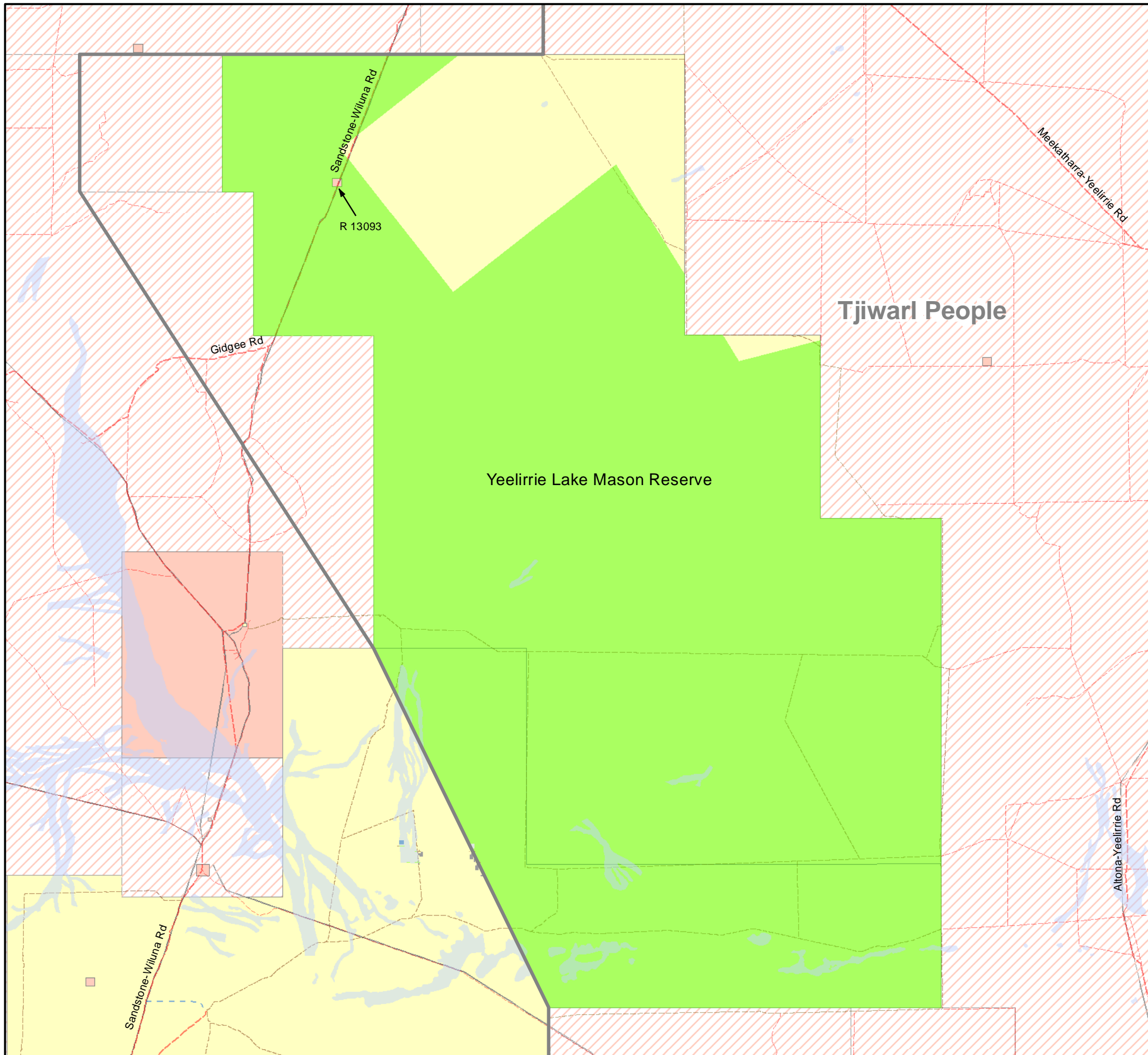
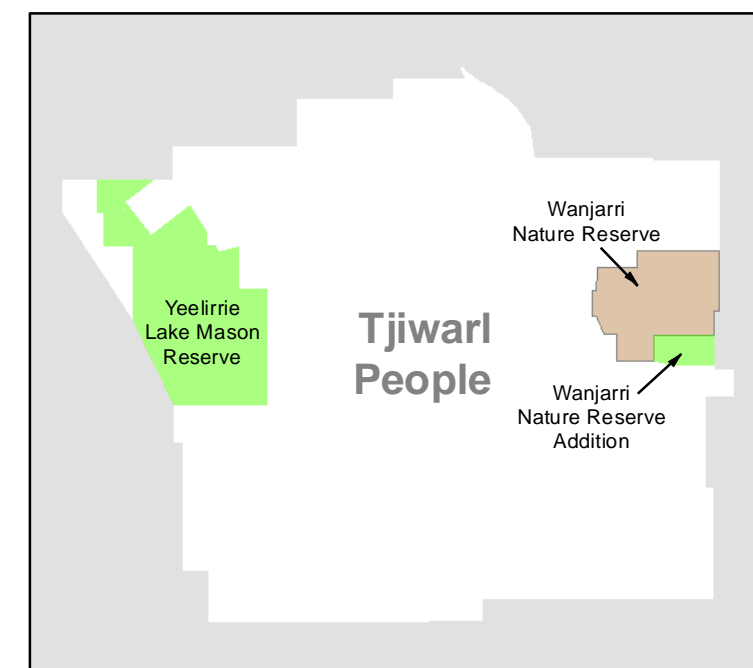
Longitude and Latitude based on
Geocentric Datum of Australia 1994



Department of Biodiversity,
Conservation and Attractions

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Department of Biodiversity, Conservation and Attractions

Produced Oct 18, 2022



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TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 7 – Annexure 3

Map of the Wanjarri Nature Reserve Access Easement

Wanjarri Nature Reserve Access Easement

Legend

- Original Wanjarri Nature Reserve Area
- Crown Reserve
- Leases
- UCL
- Public Roads/Other Public Lands
- Wanjarri Nature Reserve Access Easement



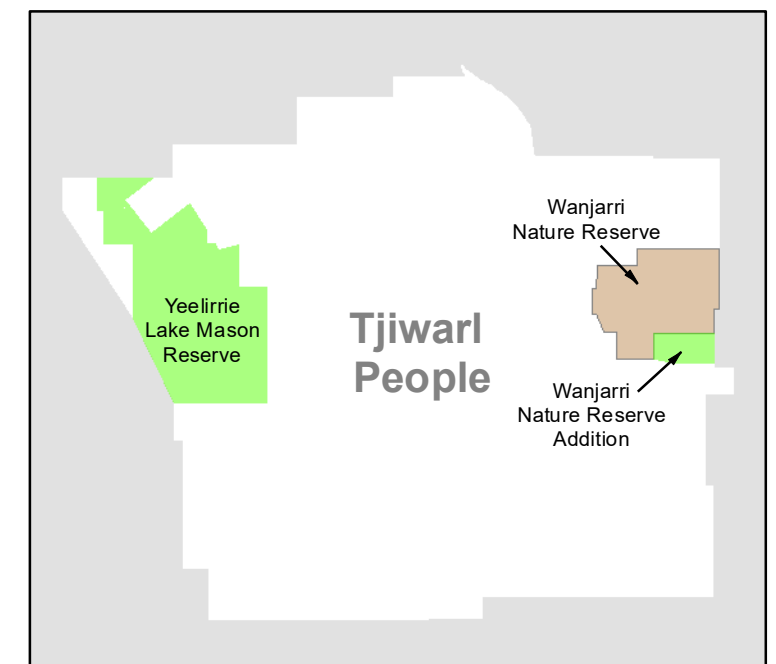
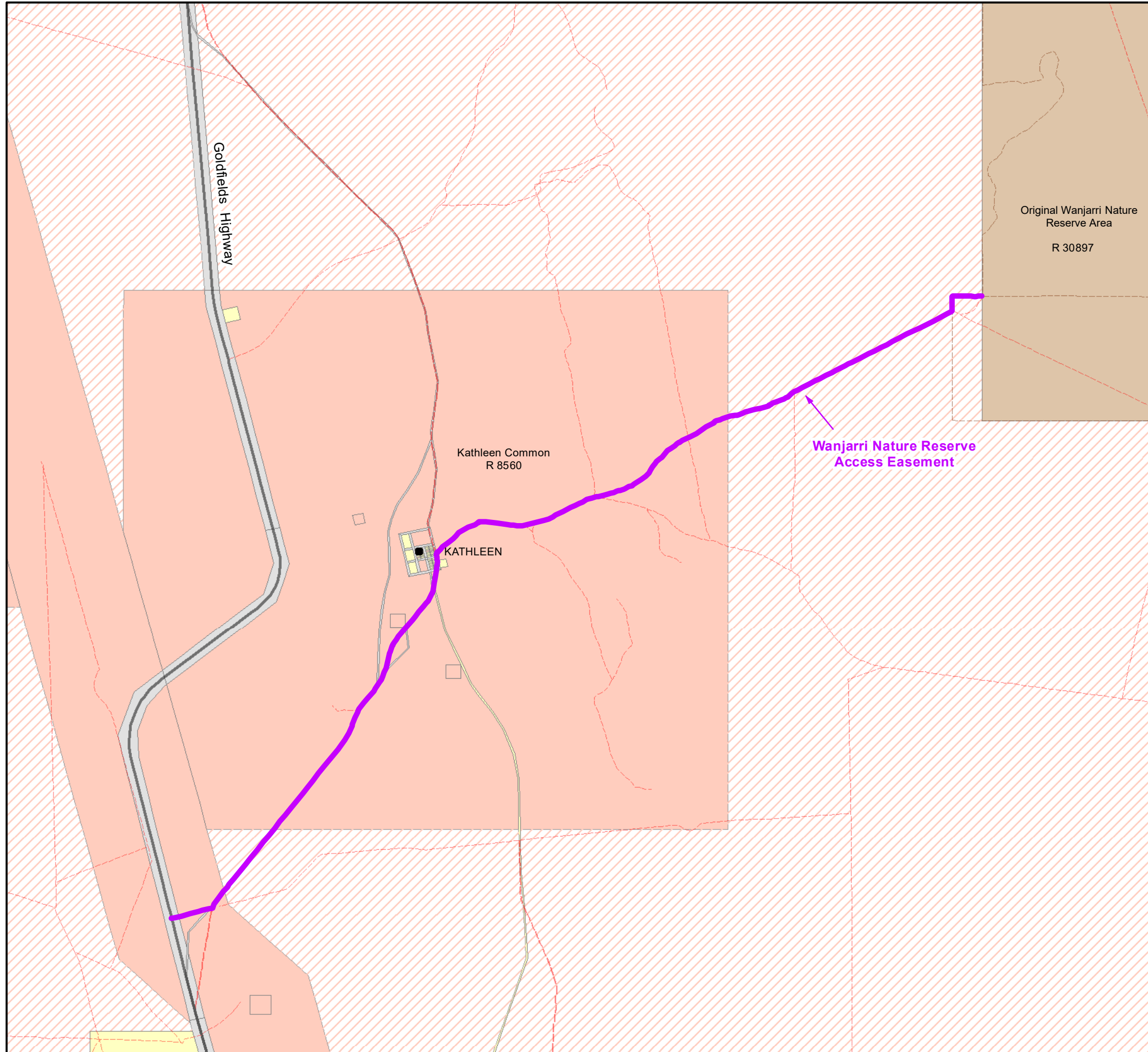
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Produced Oct 18, 2022



TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 7 – Annexure 4**

Joint Management Agreement

Section 56A CALM Act

JOINT MANAGEMENT AGREEMENT

For the Tjiwarl Conservation Estate

BETWEEN

Tjiwarl Aboriginal Corporation (ICN 8628)

Chief Executive Officer of the Department of Biodiversity, Conservation and Attractions

TABLE OF CONTENTS

Recitals	6
1. Definitions and Interpretation	8
1.1 General Definitions	8
1.2 Specific Definitions	8
1.3 Interpretation	14
2. Term and Termination	15
2.1 Term	15
2.2 Termination	16
3. Joint Management of the Tjiwarl Conservation Estate	16
4. Establishment of Joint Management Body	16
5. Joint Management Body Role and Decisions	17
5.1 Role of the Joint Management Body	17
5.2 Decisions of the Joint Management Body	18
6. Membership of the Joint Management Body	19
6.1 Representative Members	19
6.2 Representative Member unable to attend a Joint Management Body Meeting	20
6.3 Chairperson	21
6.4 Persons not eligible to be members	21
6.5 Vacancy of Member	21
6.6 Vacancy of Chairperson	22
6.7 Removal for bankruptcy	22
6.8 Removal for misbehaviour etc.	23
6.9 Conflict of Interest	23
7. Protection From Personal Liability	24
8. Meetings and Procedure of the Joint Management Body	24
8.1 First meeting	24
8.2 Convening and frequency of meetings	25
8.3 Administrative responsibility	25
8.4 Invitation to attend Joint Management Body meeting	25

8.5	Procedure	26
8.6	Sub-Committees	26
8.7	Quorum	26
8.8	Voting	26
9.	Obligation of Parties in respect of Members	27
10.	Joint Management Body Dispute	27
10.1	Interpretation	27
10.2	Referral to CEO and Tjiwarl AC	28
10.3	Referral to Mediation	28
10.4	Referral to Minister	29
10.5	Obligations continue	30
11.	Party Disputes	30
11.1	No Court proceedings	30
11.2	Notification	30
11.3	Parties to resolve Party Dispute	30
11.4	Mediation	31
12.	Default	32
12.1	Events of Default	32
12.2	Default under clause 12.1(a) to 12.1(e)	32
12.3	Event of Default under clause 12.1(f)	33
12.4	Suspension of Obligations	34
12.5	Duty to Mitigate	34
12.6	Remedies do not prejudice other rights of a Party	34
13.	Confidentiality	34
13.1	Between Parties	34
13.2	Between Members of the Joint Management Body	35
13.3	Permitted disclosure	36
13.4	Disclosure requirements	36
13.5	Party may seek injunction	37
13.6	No waiver or transfer of intellectual property rights	37
14.	Intellectual Property	37
15.	Acts By State – No Fetter Upon Discretion	37

16. No Assignment Without Consent	37
17. Force Majeure	38
18. Review	39
19. Variation	39
20. Notice	40
20.1 Requirements for giving notices and other communication	40
20.2 Addresses for notices and other communications	41
21. General	41
21.1 Entire agreement	41
21.2 Governing law and jurisdiction	41
21.3 Severance	41
21.4 Election and Waiver	42
21.5 Survival	42

DATE

This Agreement is made on the day of 202

PARTIES

CEO **THE CHIEF EXECUTIVE OFFICER** of the Department of Biodiversity Conservation and Attractions, acting through the **CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY**, a body corporate established under section 36 of the Conservation and Land Management Act, of 17 Dick Perry Avenue, Technology Park, Western Precinct, Kensington, Western Australia

Tjiwarl AC **TJIWARL ABORIGINAL CORPORATION (RNTBC)** ICN 8628 a body corporate established for and on behalf of the Tjiwarl People of Unit 6, 254 Abernethy Road, Kewdale, Western Australia

RECITALS

- A. Tjiwarl AC is the registered native title body corporate that holds native title in trust for the Tjiwarl People.
- B. The State, the Minister for Lands, the Commission, the CEO and Tjiwarl AC (and others) have entered into an indigenous land use agreement entitled the Tjiwarl Palyakuwa (Agreement). The Parties enter into this Agreement to give effect to commitments made in the Tjiwarl Palyakuwa (Agreement) which provides, among other things, for:
- (a) the Tjiwarl People's consent under the Native Title Act to:
 - (i) the addition of the Wanjarri Nature Reserve Addition to Wanjarri Nature Reserve by order of the Minister for Lands under section 42(3)(a) of the LA Act;
 - (ii) the creation of Yeelirrie Lake Mason Reserve for the purpose of National Park and for it to be classified as a class A reserve by orders of the Minister for Lands under sections 41 and 42 of the LA Act;
 - (iii) the joint vesting in the Commission and Tjiwarl AC of Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve;

- (iv) the creation of a right of access from the Goldfields Highway to Wanjarri Nature Reserve;
 - (v) the creation of a right of access to Reserve 12207; and
 - (vi) the creation and joint vesting of the Future Conservation Reserves; and
 - (vii) the grant, issue or creation, from time to time, of any lease, licence permit or other authority which is granted, issued or created under the CALM Act or the Biodiversity Conservation Act over Wanjarri Nature Reserve, Yeelirrie Lake Mason Reserve or the Future Conservation Reserves;
- (b) the Tjiwarl People to nominate a name for Yeelirrie Lake Mason Reserve;
 - (c) Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve to be managed jointly by the CEO (on behalf of the Commission) and Tjiwarl AC with the State committing funds payable over 10 years to support joint management; and
 - (d) the Tjiwarl People and the State to enter into an agreement under section 47C of the Native Title Act to enable the Tjiwarl People to make an application to the Federal Court of Australia seeking a determination of exclusive native title in relation to Wanjarri Nature Reserve and that part of the Yeelirrie Lake Mason Reserve that is, in accordance with the Tjiwarl Determination, the subject of non-exclusive native title.
- C. The area of Wanjarri Nature Reserve has now been expanded to include the Wanjarri Nature Reserve Addition. Yeelirrie Lake Mason Reserve was created on [insert date]. In accordance with section 8AA(2)(b) of the CALM Act and the Tjiwarl Palyakuwa (Agreement), Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve have been vested jointly in the Commission and Tjiwarl AC. [At the Commencement Date, no Future Conservation Reserves have been added to the Tjiwarl Conservation Estate.¹]
- D. Together, the Commission and Tjiwarl AC are the responsible body for the Tjiwarl Conservation Estate who, in accordance with Part V, Division 1 of the CALM Act, prepared the Management Plan.
- E. The Minister has approved the Management Plan which requires the CEO to manage the Tjiwarl Conservation Estate jointly with Tjiwarl AC.

¹ **Drafting Instructions:** Amend as necessary if, as at the Commencement Date, any Future Conservation Reserves have been created and jointly vested.

- F. This Agreement is the agreement that is required to be attached to the Management Plan and gives effect to joint management of the Tjiwarl Conservation Estate and sets out the role of the Joint Management Body.
- G. This Agreement is substantially in the form provided in Annexure 5 to Schedule 7 of the Tjiwarl Palyakuwa (Agreement).
- H. In accordance with section 56A(7) of the CALM Act, the Minister and the Commission have given their written approval to this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

In this Agreement there are words and terms that have specific meanings and they are explained in this clause. This clause also sets out rules for reading and understanding this Agreement.

1.1 General Definitions

In this Agreement, unless it is a defined term in clause 1.2, words and expressions defined in the CALM Act have the same meaning when used in this Agreement.

1.2 Specific Definitions

In this Agreement, unless the context otherwise requires:

Aboriginal Cultural Business means any ceremonial and other cultural obligation:

- (a) that:
 - (i) a Member; or
 - (ii) the directors of Tjiwarl AC,as relevant to the application of clause 17, are required to attend or meet under their traditional laws and customs; or
- (b) which otherwise affects the capacity of Tjiwarl AC to perform its obligations under this Agreement.

Affected Member has the meaning given in clause 6.8(b).

Affected Party has the meaning given in clause 17(a).

Agreement means this joint management agreement and its Schedules.

Alternate Member means a person who is nominated under clause 6.1(a)(i)(B).

Biodiversity Act means the *Biodiversity Conservation Act 2016* (WA).

Biodiversity Regulations means the *Biodiversity Conservation Regulations 2018* (WA).

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia commencing at 8.30am Western Standard Time and finishing at 5.00pm Western Standard Time.

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

CALM Regulations means the *Conservation and Land Management Regulations 2002* (WA).

CATSI Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

CEO Alternate Member means a person nominated by the CEO under clause 6.1(a)(ii)(B) or a person nominated by the CEO under clause 6.5(b)(ii) to replace a Vacating Member who was an Alternate Member, as applicable.

CEO Representative Member means a person nominated by the CEO under clause 6.1(a)(ii)(A) or a person nominated by the CEO under clause 6.5(b)(ii) to replace a Vacating Member who was a Representative Member, as applicable.

Chairperson means a Representative Member elected to be Chairperson of the Joint Management Body under clause 6.3.

Commencement Date means the date this Agreement is executed by the last Party to do so.

Commission means the Conservation and Parks Commission, a body corporate established under section 18 of the CALM Act.

Conflict of Interest has the meaning given in clause 6.9(a).

Confidential Information means, as the context requires, Party Confidential Information or Joint Management Body Confidential Information, or both Party Confidential Information and Joint Management Body Confidential Information or a combination of these.

Default Notice has the meaning given in clause 12.2(a).

Defaulting Party has the meaning given in clause 12.1.

Department means the department of the Public Service principally assisting in the administration of the CALM Act being, at the Commencement Date, the Department of Biodiversity, Conservation and Attractions.

Disclosing Member has the meaning given in clause 6.7(b) or clause 6.9(a) (as applicable).

Disclosing Party means, as the context requires, a Party who discloses information under clause 13.1 or clause 13.2.

Event of Default has the meaning given in clause 12.1.

Force Majeure means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide, adverse weather conditions;
- (b) impact of vehicles or aircraft;
- (c) failure of a public utility;
- (d) epidemic or pandemic;
- (e) industrial action (other than industrial action limited to the affected Party);
- (f) civil unrest, war (including civil war), act of a public enemy, sabotage, blockade, revolution, riot, insurrection and acts of terrorism;
- (g) Aboriginal Cultural Business;
- (h) radioactive or biological contamination; or
- (i) the effect of any Law or authority exercised by government official by Law (other than a State Law or a State government official).

Future Conservation Reserves means any land outside Wanjarri Nature Reserve and Yeelirrie Lake Mason Reserve, but within the area the subject of the Tjiwarl Palyakuwa (Agreement), that the Parties agree from time to time should be:

- (a) reserved under section 41 of the LA Act for the purposes of a conservation park, national park or nature reserve; and
- (b) added to the Tjiwarl Conservation Estate in accordance with the Tjiwarl Palyakuwa (Agreement).

Insolvency Event means, in respect of Tjiwarl AC, where it:

- (a) commits an act of insolvency under and for the purposes of the *Corporations Act 2001* (Cth) or the CATSI Act;
- (b) is placed under external administration under and for the purposes of Chapter 5 of the *Corporations Act 2001* (Cth);
- (c) is placed under external administration, or special administration, under and for the purposes of Chapter 11 of the CATSI Act; or
- (d) is wound up or deregistered under the CATSI Act.

Joint Management Body means the body established in clause 4.

Joint Management Body Confidential Information has the meaning given in clause 13.2(a).

Joint Management Body Dispute has the meaning given in clause 8.8(d).

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

Law means any written law of the Commonwealth or the State of Western Australia, including all regulations and other instruments made under any statute.

Management Plan means the management plan approved under section 60 of the CALM Act in respect of the Tjiwarl Conservation Estate.

Member means a Representative Member or an Alternate Member.

Minister means the Minister to whom the administration of the CALM Act is committed, which for the time being is the Minister for Environment.

Minister for Lands means the body corporate established under section 7(1) of the LA Act. and being the Minister in the Government for the time being responsible for the administration of the LA Act.

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

Non-Defaulting Party has the meaning given in clause 12.2(a) or clause 12.3(a) (as applicable).

Party means a party to this Agreement and **Parties** means all of the parties to this Agreement.

Party Confidential Information has the meaning given in clause 13.1(a).

Receiving Party means, as the context requires, a Party to whom information has been disclosed under clause 13.1 or clause 13.2.

Registered native title body corporate has the meaning given by the Native Title Act.

Remaining Members has the meaning given by clause 6.7(b), clause 6.8(c) or clause 6.9(a) (as applicable).

Replacement RNTBC means a prescribed body corporate that, in accordance with the provisions of the Native Title Act (including due to the RNTBC Orders being vacated or replaced by a subsequent determination of the Federal Court under sections 56 or 57 of the Native Title Act and an order being made under section 199C(1A) of the Native Title Act), becomes the registered native title body corporate for holding the native title rights and interests determined under the Tjiwarl Determination for the Tjiwarl People in place of Tjiwarl AC.

Representative Member means a person specified under clause 4 and nominated under clause 6.1.

Resolution Institute means the dispute resolution organisation of that name. If the Resolution Institute ceases to exist as an organisation, then "Resolution Institute" is to be taken to mean any other dispute resolution organisation with similar objects:

- (a) agreed to by the Parties; or
- (b) if no agreement can be reached, decided by the Party that first notified the relevant dispute.

RNTBC Orders means the orders of the Federal Court under section 56 or 57 of the Native Title Act in respect of the Tjiwarl Determination.

State means the State of Western Australia.

Term means the term of this Agreement specified in clause 2.1.

Tjiwarl Alternate Member means a person nominated by Tjiwarl AC under clause 6.1(a)(i)(B) or a person nominated by Tjiwarl AC under clause 6.5(b)(i) to replace a Vacating Member that was an Alternate Member, as applicable.

Tjiwarl Conservation Estate means such of Wanjarri Nature Reserve, Yeelirrie Lake Mason Reserve and any Future Conservation Reserves that are from time to time jointly vested in accordance with the Tjiwarl Palyakuwa (Agreement).

Tjiwarl Cultural and Intellectual Property means items of cultural expression and traditional knowledge of the Tjiwarl People, including songs, stories, dances, ecological knowledge of biodiversity, medicinal knowledge, and environmental management knowledge.

Tjiwarl Determination means the determination of native title made by the Federal Court of Australia on 27 April 2017 in WAD 228 of 2011 and WAD 302 of 2015, as amended by the Full Court of the Federal Court on 1 February 2018 in WAD 217 of 2017 and WAD 218 of 2017 and as further amended by the High Court of Australia on 17 April 2019 in P 38 of 2018, as varied from time to time.

Tjiwarl Palyakuwa (Agreement) means the *Tjiwarl Palyakuwa (Agreement)*, an indigenous land use agreement (body corporate agreement) as described in Part 2, Division 3, Subdivision B of the Native Title Act that was entered into on [insert date] and which was entered on the Register of Indigenous Land Use Agreements on [insert date].

Tjiwarl People means those persons described in Schedule 2 of the Tjiwarl Determination.

Tjiwarl Representative Member means a person nominated by Tjiwarl AC under clause 6.1(a)(i)(A) or a person nominated by Tjiwarl AC under clause 6.5(b)(i) to replace a Vacating Member that was a Representative Member, as applicable.

Vacating Member has the meaning given in clause 6.5(b).

Wanjarri Nature Reserve means all that land and water comprising Reserve 30897 for the purpose of Conservation of Flora and Fauna, which is classified under the LA Act as a class A reserve, being Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537 and Lot 569 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 538.

Wanjarri Nature Reserve Addition means Lot 568 on Deposited Plan 73751 and being the whole of the land in Certificate of Crown Land Title Volume LR3162 Folio 537 included in Wanjarri Nature Reserve as provided for in Schedule 8 of the Tjiwarl Palyakuwa (Agreement).

Yeelirrie Lake Mason Reserve means all that land and water comprising Reserve [insert number] for the purpose of National Park which is classified under the LA Act as a class A reserve, being Lot [insert number] as shown on Deposited Plan [insert number].

1.3 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) information in a text box is a summary to aid understanding of the provisions it relates to and does not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (b) if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any information in a 'text box' or the Recitals, the terms and conditions of the clauses of this Agreement will prevail to the extent of the inconsistency;
- (c) words and expressions defined in the Native Title Act have the same meaning where used in this Agreement;
- (d) headings and subheadings are for ease of reference only and do not govern the meaning or construction of this Agreement or of any provision contained in this Agreement;
- (e) words expressed in the singular include the plural and vice versa;
- (f) words expressed in one gender include the other;
- (g) a reference to a Party to this Agreement includes that Party's successors, permitted substitutes, persons taking by novation, permitted transferees, receivers, managers, administrators and permitted assigns and, in the case of a natural person, also includes that person's executors and administrators;
- (h) an expression importing a natural person includes a company, partnership, joint venture, association, authority, registered native title body corporate or other body corporate or governmental or semi-governmental entity;
- (i) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (j) a reference to a person established under any Law includes a reference to any person or body (corporate or unincorporate) established or continuing to perform the same or a substantially similar function;
- (k) a reference to the "CEO" includes, as the context may require, the Conservation and Land Management Executive Body (or any replacement of it under the CALM Act) if the CEO chooses (or may choose) to act through that body as permitted under the CALM Act;

- (l) a reference to a thing includes any part of a thing but is not taken as implying that performance of part of an obligation is the performance of the whole;
- (m) a reference to a clause is a reference to a clause of this Agreement;
- (n) where the day on or by which a thing is required to be done is not a Business Day that thing shall be done on or by the succeeding Business Day;
- (o) an agreement, representation or warranty on the part of or in favour of two or more persons binds, and is enforceable against, those persons jointly and each of them severally;
- (p) no rules of construction apply to the disadvantage of a Party because that Party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement;
- (q) a reference to any statute includes every regulation, code, order, ordinance, by-law, subordinated or delegated legislation and proclamation issued under that statute and all consolidations, amendments, re-enactments and replacements of any of them;
- (r) where a word or phrase is given a defined meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (s) a reference to any document, instrument or agreement, including this Agreement, includes a reference to that document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (t) a term that is defined in a clause of this Agreement has the meaning given to it wherever that term is then used in the provisions of that clause; and
- (u) "including" means "including, but not limited to".

2. Term and Termination

This clause sets out when the Agreement starts and when it may end.

2.1 Term

Subject to clause 2.2, this Agreement commences on the Commencement Date continues for so long as the Management Plan remains in force.

2.2 Termination

- (a) This Agreement terminates in the following circumstances (whichever occurs first):
 - (i) the Management Plan expires and a new management plan is substituted for it;
 - (ii) the Management Plan is revoked and a new management plan is substituted for it;
 - (iii) a new agreement is substituted for this Agreement; or
 - (iv) the Management Plan is amended so that joint management is no longer required.
- (b) Subject to clause 2.2(c), in circumstances referred to in clause 2.2(a)(i) and 2.2(a)(ii), other than where the new management plan does not require joint management, the CEO must, for the purposes of section 56A(3) of the CALM Act, attach a new joint management agreement to the new management plan.
- (c) In circumstances referred to in clause 2.2(a)(i), clause 2.2(b) does not need to be complied with if the requirements of section 56B of the CALM Act are met and this Agreement is attached to the new management plan.

3. Joint Management of the Tjiwarl Conservation Estate

The Tjiwarl Conservation Estate shall be jointly managed by Tjiwarl AC and the CEO through the Joint Management Body in accordance with Management Plan and this Agreement.

4. Establishment of Joint Management Body

- (a) A **Joint Management Body** is established for the purposes of section 56A of the CALM Act.
- (b) The Joint Management Body is made up of eight (8) Representative Members, nominated under clause 6.1.

5. Joint Management Body Role and Decisions

This clause sets out the sorts of things that the Joint Management Body will do, consider and advise on and what the Management Plan provides for the Tjiwarl Conservation Estate.

5.1 Role of the Joint Management Body

- (a) The role of the Joint Management Body is to, consistently with the CALM Act, the CALM Regulations, the Biodiversity Act and the Biodiversity Regulations:
- (i) make management decisions that are consistent with the Management Plan and this Agreement;
 - (ii) assist in the preparation of policies, programs and other similar management instruments for the management of the Tjiwarl Conservation Estate, including in relation to use, transfer, protection and recording of Tjiwarl Cultural and Intellectual Property;
 - (iii) strategically monitor the management of the Tjiwarl Conservation Estate including the implementation of the Management Plan and the delivery of on-ground operations;
 - (iv) provide advice to the CEO, Commission and Tjiwarl AC (as appropriate) on all aspects of the use, management and development of the Tjiwarl Conservation Estate including:
 - (A) the value of the Tjiwarl Conservation Estate land and waters to the culture and heritage of Aboriginal people, or the methods to determine this;
 - (B) the conduct of customary activities pursuant to the CALM Act, the CALM Regulations, the Biodiversity Act and the Biodiversity Regulations;
 - (C) approval and oversight of the annual works program for the Tjiwarl Conservation Estate;
 - (D) expenditure of the budget for the joint management of the Tjiwarl Conservation Estate as it relates to the amount specified, and purposes set out, in clause 4.4 of Schedule 7 to the Tjiwarl Palyakuwa (Agreement);
 - (E) any proposed amendments to the Management Plan or any management plan to replace the Management Plan, for the Tjiwarl Conservation Estate;

- (F) proposals to grant CALM Act leases and licences within the Tjiwarl Conservation Estate;
 - (G) the names to be given to places and interpretive and other signage, within the Tjiwarl Conservation Estate;
 - (H) the development of new business and employment opportunities for the Tjiwarl People and businesses associated with the Tjiwarl Conservation Estate;
 - (I) the recruitment of persons for joint management employment positions in relation to work to be undertaken in respect of the Tjiwarl Conservation Estate; and
 - (J) proposals for carbon farming projects within the Tjiwarl Conservation Estate;
 - (v) advise other State government agencies responsible for the implementation of specific actions in the Management Plan; and
 - (vi) work cooperatively with the CEO and Tjiwarl AC to obtain additional funding for the joint management of the Tjiwarl Conservation Estate, through State and Federal funding programs and other relevant third parties.
- (b) The Joint Management Body does not have the role of undertaking day-to-day management of the Tjiwarl Conservation Estate.

5.2 Decisions of the Joint Management Body

- (a) For the purposes of sections 33(1) and 33(3) of the CALM Act, the CEO is to take into account advice given by the Joint Management Body and shall not unreasonably fail to give effect to a management decision of the Joint Management Body.
- (b) In the event that the CEO fails to give effect to a decision of the Joint Management Body, the CEO shall give notice to the Members of the Joint Management Body as soon as practicable, identifying the relevant management decision and the CEO's reasons for not giving effect to it.

6. Membership of the Joint Management Body

This clause sets out who can be a member of the Joint Management Body and how those members can be removed or replaced.

6.1 Representative Members

- (a) After the Commencement Date but before the first meeting of the Joint Management Body convened pursuant to clause 8.1 and thereafter, at the last meeting before the expiry of a Member's term referred to in clause 6.1(c) for the purposes of section 56A(6) of the CALM Act, the Parties must each nominate persons to be Representative Members and Alternate Members of the Joint Management Body in the following manner:
- (i) Tjiwarl AC must nominate:
 - (A) five (5) persons to be Representative Members; and
 - (B) five (5) persons to be Alternate Members; and
 - (ii) the CEO shall nominate:
 - (A) three (3) persons to be Representative Members; and
 - (B) two (2) persons to be Alternate Members.
- (b) Unless otherwise agreed by the Parties, the Members nominated by the CEO must be employees of the Department and, if possible, include regional staff with operational responsibility for the Tjiwarl Conservation Estate.
- (c) Subject to clause 6.1(d) Representative Members and Alternate Members shall be nominated for a term of two (2) years.
- (d) In respect of the appointment of the Tjiwarl Representative Members and the Tjiwarl Alternate Members pursuant to clause 6.1(a) for the first time after the Commencement Date:
- (i) three (3) shall be nominated for a term of three (3) years;
 - (ii) two (2) shall be nominated for a term of two (2) years,
- and after this first term has expired their successor will be appointed for a term of two (2) years per clause 6.1(c).

- (e) A person who has been a Representative Member or an Alternate Member may be nominated again for one of those positions.
- (f) Before the first meeting of the Joint Management Body, each Party must give to the other Party, notice of their nominated Representative Members and Alternate Members.

6.2 Representative Member unable to attend a Joint Management Body Meeting

- (a) Upon receiving notice of a Joint Management Body meeting, if a Tjiwarl AC Representative Member is temporarily unable to attend the meeting due to sickness, absence or incapacity they must, as soon as possible after they become aware of that fact, inform the Chairperson and Tjiwarl AC.
- (b) If Tjiwarl AC is informed under clause 6.2(a), Tjiwarl AC must:
 - (i) notify a Tjiwarl Alternate Member to attend the meeting; and
 - (ii) prior to the meeting, notify the Chairperson and the CEO of which Tjiwarl Alternate Member will be attending the meeting.
- (c) Upon receiving notice of a Joint Management Body meeting, if a CEO Representative Member is temporarily unable to attend the meeting due to sickness, absence or incapacity they must, as soon as possible after they become aware of that fact, inform the Chairperson and the CEO.
- (d) If the CEO is informed under clause 6.2(c), the CEO must:
 - (i) notify a CEO Alternate Member to attend the meeting; and
 - (ii) prior to the meeting, notify the Chairperson and Tjiwarl AC of which CEO Alternate Member will be attending the meeting.
- (e) An Alternate Member notified under clause 6.2(b) or 6.2(d) must attend the Joint Management Body meeting in place of the absent Representative Member.
- (f) When acting in the place of the absent Representative Member:
 - (i) the Alternate Member has the rights and responsibilities of the absent Representative Member; and
 - (ii) any reference to a Representative Member in this Agreement, is to be taken to include an Alternate Member acting in the position of a Representative Member, including the obligations under this clause 6.

6.3 Chairperson

- (a) At the first meeting of the Joint Management Body convened pursuant to clause 8.1, the Representative Members must elect a Chairperson from the Tjiwarl Representative Members, to serve for a two (2) year term.
- (b) Notwithstanding clause 6.3(a) the Chairperson remains in that position after the expiry of a two (2) year term until either they are re-elected, or another Tjiwarl Representative Member is elected, Chairperson.
- (c) The Chairperson must be present at a meeting of the Joint Management Body, but if the Chairperson is unable to attend or is absent from or unwilling to act as Chairperson within 1 hour after the time appointed for a meeting, the attending Representative Members must elect a Representative Member to chair the meeting.

6.4 Persons not eligible to be members

Unless otherwise agreed by the Parties, a member of the Tjiwarl People who is an employee of the CEO is not eligible to be nominated as a Member.

6.5 Vacancy of Member

- (a) The position of a Member becomes vacant if they:
 - (i) resign their position by notice delivered to the Chairperson;
 - (ii) are absent, without leave from the Chairperson, for three consecutive meetings of which they had notice;
 - (iii) are removed from the position by the Joint Management Body under clause 6.7 or clause 6.8; or
 - (iv) become incapacitated or deceased.
- (b) If a Member's position becomes vacant for any reason (**Vacating Member**), including because of clause 6.5(a) a new Member shall be nominated for the remainder of the Vacating Member's term in the following way:
 - (i) if the Vacating Member was nominated by Tjiwarl AC, Tjiwarl AC must nominate the new Member;
 - (ii) if the Vacating Member was nominated by the CEO, the CEO must nominate the new Member; and

- (iii) a Party shall give to the other Party, written notice of the new Member nominated by them.

6.6 Vacancy of Chairperson

- (a) The position of Chairperson becomes vacant if they:
 - (i) resign their position by notice delivered to the Joint Management Body; or
 - (ii) are absent without leave from the Joint Management Body for three (3) consecutive meetings of which they had notice; or
 - (iii) are removed from the position by the Joint Management Body under clause 6.7 or clause 6.8; or
 - (iv) become incapacitated or deceased.
- (b) If the position of the Chairperson becomes vacant for any reason, including because of clause 6.6(a) a new Chairperson shall be elected in accordance with clause 6.3 for the remainder of the two (2) year term.

6.7 Removal for bankruptcy

- (a) The Joint Management Body may remove a Member, including the Chairperson, in accordance with this clause.
- (b) A Member (**Disclosing Member**) who is:
 - (i) a bankrupt as described in section 13D(1) of the *Interpretation Act 1984* (WA) or a person whose affairs are subject to insolvency Laws; or
 - (ii) disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* (Cth) or under Part 6-5 of the CATSI Act;must at the first Joint Management Body meeting after becoming aware of that fact, disclose it (**Disclosure**) to the other Members who are at that meeting (**Remaining Members**). The Disclosure must be recorded in the minutes of the meeting.
- (c) Following a Disclosure, the Remaining Members must vote, in accordance with clause 8.8, on whether the Disclosing Member is to be removed from the Joint Management Body. The results of the vote must be recorded in the minutes of the meeting.
- (d) If the result of the vote referred to in clause 6.7(c) is that the Disclosing Member is to be removed from the Joint Management Body, their position becomes vacant for the purposes

of, and needs to be filled pursuant to, clause 6.5 or, if the Disclosing Member is the Chairperson, clause 6.6.

6.8 Removal for misbehaviour etc.

- (a) In this clause, "misbehaviour" includes behaving in a manner that renders the Member unfit to be a Member even if the conduct does not relate to any function of the Joint Management Body.
- (b) A Member may move at a meeting of the Joint Management Body that the performance of a Member, including the Chairperson (**Affected Member**), is impaired by misbehaviour, incompetence or mental or physical incapacity (other than temporary illness).
- (c) Where clause 6.8(b) applies, the Members who are at that meeting, other than the Affected Member (**Remaining Members**), must vote as to whether the Affected Member's performance is impaired by misbehaviour, incompetence or mental or physical incapacity (other than temporary illness). The results of this vote must be recorded in the minutes of the meeting.
- (d) If the result of the vote under clause 6.8(c) is that the Affected Member's performance is impaired by misbehaviour, incompetence or mental or physical incapacity (other than temporary illness), the position of that Member becomes vacant for the purposes of, and needs to be filled pursuant to, clause 6.5 or, if the Affected Member is the Chairperson, clause 6.6.

6.9 Conflict of Interest

- (a) A Member (**Disclosing Member**) who has a material personal or financial interest in a matter to be considered by a meeting of the Joint Management Body (**Conflict of Interest**) must, as soon as possible after becoming aware of the Conflict of Interest, disclose the nature of it to the other Members who are at that meeting (**Remaining Members**). The disclosure of a Conflict of Interest must be recorded in the minutes of the meeting.
- (b) Subject to clause 6.9(c), a Disclosing Member must not:
 - (i) take part in the consideration or discussion of the relevant matter; or
 - (ii) vote on the relevant matter.

- (c) Following the disclosure of the Conflict of Interest, the Remaining Members must vote, in accordance with clause 8.8, as to whether:
 - (i) the Disclosing Member may take part in the consideration or discussion of the relevant matter;
 - (ii) the Disclosing Member may, following consideration or discussion of the relevant matter (whether or not the Disclosing Member was permitted to take part), vote on the matter,and the results of that vote must be recorded in the minutes of the meeting.
- (d) A Disclosing Member may choose to not take part in the consideration or discussion of, or voting on a relevant matter, notwithstanding that the Remaining Members have voted to allow them to do so under clause 6.9(c).
- (e) For the avoidance of doubt, a Member does not have a Conflict of Interest solely because:
 - (i) of their particular traditional interest or seniority in relation to an area of land or waters within, or adjoining, the Tjiwarl Conservation Estate; or
 - (ii) because they are a member of the Tjiwarl People or a director of Tjiwarl AC.

7. Protection From Personal Liability

Members of the Joint Management Body are protected from personal liability in accordance with section 132 of the CALM Act.

8. Meetings and Procedure of the Joint Management Body

This clause sets out things such as when the first Joint Management Body meeting is to happen and where and how often meetings are to take place. The CEO is to provide the administrative support for the meetings.

8.1 First meeting

Within forty (40) days of the Commencement Date, the CEO is to convene the first meeting of the Joint Management Body, to be held at a place agreed by the Parties.

8.2 Convening and frequency of meetings

- (a) Subject to clause 8.2(c)(i) or 8.2(c)(ii), the CEO shall be responsible for convening Joint Management Body meetings.
- (b) At the first Joint Management Body meeting, or at any subsequent meeting, the Joint Management Body must decide the place for the subsequent meeting or meetings.
- (c) The Joint Management Body must meet at least once every four (4) months but may meet more often in the following circumstances:
 - (i) the Chairperson requests a meeting of the Joint Management Body by giving at least fifteen (15) Business Days' notice to the CEO and Representative Members; or
 - (ii) the CEO calls a meeting by giving at least fifteen (15) Business Days' notice to the Chairperson and Representative Members.

8.3 Administrative responsibility

- (a) The CEO will provide administrative support for the Joint Management Body, including preparing and circulating meeting notices, agendas and papers, at no charge to Tjiwarl AC.
- (b) Tjiwarl AC may assist the CEO in providing administrative support referred to in clause 8.3(a).

8.4 Invitation to attend Joint Management Body meeting

- (a) The Joint Management Body may invite an organisation or individual to attend a Joint Management Body meeting, or part of a meeting, to provide advice on any issue the Joint Management Body considers necessary.
- (b) The Tjiwarl Representative Members, on the request or advice of Tjiwarl AC, may invite up to four (4) Aboriginal cultural advisors to attend a Joint Management Body meeting to assist and provide advice to them on any issue they deem necessary.
- (c) The Chairperson of the Joint Management Body must notify the CEO 2 weeks prior to a Joint Management Body meeting of the Tjiwarl AC's intention to invite an Aboriginal cultural advisor under paragraph (b).
- (d) The Joint Management Body has an absolute discretion to determine at which Joint Management Body meetings, or part of a meeting, an invitee may be present.

- (e) Invitees do not have a right to vote at a Joint Management Body meeting.
- (f) At the discretion of the Joint Management Body and with agreement of the Parties, invitees may be paid reasonable fees, which may include sitting fees for Aboriginal cultural advisors, for attending meetings of the Joint Management Body from the amount specified, and purposes set out, in clause 4.4(a) of Schedule 7 to the Tjiwarl Palyakuwa (Agreement).

8.5 Procedure

The Joint Management Body may adopt any other rules and procedures from time to time as it considers necessary, but if there is any inconsistency between those rules and procedures and this Agreement, this Agreement prevails.

8.6 Sub-Committees

The Joint Management Body may appoint sub-committees (comprising any Member and any other persons) to investigate, consider and advise, or make recommendations to, the Joint Management Body on such matters the Joint Management Body sees fit.

8.7 Quorum

The minimum number of Members (including the Chairperson) that must be present at each Joint Management Body meeting for the Joint Management Body to conduct its business is five (5) being made up of three (3) Tjiwarl Representative Members and two (2) CEO Representative Members.

8.8 Voting

- (a) Each Representative Member present at a meeting of the Joint Management Body, including the Chairperson, has one vote and, subject to clause 6.9, must exercise that vote.
- (b) Subject to clause 8.8(c) the Joint Management Body must try to reach a unanimous decision.
- (c) If the Joint Management Body cannot reach a unanimous decision, the decisions must be made by a majority of:
 - (i) Tjiwarl AC Representative Members; and
 - (ii) CEO Representative Members,

present at the meeting.

- (d) If a majority of:
 - (i) Tjiwarl AC Representative Members; and
 - (ii) CEO Representative Members,

present at the meeting cannot agree the outcome of the same agenda at three (3) consecutive meetings of the Joint Management Body, then the business that is the subject of that agenda item becomes a dispute for the purposes of clause 10 (**Joint Management Body Dispute**).

9. **Obligation of Parties in respect of Members**

Tjiwarl AC and the CEO must use all reasonable efforts to ensure that:

- (a) their Members perform their roles and comply with their obligations as Members of the Joint Management Body under this Agreement, having regard to and in accordance with:
 - (i) the role of the Joint Management Body referred to in clause 5.1; and
 - (ii) the CALM Act and any other applicable State Laws; and
- (b) the required number of Representative Members nominated by them are present at every meeting of the Joint Management Body as required by clause 8.7.

10. **Joint Management Body Dispute**

The Parties are to try and work out Joint Management Body Disputes by negotiation. If that does not work then this clause sets out a process to work through to try and resolve the dispute, including referral to a mediator or the Minister.

10.1 **Interpretation**

In this clause 10, the "CEO" means the CEO or a person nominated by the CEO, and "Tjiwarl AC" means the Chairperson of Tjiwarl AC or a person nominated by the Chairperson of Tjiwarl AC.

10.2 Referral to CEO and Tjiwarl AC

- (a) If the circumstances in clause 8.8(d) arise, the Chairperson must, within five (5) Business Days following the third meeting, give notice of the Joint Management Body Dispute to the CEO and Tjiwarl AC. The notice must set out details of the Dispute.
- (b) Upon receiving notice of a Joint Management Body Dispute under clause 10.2(a), the CEO and Tjiwarl AC must, within twenty (20) Business Days of the date of that notice:
 - (i) decide the Joint Management Body Dispute; or
 - (ii) if the CEO and Tjiwarl AC cannot decide the Joint Management Body Dispute:
 - (A) refer the Joint Management Body Dispute to a mediator in accordance with clause 10.3;
 - (B) send the Joint Management Body Dispute back to the Joint Management Body to decide; or
 - (C) refer the Joint Management Body Dispute to the Minister to decide.
- (c) When deciding the Joint Management Body Dispute under clause 10.2(b)(i) the CEO and Tjiwarl AC may consult with any person.
- (d) A determination of the Joint Management Body Dispute by the CEO and Tjiwarl AC under clause 10.2(b)(i) is be deemed to be a determination of the Joint Management Body.
- (e) If the CEO and Tjiwarl AC are unable to agree what course of action to take under cause 10.2(b), they must refer the Joint Management Body Dispute to a mediator in accordance with clause 10.3.

10.3 Referral to Mediation

- (a) The CEO and Tjiwarl AC will try to agree upon a mediator, who is a member of a recognised professional mediation group and has experience in the area the subject of the dispute and Aboriginal cultural matters, to mediate the Joint Management Body Dispute.
- (b) If the CEO and Tjiwarl AC cannot agree on a mediator within ten (10) Business Days after a referral under clause 10.2(b)(ii) or 10.2(e), either the CEO or Tjiwarl AC will request the Chairperson of the Resolution Institute to appoint a mediator who has experience in the area the subject of the dispute and Aboriginal cultural matters.

- (c) The CEO and Tjiwarl AC shall engage in the mediation process in good faith and with the aim of resolving the Joint Management Body Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the Joint Management Body Dispute, during or following which, the CEO and Tjiwarl AC may decide the Joint Management Body Dispute.
- (e) Any information or documents disclosed by the CEO and Tjiwarl AC under this clause 10:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Joint Management Body Dispute.
- (f) The CEO and Tjiwarl AC will pay their own costs of complying with this clause 10.3 and they are to equally pay the costs of any mediator, unless otherwise agreed.
- (g) If the CEO and Tjiwarl AC fail to resolve the Joint Management Body Dispute by mediation within twenty (20) Business Days of the appointment of a mediator, or such further time as is agreed by the CEO and Tjiwarl AC, either the CEO or Tjiwarl AC may refer the Joint Management Body Dispute to the Minister under clause 10.4.

10.4 Referral to Minister

- (a) If the CEO and Tjiwarl AC refer the Joint Management Body Dispute to the Minister for a decision, the Minister is to consult with the CEO and Tjiwarl AC regarding how the Joint Management Body Dispute ought to be determined and is to do one of the following:
 - (i) decide the process for determining the Joint Management Body Dispute; or
 - (ii) determine the Joint Management Body Dispute.
- (b) The Minister is not required, when making a determination under clause 10.4(a), to act in accordance with any advice or recommendation made by the CEO or Tjiwarl AC in the course of the consultation process.
- (c) A determination of the Joint Management Body Dispute by the Minister under clause 10.4(a)(ii), or a determination of the Joint Management Body Dispute by the process decided upon by the Minister under clause 10.4(a)(i), is deemed to be a decision of the Joint Management Body.

10.5 Obligations continue

If a Joint Management Body Dispute is being dealt with under any part of this clause 10, the Joint Management Body shall, pending the making of a decision on the Joint Management Body Dispute, continue to perform its obligations under this Agreement so far as circumstances will allow and such performance will be without prejudice to the final decision on the Joint Management Body Dispute.

11. Party Disputes

This clause applies to disputes which are not Joint Management Body Disputes. The Parties are to try and work out disputes by negotiation. If that does not work then this clause sets out a process to work through to try and resolve the dispute, starting with mediation.

11.1 No Court proceedings

If a dispute under this Agreement that is not a Joint Management Body Dispute arises between the Parties (**Party Dispute**), a Party must comply with this clause 11 before commencing court proceedings (except proceedings for urgent interlocutory relief).

11.2 Notification

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

11.3 Parties to resolve Party Dispute

- (a) During the twenty (20) Business Days after a notice is given under clause 11.2 (or such longer period agreed to by the Parties in writing), each Party must use its reasonable endeavours to resolve the Party Dispute.
- (b) If the Parties cannot resolve the Party Dispute within the period referred to in clause 11.3(a), any Party may, by notice in writing, request that the Party Dispute be referred to mediation. If a Party so requests, the Party Dispute must be referred to mediation in accordance with clause 11.4.

11.4 Mediation

- (a) The Parties will try to agree upon a mediator, who is a member of a recognised professional mediation group, to mediate the Party Dispute.
- (b) If the Parties cannot agree on a mediator within ten (10) Business Days after a request under clause 11.3(b), either Party will request the Chairperson of the Resolution Institute to appoint a mediator.
- (c) The Parties shall engage in the mediation process in good faith and with the aim of resolving the Party Dispute.
- (d) The role of the mediator is to assist in negotiating a resolution of the Party Dispute.
- (e) Any information or documents disclosed by the Parties under this clause 11:
 - (i) must be kept confidential; and
 - (ii) may only be used to attempt to resolve the Party Dispute.
- (f) Each Party will pay their own costs of complying with this clause 11 and they are to equally pay the costs of any mediator, unless otherwise agreed.
- (g) If the Parties fail to resolve the Party Dispute by mediation within twenty (20) Business Days of the appointment of a mediator, or such further time as is agreed by the Parties, any Party may take such action as it considers appropriate including, subject to clause 11.4(h), commencing legal proceedings.
- (h) If a Party breaches any of clauses 11.2, 11.3 and 11.4, the other Party does not have to comply with those clauses in relation to the Party Dispute before commencing legal proceedings.

12. Default

This clause sets out what is to happen if a Party does not comply with its obligations under this Agreement. It also sets out how the default is to be fixed and what happens if the default cannot be fixed.

12.1 Events of Default

- (a) A Party (**Defaulting Party**) causes an **Event of Default** for the purpose of this clause 12 where:
- (i) the Party commits a material breach of this Agreement that is incapable of being remedied;
 - (ii) the Party breaches clauses 6.1, 11.1, 13 or 16;
 - (iii) the Party breaches its obligations in clause 9(a) in respect of a Member's obligations under clauses 6.7, 6.8 and 6.9;
 - (iv) the Party breaches its obligations in clause 9(b) in relation to three (3) consecutive Joint Management Body meetings;
 - (v) the Party commits five (5) breaches of their obligations under this Agreement over any twelve (12) month period (whether or not the Defaulting Party has remedied those breaches), provided that notice of those breaches has been given to the Defaulting Party; or
 - (vi) in the case of Tjiwarl AC, an Insolvency Event occurs.
- (b) The Parties agree that a material breach of this Agreement within the meaning of clause 12.1(a)(i) refers to a breach that has a serious or substantial effect on the benefit which the Non-defaulting Party would otherwise have been expected to have if the Defaulting Party's had performed the relevant obligation in accordance with this Agreement.

12.2 Default under clause 12.1(a)(i) to 12.1(a)(v)

- (a) If a Defaulting Party causes an Event of Default referred to in clauses 12.1(a)(i), 12.1(a)(ii), 12.1(a)(iii), 12.1(a)(iv) or 12.1(a)(v), the other Party (**Non-Defaulting Party**) may give a notice (**Default Notice**) to the Defaulting Party specifying the Event of Default.

- (b) On receiving the Default Notice, the Defaulting Party must:
 - (i) where the Event of Default is capable of being remedied:
 - (A) remedy the Event of Default within twenty (20) Business Days; or
 - (B) if the Event of Default cannot reasonably be remedied in twenty (20) Business Days:
 - (I) demonstrate that it is taking steps in good faith to remedy the Event of Default; and
 - (II) continue to take such steps until the Event of Default is remedied,
 - provided that the default must be remedied by no later than three (3) months from the date of the Default Notice; or
 - (ii) where the Event of Default is not capable of being remedied, and within a period of twenty (20) Business Days commencing on the date of the Default Notice, take all steps, to the satisfaction of the Non-Defaulting Party (acting reasonably), to ensure that further breaches of this Agreement do not occur.

12.3 Event of Default under clause 12.1(a)(vi)

- (a) If an Event of Default referred to in clause 12.1(a)(vi) occurs, Tjiwarl AC must, as soon as possible, notify the CEO (the **Non-Defaulting Party**) of:
 - (i) the Insolvency Event;
 - (ii) the appointment of any receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act*) or similar officer (as the case may be); and
 - (iii) subject to clause 12.3(b), when the relevant Insolvency Event ceases to exist.
- (b) If, pursuant to an Insolvency Event, Tjiwarl AC is deregistered or an order is made that Tjiwarl AC be wound up, Tjiwarl AC agrees to take reasonable steps to procure the Tjiwarl People to:
 - (i) take steps to cause a Replacement RNTBC be appointed in accordance with the Native Title Act; and
 - (ii) use reasonable endeavours to have the Replacement RNTBC execute a deed by which it agrees to be bound by the terms of this Agreement.

12.4 Suspension of Obligations

- (a) The Non-Defaulting Party may, by notice in writing to the Defaulting Party, suspend the performance of any of its obligations (other than obligations under clause 13), and the Defaulting Party's rights, under this Agreement:
- (i) where clause 12.2 applies:
 - (A) until clause 12.2(b) is complied with; or
 - (B) the Event of Default no longer exists,
as applicable; or
 - (ii) where clause 12.3 applies (other than where clause 12.3(b) applies), until notice is given to the CEO under clause 12.3(a)(iii) that the relevant Insolvency Event has ceased and the CEO is satisfied that is the case.
- (b) The Non-Defaulting Party must only exercise its power under this clause 12 to suspend its obligations acting reasonably in all the circumstances.

12.5 Duty to Mitigate

A Party must take all reasonable steps open to it to mitigate the effects of an Event of Default.

12.6 Remedies do not prejudice other rights of a Party

Any remedy exercised under this clause 12 is without prejudice to any other rights a Party may have under this Agreement or otherwise at law (including the right to seek interlocutory relief and specific performance).

13. Confidentiality

This clause provides that if a Party discloses information that it has advised the other parties is confidential then it is not to be disclosed except if permitted by this Agreement or by Law. This is also the position for information disclosed by Tjiwarl AC as being gender restricted.

13.1 Between Parties

- (a) Subject to clause 13.1(b), all information disclosed by one Party (**Disclosing Party**) to another Party (**Receiving Party**) during:

- (i) negotiations leading to the execution of this Agreement; and
- (ii) during the Term of this Agreement,

that is identified by the Disclosing Party as confidential, is confidential, must be kept confidential and not disclosed except as permitted by this clause 13 (**Party Confidential Information**).

- (b) Any information disclosed by Tjiwarl AC or Tjiwarl People during negotiations leading up to executing this Agreement, or by Tjiwarl AC or Tjiwarl People during the term of this Agreement, and which is identified as gender sensitive (either men only or women only), shall not be disclosed to a person of the opposite gender, except as permitted by this clause 13.
- (c) The following information is not Party Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (other than by a breach of confidentiality by the Receiving Party or any permitted disclosees).

13.2 Between Members of the Joint Management Body

- (a) Subject to clause 13.2(b), all information disclosed by a Member of the Joint Management Body (**Disclosing Party**) to another Member of the Joint Management Body (**Receiving Party**) during the Term of this Agreement and operation of the Joint Management Body, that is identified by the Disclosing Member as confidential, is confidential, must be kept confidential and not disclosed except as permitted by this clause 13 (**Joint Management Body Confidential Information**).
- (b) The following is not Joint Management Body Confidential Information:
 - (i) information that the Receiving Party, prior to disclosure, already knew or created (whether alone or jointly with any third person) independently of the Disclosing Party; or
 - (ii) information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted disclosees).

- (c) Information identified by Tjiwarl AC as gender restricted (women only) or gender restricted (men only) is Joint Management Body Confidential Information whether or not it meets the requirements of clause 13.2(b)(i) or clause 13.2(b)(ii).

13.3 Permitted disclosure

Subject to clause 13.4, a receiving Party may disclose Confidential Information:

- (a) if it has the prior written consent of the Disclosing Party;
- (b) to the extent required by Law or applicable securities regulation or rule;
- (c) in connection with any dispute or litigation concerning the Agreement or its subject matter;
- (d) to the Receiving Party's members, officers, employees, agents, auditors, advisers, financiers and consultants and related bodies corporate;
- (e) subject to clause 16, to a proposed assignee of Tjiwarl AC's interests, rights and obligations under this Agreement; or
- (f) to any parliamentary or judicial body or any legislative or executive arm of the Government of Western Australia, including disclosure in response to parliamentary questions, ministerial inquiries and inquiries conducted by or on behalf of the Attorney General of the State.

13.4 Disclosure requirements

Before making any disclosure to a person the Receiving Party must:

- (a) in each case, inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Agreement;
- (b) in the case of disclosure under clauses 13.3(b) or 13.3(c), notify the Disclosing Party and give that Party a reasonable opportunity to take any steps that it considers necessary to protect the confidentiality of that information; and
- (c) in the case of a disclosure to a person or entity under clause 13.3(e), ensure that the person or entity executes a deed with the Disclosing Party, in a form acceptable to the Disclosing Party (acting reasonably), imposing on the person an undertaking of confidentiality having substantially similar effect to this clause 13.

13.5 Party may seek injunction

The Parties acknowledge that they are aware that:

- (a) any breach of this clause 13 may result in the other Party suffering loss or damage, for which monetary damages may not be an adequate remedy; and
- (b) for a suspected or actual breach of this clause 13 or any obligation of confidentiality under this Agreement, an adversely affected Party is entitled to seek and obtain injunctive relief or an order for specific performance of the terms of this clause 13.

13.6 No waiver or transfer of intellectual property rights

Disclosure of Confidential Information in connection with this Agreement does not waive or transfer any intellectual property rights in that Confidential Information held by a Disclosing Party.

14. Intellectual Property

No change of ownership which may exist in any Party's intellectual property will occur by it being made available to the Joint Management Body, the Department, the State, Tjiwarl AC or any other party pursuant to this Agreement.

15. Acts By State – No Fetter Upon Discretion

Nothing in this Agreement can fetter or control the exercise by any person of a statutory power or discretion given by a Law otherwise than in accordance with that Law.

16. No Assignment Without Consent

- (a) Tjiwarl AC must not assign, novate or otherwise dispose of its rights, title, obligations and interests under this Agreement without the written consent of the CEO which consent is not to be unreasonably withheld.
- (b) The CEO must consider any request made by Tjiwarl AC in accordance with clause 16(a) in a timely manner.

17. Force Majeure

Force majeure means 'superior or irresistible force'. The term is used in contracts to refer to an event that cannot be reasonably anticipated or controlled, and which prevents a party from complying with its obligations under the contract (e.g. storm, fire, flood, etc.). In this Agreement force majeure includes Aboriginal Cultural Business.

- (a) If because of Force Majeure, a Party (**Affected Party**) becomes wholly or partly unable to perform any of its obligations under this Agreement, then the Agreement nevertheless continues and remains in force subject to this clause 17.
- (b) The Affected Party will not be in default in respect of the obligation that it is unable to perform for as long as such Force Majeure continues, and the time within which the Affected Party is required to perform any work or satisfy any obligation will be extended by the period equivalent to that during which such prevention or delay continues, provided that:
 - (i) the cause of the Force Majeure, as far as possible, must be remedied as soon as is reasonably practicable by the Affected Party; or
 - (ii) if the Force Majeure is Aboriginal Cultural Business, that it is attended to as soon as is reasonably practicable; and
 - (iii) no Party will be required to settle any strike, lockout, or other industrial disturbance on terms that it does not regard as satisfactory.
- (c) The Affected Party must:
 - (i) as soon as reasonably practicable, give notice to the other Parties of the occurrence of the Force Majeure and the likely period of delay. The notice must:
 - (A) specify the obligations it cannot perform;
 - (B) fully describe the event of Force Majeure;
 - (C) estimate the time during which the Force Majeure will continue; and
 - (D) specify the measures proposed to be adopted to address, remedy or abate the Force Majeure or, where the Force Majeure is Aboriginal Cultural Business, the reasonable steps that will be taken to address it;
 - (ii) as soon as reasonably practicable, give notice of the cessation of the delay caused by the Force Majeure; and

- (iii) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations under this Agreement.
- (d) If the Force Majeure cannot be overcome within three (3) months, either Party may, by notice to the other Party, suspend the performance of its obligations (other than obligations under clause 13) and the affected Party's rights under this Agreement, until the Force Majeure has ceased.

18. Review

The CEO and Tjiwarl AC are to review the Agreement if a management plan is to be substituted for the Management Plan or they both agree a review is necessary.

- (a) The Parties must review this Agreement, including assessing its operation and implementation, in the following circumstances (whichever happens first):
 - (i) a substitute management plan for the Management Plan is being prepared for the purposes of Part V Division 1 of the CALM Act; or
 - (ii) the Parties agree that a review is necessary.
- (b) A review under clause 18(a) must be commenced within six (6) months of a circumstance in clause 18(a) occurring.
- (c) The review must be undertaken by persons selected by the Parties in accordance with terms of reference agreed to by the Parties.
- (d) The agreed costs of the review agreed by the Parties are to be met by the CEO.

19. Variation

The Parties may vary this Agreement by a deed of variation executed by both Parties.

20. Notice

20.1 Requirements for giving notices and other communication

Each notice or other communication to be given under this Agreement:

- (a) must be in writing;
- (b) must be delivered to its intended recipient:
 - (i) by prepaid post or by hand to the address in clause 20.2 below or the address last notified by the intended recipient to the sender; or
 - (ii) if the intended recipient has agreed in writing to receive notices or other communications by email, to the email address noted in clause 20.2 or the email address last notified in writing by the intended recipient to the sender;
- (c) subject to clause 20.1(d), will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, seven (7) Business Days after the date of posting; and
 - (iii) if by email, at the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) four (4) hours after the time that the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four (4) hour period, an automated message that the email has not been delivered,
- (d) If the result of clause 20.1(c) is that a notice or other communication would be taken to be given or made on a day that is not a Business Day, or is later than 4.00pm (local time), in the place to which the notice or other communication is sent, it will be taken to have been duly given or made at 9.00am on the next Business Day in that place.

20.2 Addresses for notices and other communications

The address and email for Each Party for the purpose of clause 20.1 is:

CEO (DBCA)

Attention: [insert detail]

Address: [insert detail]

Email Address: [insert detail]

Tjiwarl AC

Attention: [insert detail]

Address: [insert detail]

Email Address: [insert detail]

21. General

21.1 Entire agreement

The Agreement is the entire agreement between all of the Parties as to its subject matter and, as to that subject matter, supersedes any prior understanding or agreement between any of the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

21.2 Governing law and jurisdiction

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

21.3 Severance

If any provisions of the Agreement is void, voidable by any Party, unenforceable or illegal according to the Law in force in the State, it is to be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), are to be severed from the Agreement to the extent necessary unless it would materially change the intended effect and objectives of the Agreement.

21.4 Election and Waiver

A right or power under the Agreement is only to 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.

21.5 Survival

Clauses 1, 11, 13, 20 and 21 (except for clause 21.4) survive termination of this Agreement.

EXECUTED BY THE PARTIES AS AN AGREEMENT

The **COMMON SEAL** of the **CONSERVATION**)
AND LAND MANAGEMENT EXECUTIVE BODY)
a body corporate established under section 36 of the)
CALM Act was affixed hereto in the presence of:)

Signature of Chief Executive Officer

Signature of witness

Date

Full name of witness (print)

Address of witness

Occupation of witness

EXECUTED in accordance with section 99-5 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) on behalf of the **TJIWARL ABORIGINAL CORPORATION (RNTBC) ICN 8628** by:

Director (Signature)

Director (Signature)

Director (print name)

Director (print name)

Date

Date