

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 6**

Land Estate*Parna / Manta*

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1. Overview

This clause summarises what this Schedule is about and explains where to find things in the Schedule.

1.1 Principles and Objectives of this Schedule

- (a) The State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Tjiwarl People.
- (b) The establishment of the Tjiwarl Land Estate under this Schedule provides an opportunity for the Tjiwarl People to achieve sustainable economic, social and cultural outcomes. The State recognises that the creation of an economically and culturally sustainable Tjiwarl Land Estate is in the long term interest of the Tjiwarl People and the Parties.
- (c) The Parties recognise that the creation of the Tjiwarl Land Estate is a fundamental part of the Agreement and all Parties commit to working together to maximise the outcomes in regards to the Tjiwarl Land Estate.
- (d) The State commits to develop a long-term and productive relationship with the Landholding Body to deliver outcomes in the Tjiwarl Land Estate.
- (e) The Parties acknowledge that the creation of the Tjiwarl Land Estate will only reach its full potential if all Parties engage in the process in a spirit of cooperation.
- (f) The State recognises the role of Tjiwarl AC and the Landholding Body in representing the interests and aspirations of the Tjiwarl People.
- (g) The Parties acknowledge that lands considered for Handover under this Schedule are subject to statutory and administrative approvals and considerations applicable to the grant of tenure by the Minister for Lands under the LA Act.
- (h) The Parties agree that they will promptly do all acts necessary, and execute and deliver all documents required by State Law or reasonably requested by another Party, to give effect to this Schedule and the creation of the Tjiwarl Land Estate.

1.2 What this Schedule contains

This Schedule:

- (a) outlines the processes to be followed by the Parties to create the Tjiwarl Land Estate. These processes are illustrated in the flow charts contained in Annexure 2. Land in the Agreement Area has been divided into the following categories:
 - (i) First Stage Lands (see clause 6);
 - (ii) Second Stage Lands (see clause 7);
 - (iii) Cultural Lands (see clause 8); and
 - (iv) Future Lands (see clause 9);
- (b) establishes the Land Estate Working Group (see clause 3.4 and Annexure 1); and
- (c) includes tenure deeds that will reflect the general conditions for Handover of the land to form part of the Tjiwarl Land Estate (see Annexures 4 and 5).

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 rules which help explain the way in which this Schedule should be read to avoid any confusion.

2.1 General Definitions

In this Schedule words and expressions:

- (a) defined in the Native Title Act, including **future act**, have the same meaning when used in this Schedule unless a specific definition in clause 2.2 applies; and
- (b) defined in the LA Act, including **certificate of Crown land title, Crown land, dealing, land, licence, interest, notice of intention, management order, public access route** have the same meaning when used in this Schedule unless a specific definition in clause 2.2 applies.

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, including this Schedule.

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

Application for Charitable Exemption Form means the form published by RevenueWA under section 95(1) of the Duties Act, which, at the time of execution of this Agreement is called “*Transfer Duty - Application for Charitable Exemption on Revenue Form FDA2*”.

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

Conveyance has the meaning given in section 7 of the *Property Law Act 1969* (WA).

Cultural Lands has the meaning given in clause 8.1(a).

DPLH means the department of the public service of the State principally assisting the Minister for Lands in the administration of the LA Act which, at the Execution Date, is the Department of Planning, Lands and Heritage.

DMIRS means the department of the public service of the State principally assisting the Minister for Mines and Petroleum in the administration of the Mining Act and/or the PGER Act which, at the Execution Date, is the Department of Mines, Industry Regulation and Safety.

Duties Act means the *Duties Act 2008* (WA).

Execution Date has the meaning given by clause 1.2 of this Agreement.

First Stage Lands has the meaning given by clause 6.1(a).

First Stage Lands Handover Terms has the meaning given by clause 6.1(b).

Freehold Deed means the deed in the same or substantially the same form as the deed contained in Annexure 4.

Future Lands has the meaning given in clause 9.1.

Handover means:

- (a) the transfer of Crown land in fee simple in accordance with Part 6 of the LA Act;

- (b) the conferral of a management order in accordance with Part 4 of the LA Act; or
- (c) the grant of a leasehold interest in accordance with Part 6 of the LA Act.

Implementation Committee means the committee established under clause 9.2 of the Agreement.

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

Land Estate Working Group means the working group established under clause 3.4.

Landgate means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006* (WA) which is responsible for the registration of dealings relating to land in the register kept pursuant to the TLA.

Land Handover Terms has the meaning given by clause 12.

Landholding Body means:

- (a) Tjiwarl AC; or
- (b) a body (or bodies) that fulfils the Minimum Requirements.

Landholding Body Acceptance is the acceptance by the Landholding Body referred to in clause 12.2.

Land Report has the meaning given by clause 10.2.

List of Future Lands has the meaning given by clause 9.1(b).

List of Second Stage Lands has the meaning given by clause 7.1(b).

Management Order Deed means the deed in the same or substantially the same form as the deed contained in Annexure 5.

Minimum Requirements means those requirements set out in clause 4(c).

Mining Act means the *Mining Act 1978* (WA).

Mining tenement has the meaning given by section 8 of the Mining Act.

Minster 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.

Minister for Mines and Petroleum means the Minister in the Government for the time being responsible for the administration of the Mining Act and the PGER Act.

Parties means, for the purpose of this Schedule, the State, Tjiwarl AC and the Landholding Body.

PGER Act means the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

Second Stage Lands has the meaning given in clause 7.1(a).

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

State Law means any written law of the State of Western Australia, including any regulation, proclamation, ordinance, by-law or other instrument made under any statute.

State Transaction Costs means the costs associated with the Handover of Crown land determined in accordance with this Schedule, being the fees payable in respect of the Handover of land in clause 13, the costs of survey of land, transfer duty and lodgement fees.

Tengraph means the spatial enquiry and mapping system published by DMIRS which displays the position of mining tenements and petroleum titles in relation to other land information.

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 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 Land Estate means land which has been the subject of a Handover to the Landholding Body in accordance with this Schedule.

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

Tjiwarl Transaction Costs means any costs other than the State Transactions Costs associated with the Handover of land in accordance with this Schedule, including, but not limited to:

- (a) any establishment costs, including the provision or relocation of services to the land, including road upgrades, service connections and headworks charges;

- (b) all holding costs, including local government rates and all other taxes or duties that are normally borne by the land holder; and
- (c) any transaction costs associated with any subsequent Transfer of the land, including to related entities to Tjiwarl AC or the Landholding Body.

TLA means the *Transfer of Land Act 1893* (WA).

Transfer includes conveyance.

Transfer Document means a transfer of land in a form approved by the Registrar under the TLA which in substance and form is acceptable to Landgate for the purposes of registration under the TLA.

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 the Agreement apply to this Schedule.

3. The Roles of Parties in this Schedule

This clause sets out the roles of the Parties in this Schedule and establishes the Land Estate Working Group.

3.1 Agency responsible

- (a) DPLH has the responsibility for administering Crown land under the LA Act on behalf of the Minister for Lands.
- (b) DPLH is the agency responsible for coordinating and facilitating the creation of the Tjiwarl Land Estate through this Schedule, whilst also liaising with other departments and agencies as may be required.
- (c) DPLH will work closely with Tjiwarl AC and the Landholding Body to facilitate the creation of the Tjiwarl Land Estate in accordance with this Schedule.
- (d) DPLH will provide regular updates to the Land Estate Working Group on the progress towards creating the Tjiwarl Land Estate.
- (e) In this Schedule, unless otherwise indicated, the State is the State acting through DPLH.

3.2 Role of Landholding Body

The role of the Landholding Body is to:

- (a) accept First Stage Lands Handover Terms in accordance with clause 6.2;
- (b) select land in accordance with clause 10.3;
- (c) accept Land Handover Terms in accordance with clause 12.2;
- (d) execute all documents to effect the Handover of land in accordance with clause 13.3; and
- (e) receive land that is the subject of a Handover in accordance with this Schedule.

3.3 Role of Tjiwarl AC

The role of Tjiwarl AC to give effect to this Schedule is to:

- (a) provide input and assistance to the Landholding Body to enable it to undertake its role in clause 3.2; and
- (b) nominate Cultural Lands in accordance with clause 8.2(a).

3.4 Establishment of the Land Estate Working Group

The Parties agree to establish a Land Estate Working Group to work collaboratively to:

- (a) follow the processes contained in this Schedule with respect to the creation of the Tjiwarl Land Estate; and
- (b) determine the specific requirements for the Handover of land to the Landholding Body in accordance with the Land Estate Working Group Terms of Reference set out in Annexure 1 to this Schedule.

4. Landholding Body

- (a) The Parties acknowledge and agree that the creation of the Tjiwarl Land Estate in this Schedule is subject to the incorporation or other establishment of the Landholding Body.
- (b) The Parties acknowledge and agree that there may be more than one Landholding Body;
 - (i) any reference to the Landholding Body shall be read as relating to each Landholding Body; and

- (ii) except, unless otherwise provided, where a reference to the Landholding Body relates to any of the actions, rights and obligations in this Schedule 6 specific to a Handover, those actions, rights and obligations are to be undertaken by or provided to the Landholding Body that will receive the Handover; and
- (c) The minimum continuing requirements for the Landholding Body under this Schedule until a Handover are that:
 - (i) it must be a legal entity capable of:
 - (A) undertaking the actions in this Schedule;
 - (B) meeting Landgate’s formal requirements for the registration of an interest or right in land; and
 - (C) holding and managing land;
 - (ii) it maintains any required statutory insurances to conduct its operations;
 - (iii) the constituent documents of the Landholding Body must:
 - (A) include an objects clause that specifies that the land is held on behalf of the Tjiwarl People;
 - (B) provide that a majority of the directors to be members of Tjiwarl AC;
 - (C) include the power to undertake any actions required to give effect to the Tjiwarl Land Estate under this Schedule;
 - (D) detail how the Landholding Body makes decisions in relation to the Handover of land into the Tjiwarl Land Estate;
 - (E) address whether any decisions in relation to the Handover of land into the Tjiwarl Land Estate can be delegated;
 - (F) contain an identified process for the transfer of the Tjiwarl Land Estate to pass to an entity for the benefit of the Tjiwarl people in the event that the Landholding body is wound-up or de-registered; and
 - (iv) must provide the State with confirmation annually with respect to solvency and its commitments under this Schedule,

(Minimum Requirements).

- (d) The Parties acknowledge that any Landholding Body that is required to undertake actions to accept First Stage Lands Handover Terms under clause 6.2 of this Schedule must undertake such actions within 12 months of Conclusive Registration.

- (e) In order to support the Landholding Body's obligation in clause 4(d), that Landholding Body will:
 - (i) be incorporated or established within 6 months of Conclusive Registration; and
 - (ii) have had its first annual general meeting in accordance with its constituent documents within 9 months of Conclusive Registration.
- (f) If a Landholding Body is not incorporated or established in accordance with the Minimum Requirements, then all obligations and timeframes in this Schedule with respect to that Landholding Body are suspended until such time as the Minimum Requirements are satisfied.
- (g) If at any time a Landholding Body ceases to meet the Minimum Requirements, the obligations and timeframes in this Schedule with respect to that Landholding Body are suspended until such time as these requirements are satisfied.

5. Quarantine of land and public file notations

5.1 Commitment to quarantine land

The State will quarantine from dealings:

- (a) all First Stage Lands from the Conclusive Registration Date; and
- (b) all Second Stage Lands, Cultural Lands and Future Lands that have been accepted by the Landholding Body in accordance with clause 12.2.

5.2 Quarantine sunset date

- (a) The State will only quarantine First Stage Lands under clause 5.1 until the earlier of:
 - (i) other than where the Landholding Body has complied with its obligations under clauses 6 and 13, 5 years after the Conclusive Registration Date;
 - (ii) the date Handover is effected; or
 - (iii) where Handover cannot proceed under clauses 6.3, 13.4 or 13.5.
- (b) The State will only quarantine Second Stage Lands, Cultural Lands and Future Lands under clause 5.1 until the earlier of:
 - (i) the date Handover is effected; or
 - (ii) where Handover cannot proceed under clauses 11(c), 12.3, 13.4 or 13.5.

5.3 Quarantine measures

The State will quarantine under clause 5.1 by:

- (a) providing notice to all relevant government agencies of the land to be quarantined; and
- (b) lodging with the Registrar of Titles a memorial pursuant to section 17 of the LA Act on those lands with certificates of Crown land titles; and
- (c) where there is no certificate of Crown land title, doing all things necessary to ensure the land is quarantined within DPLH usual processes from time to time.

5.4 File notations

- (a) Within 10 Business Days of the Execution Date, DMIRS will place a public file notation on the First Stage Lands in Tengraph providing notice of the Agreement and the proposed Handover of the First Stage Lands under this Schedule.
- (b) Within 10 Business Days after the Landholding Body provides acceptance of Land Handover Terms under clause 12.2(a)(i), DMIRS will place a public file notation on the relevant land parcels in Tengraph providing notice of the Agreement and the proposed Handover under this Schedule.

6. First Stage Lands

This clause defines what First Stage Lands are and how they are chosen for possible Handover to the Landholding Body.

6.1 Identification of First Stage Lands

The State, Tjiwarl AC and the Landholding Body agree that:

- (a) the **First Stage Lands** are all those Crown land parcels identified in Annexure 3; and
- (b) the terms and conditions on which the First Stage Lands are offered for Handover by the State are those set out in the Freehold Deed and Annexure 3 (**First Stage Lands Handover Terms**).

6.2 Acceptance of First Stage Lands Handover Terms

- (a) Within 9 months of the Conclusive Registration Date, Tjiwarl AC will provide written notice to the State of the Landholding Body for the First Stage Lands.
- (b) Within 12 months of the Conclusive Registration Date, the Landholding Body must provide to the State:
 - (i) a written resolution(s) in accordance with its constituent documents that it accepts the First Stage Lands Handover Terms in respect of each land parcel; and
 - (ii) written notice of its execution clause, signatories, and details of any power of attorney (where relevant) registered at Landgate in respect of each land parcel.
- (c) If the Landholding Body does not provide the notice(s) within the timeframe referred to in clause 6.2(a), the State will provide the Landholding Body with a written notice giving a further 60 Business Days (or such other longer period as agreed by the Parties) to return the notice(s) to the State.
- (d) Following the Landholding Body providing the written resolution and notice under clause 6.2(a) or 6.2(c), the State will undertake the processes in contained in clause 13 (Handover).
- (e) The Parties agree that all the processes contained in clause 13 (Handover) in relation to the First Stage Lands must occur within 5 years after the Conclusive Registration Date and the Parties will work towards concluding all process within that timeframe.

6.3 Where First Stage Lands Handover Terms are not accepted

If the Landholding Body does not accept the First Stage Lands Handover Terms for any parcel of First Stage Lands, the State:

- (a) will no longer be required to quarantine those parcels of First Stage Lands under clause 5.1;
- (b) will not be obligated to ensure that those parcels of First Stage Lands remain available for Handover to the Landholding Body; and
- (c) may deal with those parcels of First Stage Lands without further reference to the Landholding Body or Tjiwarl AC.

7. Second Stage Lands

This clause sets out the process to identify any unallocated Crown lands or unmanaged reserves within the Agreement Area that could be handed over to the Landholding Body. The process is summarised in the Second Stage Lands Flow Chart in Annexure 2.

7.1 Application of this clause

- (a) This clause applies to those Crown land parcels wholly within the Agreement Area which, as at the Conclusive Registration Date, are unallocated Crown land or unmanaged reserve which are not First Stage Lands (**Second Stage Lands**).
- (b) Within 20 Business Days of the Conclusive Registration Date, the State will provide Tjiwarl AC with a list of Second Stage Lands (**List of Second Stage Lands**).

7.2 Process for the identification, selection, approvals and Handover of Second Stage Lands

The Parties each acknowledge and agree that:

- (a) the State and Tjiwarl AC have been involved in a process of identifying those Second Stage Lands, as per the List of Second Stage Lands, which may be eligible for Handover to the Landholding Body;
- (b) the processes in clauses 10 (Identification and Selection), 11 (Approvals), 12 (Land Handover Terms) and 13 (Handover) in relation to Second Stage Lands are to occur within 5 years after the Conclusive Registration Date;
- (c) in order to facilitate the orderly and efficient identification, selection, approvals and Handover of the Second Stage Lands it will be necessary for the processes in clauses 10 to 13 (inclusive) to be staged over 5 years following the Conclusive Registration Date. Accordingly, not all Second Stage Lands will be identified, selected or the subject of a Handover at the same time;
- (d) in the first meeting of the Land Estate Working Group, a schedule for the identification, selection, approvals and Handover of the Second Stage Lands from the List of Second State Lands will be agreed. For the avoidance of doubt, that schedule, or those priorities, may be modified from time to time as agreed by the Land Estate Working Group; and

- (e) in respect of any parcel of Second Stage Lands, the processes contained in clauses 10 (Identification and Selection), 11 (Land Approvals), 12 (Land Handover Terms) and 13 (Handover) will be undertaken in accordance with the schedule, or priorities, agreed by the Land Estate Working Group.

7.3 A freehold transfer after a Handover is effected

- (a) Where a Handover of any parcel of Second Stage Lands has been effected in accordance with this Schedule that is not the transfer of Crown land in fee simple in accordance with Part 6 of the LA Act, at any time after the Handover is effected the Landholding Body of a land parcel may request the State to transfer that Crown land in fee simple in accordance with Part 6 of the LA Act.
- (b) If a request is made by the Landholding Body in accordance with clause 7.3(a), the parties acknowledge and agree it is subject to:
 - (i) the absolute discretion of the Minister for Lands; and
 - (ii) the Landholding Body bearing all costs.

8. Cultural Lands

This clause sets out the process to nominate Cultural Lands and the way in which they may be protected or handed over to the Landholding Body. The process is summarised in the Cultural Lands Flow Chart in Annexure 2.

8.1 Application of this clause

- (a) This clause applies to those areas of Crown land within the Agreement Area which:
 - (i) as at the Conclusive Registration Date are not First Stage Lands or Second Stage Lands (e.g. not unallocated Crown land or unmanaged reserve);
 - (ii) are of cultural, social, spiritual or historical importance to the Tjiwarl People; and
 - (iii) have been nominated as areas of significance under clause 8.1(b) or 8.2(a),
(Cultural Lands).
- (b) As at the Execution Date the following areas have been nominated by Tjiwarl AC and the Tjiwarl People as being Cultural Lands for the purpose of this clause 7:
 - (i) Lake Miranda; and

- (ii) Boolygoo Ranges.
- (c) Tjiwarl AC must provide, prior to the Conclusive Registration Date:
 - (i) the geographic boundaries with GPS coordinates of the Cultural Lands in reference to a map referred to in clause 8.1(b); and
 - (ii) an indication as to whether a Handover of some or all of the Cultural Lands nominated under clause 8.1(b) is being sought or, alternatively, whether some other cultural heritage protection mechanism under State Law is requested.

8.2 Nomination of Cultural Lands

- (a) On and from the Conclusive Registration Date and each anniversary of the Conclusive Registration Date (or as otherwise agreed) for a period of 10 years (or as otherwise agreed between Tjiwarl AC and the State), Tjiwarl AC may, by written notice to the State, nominate areas wholly within the Agreement Area to be Cultural Lands for the purpose of this clause 8.
- (b) Where Cultural Lands are nominated in accordance with clause 8.2(a), Tjiwarl AC is to provide:
 - (i) the geographic boundaries with GPS coordinates of the Cultural Lands in reference to a map; and
 - (ii) an indication as to whether a Handover of some or all of the Cultural Lands is being sought or, alternatively, whether some other cultural heritage protection mechanism under State Law is requested.
- (c) Where Tjiwarl AC requests a Handover as a cultural heritage protection mechanism, the remaining clauses in this clause 8 apply.
- (d) Where Tjiwarl AC requests a cultural heritage protection mechanism that is not a Handover:
 - (i) the State will refer that request to:
 - (A) the Implementation Committee; and
 - (B) the Division or Department principally assisting the Minister for Aboriginal Affairs with the administration of the *Aboriginal Heritage Act 1972* (WA) and /or the *Aboriginal Cultural Heritage Act 2021* (WA) which, at the Execution

Date, is the Heritage and Property Services Division of DPLH, for consideration; and

- (ii) for the avoidance of doubt, the remaining clauses in this clause 8 do not apply.

8.3 Cultural Land Assessment

Where a Handover of Cultural Land is requested under clause 8.2(c):

- (a) Tjiwarl AC will provide the State with written notice of the Landholding Body for the Cultural Lands; and
- (b) the State will provide the Landholding Body with:
 - (i) a list of all interests in the Cultural Lands; and
 - (ii) any land information held on files or registers maintained by DPLH that may be relevant to the acceptance (or otherwise) of the Cultural Land by the Landholding Body,

to support the Landholding Body's selection of the Cultural Land.

8.4 Cultural Land Handover Strategy

Following provision of the information in clause 8.3, the Land Estate Working Group will meet to develop a strategy to facilitate the possible Handover of the Cultural Lands to the Landholding Body.

8.5 Third Party Consent to Cultural Land Handover

- (a) Where the Land Estate Working Group decides on a strategy under clause 8.4 to facilitate the possible Handover of the Cultural Lands the Parties will, within 40 Business Days of the development of the strategy (or such other longer period as agreed by the Parties), jointly seek consent from any third party who may hold an interest in the Cultural Lands, which consent may include:
 - (i) an excision of the Cultural Lands from the relevant interest; or
 - (ii) a surrender of the relevant interest.
- (b) Tjiwarl AC and the Landholding Body each acknowledge and agree that:
 - (i) where a third party does not provide consent under clause 8.5(a), this is final and the State will not seek consent again;

- (ii) the State will not purchase, take or acquire land or any third party interest in land to facilitate the proposed Handover of the Cultural Lands;
- (iii) the State will not pay to remove third party encumbrances over land in order to facilitate the proposed Handover of the Cultural Lands; and
- (iv) it is entirely at the discretion of the third party as to whether any relevant consent is given and the State will not take any action in respect of a third party interest holder who does not consent to the proposed Handover of the Cultural Lands.

8.6 Approvals and Handover of Cultural Lands

Upon receipt of all third party consents required in clause 8.5, the Parties agree the processes set out in clauses 10 (Identification and Selection), clauses 11 (Approvals), 12 (Land Handover Terms) and 13 (Handover) will apply to any parcel of Cultural Lands.

9. Future Lands

This clause sets out the process to identify any lands which may become unallocated Crown land or unmanaged reserve in the future and may then be handed over to the Landholding Body. Land in this category may include Second Stage Lands which did not receive section 16(3) Mining Act approval for a change of tenure. The process is summarised in the Future Lands Flow Chart in Annexure 2.

9.1 Application of this clause

- (a) This clause applies to:
 - (i) those areas of Crown land wholly within the Agreement Area which:
 - (A) as at the Conclusive Registration Date are not unallocated Crown land or unmanaged reserve (e.g. are not First Stage Lands or Second Stage Lands); and
 - (B) at any time after the Conclusive Registration Date become unallocated Crown land or unmanaged reserve; or
 - (ii) Second Stage Lands which did not receive section 16(3) Mining Act approval for a change of tenure,
- (Future Lands).**

- (b) On each anniversary of the Conclusive Registration Date, the State will provide Tjiwarl AC with a list of Future Lands referred to in clause 9.1(a)(i) (**List of Future Lands**).
- (c) Tjiwarl AC may, by notice to the State, request the inclusion on the List of Future Lands any Future Lands referred to in clause 9.1(a)(ii) where the circumstances have materially changed such that the land may receive the necessary section 16(3) Mining Act approval for a change of tenure.

9.2 Identification, selection, approvals and Handover of Future Lands

Upon receipt of the List of Future Lands, the Parties agree the processes in clauses 10 (Identification and Selection), 11 (Approvals), 12 (Land Handover Terms) and 13 (Handover) will apply to the Future Lands.

10. Second Stage, Cultural & Future Land Identification and Selection

This clause sets out how Second Stage Lands, Cultural Lands and Future Lands are identified and chosen for possible Handover to the Landholding Body.

10.1 Eligibility Assessment

- (a) The State will undertake an eligibility assessment of the Second Stage Lands, Cultural Lands or Future Lands (as applicable) to ascertain if each land parcel is eligible for selection by the Landholding Body.
- (b) The Parties agree that the eligibility criteria are that each land parcel must:
 - (i) be wholly located within the Agreement Area;
 - (ii) not be subject to a third party interest;
 - (iii) not be subject to an expression of interest in, or a proposal for a dealing in respect of, the land received by DPLH;
 - (iv) not be subject to a notice of intention to take under section 170 of the LA Act or been taken and designated for a public work under section 161 or section 165 of the LA Act;
 - (v) not be affected by the requirements for land under other State Law that has the effect of excluding the application of the LA Act to that land parcel;

- (vi) not be subject to an existing or proposed government agreement as defined in the *Government Agreements Act 1979* (WA); and/or
 - (vii) have a consideration of legal access in accordance with clause 17.
- (c) In addition to the eligibility criteria in clause 10.1(b), the Parties acknowledge and agree that a land parcel may not, in the absolute discretion of the State, be eligible for Handover where the land may not be fit for purpose including, for example, due to contamination or other health or safety issues, the application of State Law, public access requirements, physical and legal access, and/or geographic constraints.

10.2 Land Report

- (a) Following an eligibility assessment, the State will, on a quarterly basis, provide Tjiwarl AC with a report that will:
- (i) identify whether the land is eligible for selection under clause 10.3, having regard for the criteria in clause 10.1(b) and clause 10.1(c); and
 - (ii) include any land information held on files or registers maintained by DPLH that may be relevant to the acceptance (or otherwise) of the land by the Landholding Body,
- (Land Report)**
- (b) The Land Report is provided by the State to support the Landholding Body's selection of the land and appropriate tenure.

10.3 Land Selection

- (a) If a Land Report identifies that any parcel of Second Stage Lands, Cultural Lands or Future Lands (as applicable) is eligible for selection, Tjiwarl AC must, within 80 Business Days of receiving the Land Report, provide the State with notice of:
- (i) the land selected to be included in the Tjiwarl Land Estate;
 - (ii) except where Tjiwarl AC has provided written notice of the Landholding Body under clauses 6.2(a) or 8.3(a), the Landholding Body for each land parcel; and
 - (iii) the preferred tenure for Handover for each land parcel.
- (b) If Tjiwarl AC does not provide the notice within the timeframe referred to in clause 10.3(a) in respect of any land in a Tjiwarl Land Report, the State will provide Tjiwarl AC with a

written notice giving a further 40 Business Days (or such other longer period as agreed by the Parties) to return the notice to the State.

- (c) Where, after the further period in clause 10.3(b), Tjiwarl AC does not provide notice to the State, then the State:
- (i) will not be obligated to ensure that those land parcels remain available for Handover to the Landholding Body; and
 - (ii) may deal with those land parcels without further reference to the Landholding Body or Tjiwarl AC.

11. Land Approvals

This clause sets out what approvals are needed to support the Handover of Second Stage Lands, Cultural Lands and Future Lands.

- (a) Upon receipt of Tjiwarl AC's tenure selection under clause 10.3(a) or 10.3(b), and on the basis of the tenure preferences provided by the Tjiwarl AC, the State will undertake the statutory and administrative approvals required to support the Handover of that land.
- (b) The statutory and administrative approvals include:
- (i) consultation with local governments under section 14 of the LA Act;
 - (ii) consultation with any State department or agency, as required;
 - (iii) consideration of legal access to the land in accordance with clause 17;
 - (iv) referral to servicing authorities (e.g. water, power, phone) to find out whether there are services or infrastructure on the land that may need protecting;
 - (v) referral for assessment under the *Contaminated Sites Act 2003* (WA); and
 - (vi) approval of the Minister for Mines and Petroleum under section 16(3) of the Mining Act.
- (c) Where the Handover of a land parcel cannot proceed as a result of any statutory and administrative approvals referred to in clause 11(b) not being granted, then the State:
- (i) will not be obligated to ensure that those land parcels remain available for Handover to the Landholding Body; and

- (ii) may deal with those land parcels without further reference to the Landholding Body or Tjiwarl AC.

12. Land Handover Terms

This clause sets out the terms on which Second Stage Lands, Cultural Lands and Future Lands are offered for Handover.

12.1 Provision of the Land Handover Terms

- (a) If the Handover of any parcel of Second Stage Lands, Cultural Lands or Future Lands (as applicable) can proceed, the State will prepare terms and conditions on which those land parcels are offered for Handover (**Land Handover Terms**) and will provide these to the Landholding Body at the Land Estate Working Group to inform and support the Landholding Body's consideration.
- (b) The Land Handover Terms will include, but will not necessarily be limited to:
 - (i) for the transfer of land in fee simple, the Freehold Deed;
 - (ii) for the conferral of a management order over a reserve under Part 4 of the LA Act:
 - (A) the management order over a reserve with the purpose of "Tjiwarl Social, Cultural and/or Economic Benefit", or such other purpose as agreed between the State and the Landholding Body; and
 - (B) the Management Order Deed,
 - (iii) for the grant of a leasehold interest, a deed of lease, the terms and conditions to be agreed between the State and the Landholding Body in accordance with Part 6 of the LA Act;
and will further deal with:
 - (iv) any existing encumbrances and interests; and
 - (v) where required by the administrative and statutory approvals or referrals:
 - (A) any new encumbrances and interests to be created; and
 - (B) any other terms or conditions required having regard to the particular land.

12.2 Acceptance of the Land Handover Terms

- (a) Within 80 Business Days of receiving the Land Handover Terms, the Landholding Body must provide the State with:
 - (i) a written resolution in accordance with its constituent documents that it accepts Land Handover Terms in respect of each land parcel; and
 - (ii) where the execution clause, signatories, and details of any power of attorney (where relevant) registered at Landgate provided under clause 6.2(b)(ii) have changed, the Landholding Body must provide written notice to the State of that change.
- (b) If the Landholding Body does not provide the written resolution and notice within the timeframe referred to in clause 12.2(a), the State will provide the Landholding Body with a written notice giving a further 40 Business Days (or such other longer period as agreed by the Parties) to return the resolution and notice to the State.
- (c) If the Landholding Body accepts the Land Handover Terms for those parcels of the Second Stage Lands, Cultural Lands or Future Lands (as applicable), the State will:
 - (i) undertake the processes contained in clause 13 (Handover) to Handover the land parcel; and
 - (ii) quarantine that land parcel in accordance with clause 5.1.

12.3 Where Land Handover Terms are not accepted

- (a) If the Landholding Body does not accept the Land Handover Terms, the Landholding Body may, within 30 Business Days of receiving the Land Handover Terms, notify the State that it wants to refer that land parcel for a discussion at the next meeting of the Land Estate Working Group. The notice must include:
 - (i) the land parcel details; and
 - (ii) brief written reasons why the Land Handover Terms relating to that land parcel are not accepted.
- (b) The timeframes referred to in clause 12.2 are suspended upon notice being given in accordance with clause 12.3(a).
- (c) Where there is a referral to the Land Estate Working Group under clause 12.3(a), after the meeting of the Land Estate Working Group, the State may provide amended Land

Handover Terms to the Landholding Body and, within 80 Business Days of receiving the Land Handover Terms from the State, the Landholding Body must provide the State with:

- (i) a written resolution in accordance with its constituent documents that it accepts Land Handover Terms in respect of each land parcel; and
 - (ii) where the execution clause, signatories, and details of any power of attorney (where relevant) registered at Landgate provided under clause 6.2(b)(ii) have changed, the Landholding Body must provide written notice to the State of that change.
- (d) If the Landholding Body does not provide the written resolution and notice within the timeframe referred to in clause 12.3(c), the State will provide the Landholding Body with a written notice giving a further 40 Business Days (or such other longer period as agreed by the Parties) to return the resolution and notice to the State.
- (e) If the Landholding Body does not accept the Land Handover Terms for any parcel of Second Stage Lands, Cultural Lands or Future Lands (including where the State has not provided amended Land Handover Terms to the Landholding Body under clause 12.3(c)), the State:
- (i) will not be obligated to ensure that those land parcels remain available for Handover to the Landholding Body; and
 - (ii) may deal with those land parcels without further reference to the Landholding Body or Tjiwarl AC.

13. Handover to Landholding Body

This clause sets out how land is ultimately handed over to the Landholding Body once the Landholding Body has agreed that it wants the land. The process is summarised in the Handover Flow Chart in Annexure 2.

13.1 Application of this clause

For the avoidance of doubt, this clause 13 applies where the Landholding Body has:

- (a) accepted the First Stage Lands Handover Terms under clause 6.2; or
- (b) accepted Land Handover Terms for any parcel of Second Stage Lands, Cultural Lands or Future Lands under clause 12.2,

(the **Landholding Body Acceptance**).

13.2 Land Assembly

Following the Landholding Body Acceptance, the State will undertake all of the relevant land assembly activities required to support the Handover of the relevant land to the Landholding Body as soon as practicable. These activities may include:

- (a) obtaining a land valuation from the Valuer General in accordance with the requirements of the *Land Administration Regulations 1998* (WA);
- (b) obtaining a survey of the land and generation of a deposited plan;
- (c) facilitating the creation of a certificate of title;
- (d) cancelling any reserves under the LA Act;
- (e) identifying and resolving any constraints on the land for transfer;
- (f) taking actions to create legal access to the land in accordance with clause 17;
- (g) resolving any conditions precedent to Handover, such as easements or notifications of title; or
- (h) taking actions to protect public service infrastructure or existing third-party access rights (where this a condition of Handover).

13.3 Document Preparation and Execution

Once the land assembly processes in clause 13.2 are complete:

- (a) Subject to receiving written notice of information required by clause 6.2(b)(ii), 12.2(a)(ii) or 12.3(c)(ii) (as applicable), the State will prepare and submit to the Landholding Body the following documents:
 - (i) where the Handover is a transfer of fee simple:
 - (A) a Freehold Deed;
 - (B) a Transfer Document; and
 - (C) any ancillary documents; or
 - (ii) where the Handover is the conferral of a management order over a reserve under Part 4 of the LA Act:
 - (A) a Management Order Deed;
 - (B) a Management Order; and
 - (C) any ancillary documents; or

- (iii) where the Handover is a grant of leasehold interests in accordance with Part 6 of the LA Act:
 - (A) a deed of lease reflecting the terms and conditions agreed between the State and the Landholding Body; and
 - (B) any ancillary documents.
- (b) The Landholding Body must, within 80 Business Days of receiving the documents provided under clause 13.3(a):
 - (i) execute and return to State the documents provided under clause 13.3(a); and
 - (ii) when requested by the State, provide the State with a certified current company search in respect of the Landholding Body from the relevant corporate regulator.
- (c) If the Landholding Body does not execute and return the documents to the State within the timeframe referred to in clause 13.3(b), the State will provide the Landholding Body with a written notice giving a further 40 Business Days (or such other longer period as agreed by the Parties) to execute and return the documents to the State.
- (d) Within 40 Business Days of receiving all relevant executed documents from the Landholding Body under clause 13.3(b) or 13.3(c), the State will:
 - (i) arrange for the execution of the documents;
 - (ii) subject to clause 18(a), have the documents endorsed for duty pursuant to the Duties Act (if necessary); and
 - (iii) will lodge the documents for registration at Landgate.
- (e) Within 10 Business Days of lodging the documents for registration with Landgate under clause 13.3(d)(iii), the State will notify the Landholding Body of the date on which the documents were lodged and the document number shown on the Landgate lodging slip.
- (f) Where the Handover is a conferral of a management order over a reserve under Part 4 of the LA Act, the Landholding Body will provide insurance required under the management order deed from the date of registration of the documents in clause 13.3(e) in accordance with the terms of the management order deed.
- (g) All timeframes in this clause 13.3 may be extended by the agreement of the State and the Landholding Body.

13.4 Documents not executed

Where the Landholding Body does not execute and return the documents within the timeframe referred to in clause 13.3(b) or 13.3(c), the State:

- (a) will no longer be required to quarantine the relevant land under clause 5.1 (as applicable);
- (b) will not be obligated to ensure that the relevant land remains available for Handover to the Landholding Body; and
- (c) may deal with the relevant land without further reference to the Landholding Body or Tjiwarl AC.

13.5 No penalty or compensation

The Parties each acknowledge that, where circumstances beyond the control of the State materially prevent the State from giving effect to a Handover under this clause 13:

- (a) the State will not be under an obligation to complete the Handover;
- (b) it will not amount to an Event of Default on behalf of the State for the purpose of clause 21 of the Agreement; and
- (c) Tjiwarl AC, the Tjiwarl People and the Landholding Body will not be entitled to any compensation.

13.6 Handover subject to State and Commonwealth laws

- (a) The Handover of land to the Tjiwarl Land Estate in accordance with this Schedule is subject to all relevant State Law and policies, including the LA Act, the Mining Act, the TLA and the *Planning and Development Act 2005* (WA).
- (b) The proposed use and development of the land in the Tjiwarl Land Estate is subject to all relevant State Law and Commonwealth laws and policies.

13.7 Retention of statutory rights and powers

The Handover of land to the Landholding Body as part of the Tjiwarl Land Estate in accordance with this Schedule does not fetter the later exercise of any statutory rights, powers and duties, including the right to take land under Parts 9 and 10 of the LA Act, the revocation of management orders under the LA Act or the forfeiture of a lease under the LA Act.

14. Land costs

This clause says who will pay for the Handover of land to the Landholding Body.

- (a) At the time of Handover to the Landholding Body:
 - (i) the State will meet the State Transaction Costs; and
 - (ii) the Landholding Body will meet the Tjiwarl Transaction Costs.
- (b) For the avoidance of doubt, the State will not pay costs associated with any transaction with respect to the land after Handover. This includes costs associated with a subsequent transfer of that land, including to related entities of Tjiwarl AC or the Landholding Body.

15. Land taken as is

This clause says that land which is taken by the Landholding Body is taken "as is"

At Handover, land will be in its available state ("as is"), including:

- (a) subject to any existing positive or restrictive covenants, interests and easements and other encumbrances;
- (b) the State cannot guarantee the land will be free from contamination;
- (c) the State does not guarantee that the land is otherwise fit for purpose; and
- (d) in relation to any fixtures on the land constructed prior to the Handover, the State makes no representation as to the fitness, condition or safety of those fixtures and the Landholding Body accepts them at the Landholding Body's risk at the time of Handover to the Landholding Body.

16. Section 117 Mining Act

This clause acknowledges the effect of section 117 of the Mining Act when land is handed over to the Landholding Body.

- (a) Where a Handover under this Schedule comprises a Crown grant, transfer of Crown land in fee simple, or conveyance, Tjiwarl AC and the Landholding Body each acknowledge the application and effect of section 117 of the Mining Act to the effect that the Crown grant, transfer of Crown land in fee simple, or conveyance:
 - (i) does not have the effect of revoking or injuriously affecting any existing mining tenement; and
 - (ii) contains an express reservation of the rights to which the holder of the existing mining tenement is entitled.
- (b) Tjiwarl AC and the Landholding Body each acknowledge that, if the Landholding Body should subsequently transfer the land to a third party, section 117 of the Mining Act applies to the same effect described in clause 16(a).

17. Legal Access

- (a) As part of the eligibility assessment in clause 10.1, approvals in clause 11 and land assembly in clause 13.2, the State will assess the legal access of any land parcel.
- (b) Where a land parcel has no legal access, the State will investigate means of creating legal access by:
 - (i) dedication of a road;
 - (ii) amalgamation of land forming an access corridor into adjoining land;
 - (iii) grant of an easement;
 - (iv) creation of a reserve for access purposes; or
 - (v) creation of a public access route.
- (c) Where the State forms a view that legal access cannot be created, the Land Handover Terms will include:
 - (i) an acceptance of the land without legal access;

- (ii) acknowledgement of the limitations of land without legal access; and
 - (iii) appropriate release of the State from any obligation to create legal access in the future and for any loss or liability as a consequence of a Handover without legal access.
- (d) Where a Handover has been effected without legal access, and the Landholding Body makes a written request to the State for legal access, the State will investigate means of creating legal access by:
- (i) dedication of a road;
 - (ii) amalgamation of land forming an access corridor into adjoining land;
 - (iii) grant of an easement;
 - (iv) creation of a reserve for access purposes; or
 - (v) creation of a public access route;
- subject to clause 14(b) and the Landholding Body obtaining any third party consent to the legal access.

18. Transfer Duty

This clause deals with whether transfer duty (often called stamp duty) will need to be paid under this Schedule.

- (a) Following Conclusive Registration, the State will seek assessment of the Agreement by RevenueWA. This will form the basis for a transfer duty exemption being applied to a Handover.
- (b) The Landholding Body must provide all documents required by the State to support the assessment within 20 Business Days of any request or sooner in accordance with any time frame specified by RevenueWA.
- (c) The documents in clause 18(b) include, but are not limited to, the Application for Charitable Exemption Form.

19. 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 and any Annexures to this Schedule may be varied by the agreement of the State, Tjiwarl AC and the Landholding Body, with the variation put in writing and executed by each of those Parties.

20. Notices

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

20.1 Notices under this Schedule

Notwithstanding clause 29.1 of this Agreement, any notice, document 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) subject to clause 20.2, must be delivered to its intended recipient by hand, prepaid post or email to the address in clause 20.3, or to the address the intended recipient last indicated to the sender as a suitable address;
- (d) subject to clause 20.1(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.

20.2 Original Documents

Where a document to be provided under this Schedule is required to be provided as an original document (for example documents for registration with Landgate), it must be delivered to its intended recipient by hand or prepaid post.

20.3 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: Attn: The CEO, Tjiwarl (Aboriginal Corporation) RNTBC
Unit 6, 524 Abernethy Road
Kewdale WA 6105

(b) **For the State:**

- (i) By email: tjiwarlagreement@dplh.wa.gov.au
- (ii) By post: Attn: Native Title Agreements and Partnerships
Implementation Manager
Department of Planning, Lands and Heritage
140 William Street
Perth WA 6000
- (iii) For notices that must be served on the State in accordance with the LA Act: by post (as above) or by facsimile on (08) 6118 8116.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 6 – Annexure 1

Land Estate Working Group Terms of Reference

TJIWARL PALYAKUWA (AGREEMENT)

TERMS OF REFERENCE

Land Estate Working Group

1. Background

- (a) In accordance with clause 3 of the Land Estate Schedule to the Agreement, the Parties have agreed to establish the Land Estate Working Group to:
 - (i) oversee the delivery of the commitments and processes provided in the Land Estate Schedule; and
 - (ii) foster open and regular communication between the State and Tjiwarl AC with respect to the Agreement.
- (b) This document sets out the Terms of Reference of the Land Estate Working Group.
- (c) All capitalised terms are as defined in the Agreement.

2. Aim and Purpose

- (a) The aim and purpose of the Land Estate Working Group is to work collaboratively to oversee and facilitate the delivery of the commitments in the Land Estate Schedule through:
 - (i) providing information to Tjiwarl AC and the Landholding Body to support their decision-making processes;
 - (ii) scheduling (where applicable) the orderly staging of the identification, selection, approvals and Handover of land to the Landholding Body in accordance with the Land Estate Schedule;
 - (iii) establishing the process for the execution of documents by the Landholding Body; and
 - (iv) reporting on the progress of the identification, selection, approvals and Handover of land to the Landholding Body in accordance with the Land Estate Schedule.
- (b) The Land Estate Working Group will be guided by the principles and objectives of the Land Estate Schedule.

3. Membership and Attendees

3.1 Members

The members of the Land Estate Working Group are the Department of Planning, Lands and Heritage (**DPLH**), Tjiwarl AC and any relevant Landholding Body for any land parcel to be considered in a meeting of the Land Estate Working Group.

3.2 Co-chairs

The Land Estate Working Group will be co-chaired by a representative nominated by Tjiwarl AC and a representative from DPLH (the **Co-Chairs**).

3.3 Non Member Attendees

- (a) The Co-Chairs may, as required from time to time, invite representatives of other State agencies, or any person with specialist knowledge, experience or responsibility relevant to the priorities and objectives of the Land Estate Working Group, to attend meetings of the Land Estate Working Group.
- (b) All non-member attendees will be provided with a copy of this Terms of Reference in advance of attending a meeting of the Land Estate Working Group.

4. Meetings

4.1 Attendance & Quorum

- (a) There is an expectation that all members of the Land Estate Working Group will attend all meetings of the Land Estate Working Group.
- (b) The members agree that, for a meeting of the Land Estate Working Group to proceed the following members must be present:
 - (i) the Co-Chairs;
 - (ii) at least two Tjiwarl AC members;
 - (iii) at least one other DPLH representative; and

- (iv) a decision-making quorum in accordance with its constituent documents, of each relevant Landholding Body for any land parcel to be considered in a meeting of the Land Estate Working Group.
- (c) Any member may participate in a meeting through electronic communications, videoconferencing, teleconferencing or other available technology which allows the members to communicate simultaneously. Participation in a meeting through any such form of electronic communication technology constitutes presence in person at the meeting.

4.2 Meeting Agenda

- (a) DPLH will circulate a:
 - (i) draft meeting agenda 10 Business Days prior to a meeting; and
 - (ii) finalised agenda and papers 5 Business Days prior to the meeting.
- (b) The Co-Chairs may choose to allow additional, urgent items to be added to the agenda after the finalised agenda has been circulated by written notice to members of the Land Estate Working Group.

4.3 Frequency and Location of Meetings

- (a) Unless otherwise agreed between the members at a meeting of the Land Estate Working Group, the Land Estate Working Group will meet:
 - (i) quarterly during the first three years following the Conclusive Registration Date on dates to be agreed by the Co-Chairs; and
 - (ii) on dates and at a frequency to be agreed by the Co-Chairs thereafter during the Term of the Agreement but no less than twice each year.
- (b) The Land Estate Working Group will review their commitment and timing for ongoing meetings on the third anniversary of the Conclusive Registration Date and from time to time thereafter as agreed by the Co-Chairs. Following each review, the Co-Chairs must provide an update to the Implementation Committee as to the commitment and timing for ongoing meetings.
- (c) Meetings of the Land Estate Working Group are to be convened in Perth or at a location nominated by Tjiwarl AC as far as is practicable.

4.4 Conduct of Meetings

At a meeting of the Land Estate Working Group, members can expect:

- (a) that DPLH will ensure that Tjiwarl AC and the relevant Landholding Body for any land parcel to be considered in that meeting of the Land Estate Working Group is provided with the relevant information and support to make informed decisions relating to the processes of the Land Estate Schedule;
- (b) that DPLH will provide detailed maps, supporting documents and, where required, presentations to assist members' understanding of the land parcels the subject of each meeting;
- (c) that Tjiwarl AC and relevant Landholding Bodies may be required to consider the land parcels the subject of each meeting;
- (d) to work in a supportive and collegiate manner to achieve the objectives of the Land Estate Schedule and determine any deviation from timeframes as drafted in the Land Estate Schedule; and
- (e) that DPLH will respect relevant Landholding Bodies and Tjiwarl AC's cultural decision-making processes and any decision-making processes required by their constituent documents.

4.5 Costs

Members and attendees of the Land Estate Working Group will each bear their own costs of attendance, including travel and accommodation as required.

4.6 Resolutions

- (a) The Land Estate Working Group is not a decision making body. It is advisory body that provides a forum for collaboration and engagement between Tjiwarl AC and the State. The proceedings of the Land Estate Working Group do not have any power to bind or fetter Tjiwarl AC or the State.
- (b) No resolution will be communicated as advice or recommendations of the Land Estate Working Group unless approved by consensus of the Land Estate Working Group
- (c) Any matters of procedure or membership of the Land Estate Working Group will be determined by the Co-Chairs.

5. Roles and Obligations

5.1 Co-Chair Responsibilities

The Co-Chair's responsibilities include, but are not limited to:

- (a) ensuring the meetings are run in a respectful and culturally appropriate way;
- (b) ensuring all members have opportunities to participate and contribute to the meeting;
- (c) inviting non-member attendees to meetings to provide technical or other advice and assistance, if and when required;
- (d) guiding the meeting according to the agenda and the time available; and
- (e) ensuring all discussion items end with an action or outcome, when required.

5.2 Administrative Support

- (a) Administrative support for the Land Estate Working Group meetings will be provided by DPLH.
- (b) Appropriate records of the Land Estate Working Group will be maintained in accordance with DPLH's obligations under the *State Records Act 2000* (WA) and the *Public Sector Management Act 1994* (WA). These may include:
 - (i) general correspondence with members;
 - (ii) documents and papers circulated for review or comment;
 - (iii) feedback and comments received from members;
 - (iv) records of discussions, meetings or teleconferences, including meeting minutes, papers and agendas; and
 - (v) communiqués (as required and as agreed in writing between the Co-Chairs).

5.3 Conduct of members

All members of the Land Estate Working Group will:

- (a) consider the agenda papers before any meeting;
- (b) carry out allocated action items within the required timeframe; and
- (c) act with integrity, courtesy and respect.

5.4 Conflict of Interest

All members of the Land Estate Working Group will:

- (a) declare any potential, perceived or actual conflict of interest in writing or verbally to the Co-Chairs, at the beginning of the meeting or agenda item;
- (b) remove themselves from any deliberations where such conflicts of interest arise, unless it is decided by the Co-Chairs that the member need not remove themselves;
- (c) ensure any potential, perceived or actual conflict of interest and any action taken in response is recorded in the minutes of meeting; and
- (d) have regard to the principles set out in the WA Public Sector Commission's Good Governance Guide - Conflicts of Interest.

5.5 Confidentiality

- (a) All members are bound by the confidentiality requirements of:
 - (i) the Agreement; and
 - (ii) the organisation that they represent on the Land Estate Working Group.
- (b) Members should identify sensitive or confidential items as they arise when meeting agendas are being prepared and/or during meetings. Members will agree the appropriate treatment of this information on a case by case basis.

6. Communications and Reporting

6.1 General Communications

- (a) To ensure members have all relevant information for the Land Estate Working Group, DPLH will, from time to time, update and confirm the contact list for the members of the Land Estate Working Group.
- (b) Any other information required by the members of the Land Estate Working Group will be provided within the agreed timeframe at the time of request.

6.2 Minutes of Meetings

- (a) DPLH will provide the minutes of each meeting to the members of the Land Estate Working Group via email no later than 20 Business Days after each Land Estate Working Group meeting.
- (b) Members will be given an opportunity to correct and confirm the minutes as the first agenda item at the next subsequent meeting of the Land Estate Working Group.

6.3 Reporting

DPLH will, as required, report on the progress of matters before the Land Estate Working Group to:

- (a) members of the Land Estate Working Group by way of update;
- (b) other agencies across State government where required to support the outcomes of the Land Estate Working Group or the Agreement; and
- (c) the Implementation Committee prior to each Implementation Committee meeting or as otherwise requested by the Implementation Committee.

7. Amendment of the Terms of Reference

- (a) These Terms of Reference may only be amended:
 - (i) by the unanimous agreement of DPLH and Tjiwarl AC; and
 - (ii) where the Implementation Committee has endorsed the amendment agreed by the Land Estate Working Group.
- (b) The Co-Chairs must, within 10 Business Days of any amendment to these Terms of Reference being agreed to by the Land Estate Working Group, provide the Implementation Committee with a copy of the proposed amended Terms of Reference for its consideration.

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 6 – Annexure 2

Land Estate Process Flow Charts

Item A – Second Stage Lands

Item B – Cultural Lands

Item C – Future Lands

Item D – Land Handover

Item A – Process Flow Chart for Second Stage Lands

This flow chart is a simplification of the selection process for Second Stage Lands under the Land Estate Schedule of the Agreement. It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Agreement, the text of the Agreement prevails.

PROCESS FOR THE SELECTION OF SECOND STAGE LANDS

Step 1: LIST OF SECOND STAGE LANDS (Clause 7.1(b))

The State will provide the Landholding Body with a list of Second Stage Lands (land that is unallocated Crown land or unmanaged reserves in the Agreement Area and that are not First Stage Lands)



Step 2: ELIGIBILITY ASSESSMENT (Clause 10.1)

The State will undertake an assessment of Second Stage Lands to ascertain if each land parcel is eligible for selection by the Landholding Body



Step 3: LAND REPORT (Clause 10.2)

The State provides a report indicating if the land is eligible for selection and including any land information to support the Landholding Body's selection of land and tenure



Step 4: LAND SELECTION (Clause 10.3)

Landholding Body advises the State of the land selected and the preferred tenure for each land parcel



Step 5: LAND APPROVALS (Clause 11)

The State undertakes the statutory and administrative approvals required to support the Handover of the land



Step 6: PROVISION OF LAND HANDOVER TERMS (Clause 12.1)

If the Handover of any parcel of Second Stage Lands can proceed, the State will prepare Land Handover Terms and will provide these to the Landholding Body



Step 7: ACCEPTANCE OF LAND HANDOVER TERMS (Clause 12.2)

The Landholding Body provides a written resolution that it accepts the Land Handover Terms in respect of each land parcel



Land Progresses to Land Handover Process (see Flow Chart at Item D)

Item B – Process Flow Chart for Cultural Lands

This flow chart is a simplification of the selection process for Cultural Lands under the Land Estate Schedule of the Agreement. It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Agreement, the text of the Agreement prevails.

PROCESS FOR THE SELECTION OF CULTURAL LANDS

Step 1: NOMINATION OF CULTURAL LANDS (Clause 8.2)

Tjiwarl AC and the Landholding Body jointly nominate land as Cultural Lands, provide geographic boundaries and an indication whether a Handover of the Cultural Lands is sought, or whether some other cultural heritage protection mechanism is requested



Step 2: CULTURAL LAND ASSESSMENT (Clause 8.3)

Where a Handover of Cultural Lands is requested, the State provides the Landholding Body with a list of all existing interests and any relevant land information



Step 3: CULTURAL LAND HANDOVER STRATEGY (Clause 8.4)

The Land Estate Working Group meets to develop a strategy to facilitate the possible Handover of the Cultural Lands to the Landholding Body



Step 4: THIRD PARTY CONSENT TO CULTURAL LANDS HANDOVER (Clause 8.5)

The State, Tjiwarl AC and the Landholding Body jointly seek consent of third party interest holders to the proposed strategy



Step 5: ELIGIBILITY ASSESSMENT (Clause 10.1)

The State will undertake an assessment of Cultural Lands to ascertain if each land parcel is eligible for selection by the Landholding Body



Step 6: LAND REPORT (Clause 10.2)

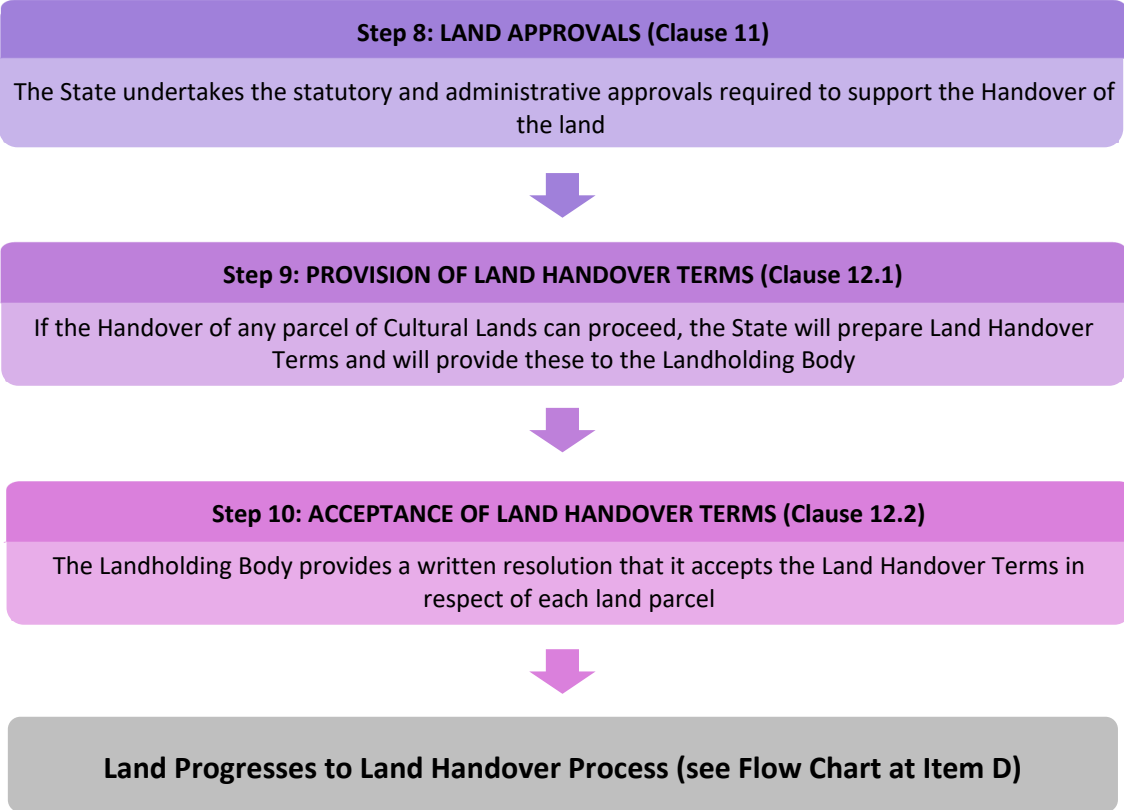
The State provides a report indicating if the land is eligible for selection and including any land information to support the Landholding Body's selection of land and tenure



Step 7: LAND SELECTION (Clause 10.3)

Landholding Body advises the State of the land selected and the preferred tenure for each land parcel





Item C – Process Flow Chart for Future Lands

This flow chart is a simplification of the selection process for Future Lands under the Land Estate Schedule of the Agreement. It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Agreement, the text of the Agreement prevails.

PROCESS FOR THE SELECTION OF FUTURE LANDS



Item D – Process Flow Chart for Land Handover

This flow chart is a simplification of the Land Handover processes under the Land Estate Schedule of the Agreement. It is provided for ease of reference and illustration purposes only. If there is any inconsistency between the flow chart and the text of the Agreement, the text of the Agreement prevails.

LAND HANDOVER PROCESS

Step 1: LAND QUARANTINE

The State to take steps to quarantine land where Land Handover Terms have been offered and accepted



Step 2: LAND ASSEMBLY

The State completes, as soon as practicable, land assembly activities (including conditions precedent) required to support the Handover of the land



Step 3: DOCUMENT PREPARATION AND EXECUTION

The State prepares land Handover documents and provides them to the Landholding Body. The Landholding Body, followed by the State, execute the documents



Step 4: DOCUMENT ASSESSMENT, LODGEMENT & FORMAL HANDOVER

The State has documents assessed for transfer duty (if relevant) and lodges documents with Landgate. Registration of those documents effects the formal handover of the land

TJIWARL PALYAKUWA (AGREEMENT)

SCHEDULE 6 - Annexure 3

First Stage Lands Handover Terms

1. Definitions and Interpretation

1.1 Definitions

PIN means the Polygon Identification Number current as at the Execution Date.

1.2 Interpretation

- (a) Words and expressions used in this Annexure 3 have the same meaning as in the Agreement and the Freehold Deed at Annexure 4 unless otherwise indicated.
- (b) Conditions Precedent will be resolved prior to a Handover.
- (c) Special Conditions will be included in any schedule to the Freehold Deed or Management Order Deed, as the case requires.

2. PIN 781200 – Reserve 13095 (Jones Creek)

In respect of all that land comprising Reserve 13095 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

2.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:
 - (i) the creation of legal access to the Land by the Minister for Lands under the LA Act; or
 - (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and
 - (iii) the Landholding Body acknowledging and agreeing:
 - (A) that the State and the Minister for Lands make no representation or warranty that:

- (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land; and
- (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
- (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
 - (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

2.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees, with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:

- (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
- (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
 - (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

3. PINS 11186640 & 11186641 – UCL (Logan Springs)

In respect of all those Unallocated Crown Land parcels (formally part of Reserve 17675) bound to the north and east by Pastoral Lease N049448 (Mt Keith), bound to the south by Pastoral Lease N049476 (Yakabindie) and bound to the west by Reserve 9699 with approximate centroids of Latitude -27.333345 South, Longitude 120.489071 East and Latitude -27.333889 South, Longitude 120.510452 East (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

3.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) the creation of an easement under section 195 and 196 of the LA Act over that portion that forms part of the Albion Downs-Yeelirrie Road for the purpose of creating a right of way for the public at large.

3.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees:

- (a) the Land is subject to the existing rights and interests under the Easement identified by [xx Easement number] benefiting the public at large for the purpose of access to that portion that forms part of the Albion Downs-Yeelirrie Road; and
- (b) the existing Telstra infrastructure on the Land, pursuant to the *Telecommunications Act 1997* (Cth), and Telstra's statutory right to access its infrastructure for activities including, but not limited to, maintenance and asset replacement from time to time.

4. PIN 1030402 – UCL (Paddy's Bore)

In respect of all that Unallocated Crown Land parcel bound to the south and the west by Pastoral Lease N050557 (Booylgoo Spring), bound to the north by Pastoral Lease N049476 (Yakabindie) and bound to the east by Pastoral Lease N049438 (Leinster Downs) with an approximate centroid of Latitude -27.677139 South, Longitude 120.374479 East (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

4.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:

- (i) the creation of legal access to the Land by the Minister for Lands under the LA Act;
or
- (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and
- (iii) the Landholding Body acknowledging and agreeing:
 - (A) that the State and the Minister for Lands make no representation or warranty that:
 - (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
 - (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
 - (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
 - (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may

be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

4.2 Special Conditions to Handover

The Landholding Body acknowledges and with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:
 - (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
 - (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

5. PIN 1372531 – Portion Reserve 19403 (portion Nuendah)

In respect of all that land comprising the western severance of Lot 126 as shown on Deposited Plan 28500 (Part Reserve 19403) (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

5.1 Conditions Precedent to Handover

The Handover of the Land is subject to a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title.

5.2 Special Conditions to Handover

The Landholding Body acknowledges the existing Telstra infrastructure on the Land, pursuant to the *Telecommunications Act 1997* (Cth), and Telstra's statutory right to access its infrastructure for activities including, but not limited to, maintenance and asset replacement from time to time.

6. PIN 781190 – Reserve 13094 (No. 13 Well)

In respect of all that land comprising Reserve 13094 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

6.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:
 - (i) the creation of legal access to the Land by the Minister for Lands under the LA Act;
or
 - (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and

- (iii) the Landholding Body acknowledging and agreeing:
- (A) that the State and the Minister for Lands make no representation or warranty that:
 - (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
 - (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
 - (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
 - (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

6.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:
 - (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
 - (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

7. PIN 1013094 – Reserve 12207

In respect of all that land comprising Reserve 12207 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

7.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:
 - (i) the creation of legal access to the Land by the Minister for Lands under the LA Act; or
 - (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and
 - (iii) the Landholding Body acknowledging and agreeing:
 - (A) that the State and the Minister for Lands make no representation or warranty that:
 - (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
 - (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
 - (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee

simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:

- (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
- (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
- (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

7.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:
 - (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;

- (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
- (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

8. PIN 1008226 – Reserve 12833

In respect of all that land comprising Reserve 12833 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

8.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:
 - (i) the creation of legal access to the Land by the Minister for Lands under the LA Act; or
 - (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and
 - (iii) the Landholding Body acknowledging and agreeing:
 - (A) that the State and the Minister for Lands make no representation or warranty that:
 - (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;

- (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
 - (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

8.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees that with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:
 - (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;

- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
 - (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
 - (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

9. PIN 11550152 – Reserve 12836

In respect of all that land comprising Reserve 12836 being Lot 390 as shown on Deposited Plan 47701 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed.

10. PINS 1008224 & 1008225 – Reserve 13093

In respect of all that land comprising Reserve 13093 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

10.1 Conditions Precedent to Handover

The Handover of the Land is subject to a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title.

11. PIN 1030399 – Reserve 12835

In respect of all that land comprising Reserve 12835 (**Land**), the Land is offered to the Landholding Body for Handover in fee simple in accordance with Part 6 of the LA Act on the terms and conditions contained in the Freehold Deed and the following:

11.1 Conditions Precedent to Handover

The Handover of the Land is subject to:

- (a) a survey being undertaken for the purposes of the creation of a deposited plan and Certificate of Title; and
- (b) with respect to legal and physical access:
 - (i) the creation of legal access to the Land by the Minister for Lands under the LA Act; or
 - (ii) where, DPLH forms the view that legal access cannot be created, the Landholding Body acknowledging the limitations of land without legal access; and
 - (iii) the Landholding Body acknowledging and agreeing:
 - (A) that the State and the Minister for Lands make no representation or warranty that:
 - (I) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (II) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (III) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
 - (B) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
 - (C) where DPLH forms the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee

simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:

- (I) there is no obligation on the part of the State or the Minister to provide legal access to the Land;
- (II) it is the Landholding Body's responsibility to make its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body can undertake activities on the Land and the Landholding Body warrants that, before accepting these terms, it has done so to its own satisfaction; and
- (III) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

11.2 Special Conditions to Handover

The Landholding Body acknowledges and agrees that with respect to legal and physical access:

- (a) the State and the Minister for Lands make no representation or warranty that:
 - (i) where the Landholding Body has determined native title rights and interests in the Land and its surrounds, that this will provide access to the Land;
 - (ii) the existence or suitability or safety of physical access (if any) to the Land or services to the Land;
 - (iii) where there is physical access to the Land, that this will ensure there is a constructed road, a gravel road, a track or other means of physical access to the Land;
- (b) there is no obligation on the part of the State or the Minister to provide physical access to the Land nor any other services nor to maintain or upgrade physical access or services to the Land, if any; and
- (c) where DPLH has formed the view that legal access cannot be created, the Landholding Body has requested the Minister to transfer the Land in fee simple in accordance with Part 6 of the LA Act without legal access, and the Minister has agreed provided:
 - (i) there is no obligation on the part of the State or the Minister to provide legal access to the Land;

- (ii) the Landholding Body has made its own enquiries about zoning, approvals, permits or authorisations, having regard to the absence of legal access, before the Landholding Body undertakes activities on the Land and the Landholding Body warrants that it has done so to its own satisfaction; and
- (iii) that in addition to the release and indemnity in clause 12.5 of this Deed, the Landholding Body releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to the Land not having legal access.

Tjiwarl Palyakuwa (Agreement)

Overview Map

Legend

-  First Stage Lands
 -  Tjiwarl Palyakuwa (Agreement) - Agreement Area
- #### Land Tenure
-  Freehold
 -  Pastoral Leases
 -  General and Special Purpose Leases
 -  Perpetual and Conditional Purchase Leases
 -  Reserve Leases
 -  Reserves
 -  State Forest
 -  Marine Park
 -  Unallocated Crown Land
 -  Road Survey; Road Lease; Miscellaneous Tenure



Latitude and Longitude based on Geocentric Datum of Australia 2020

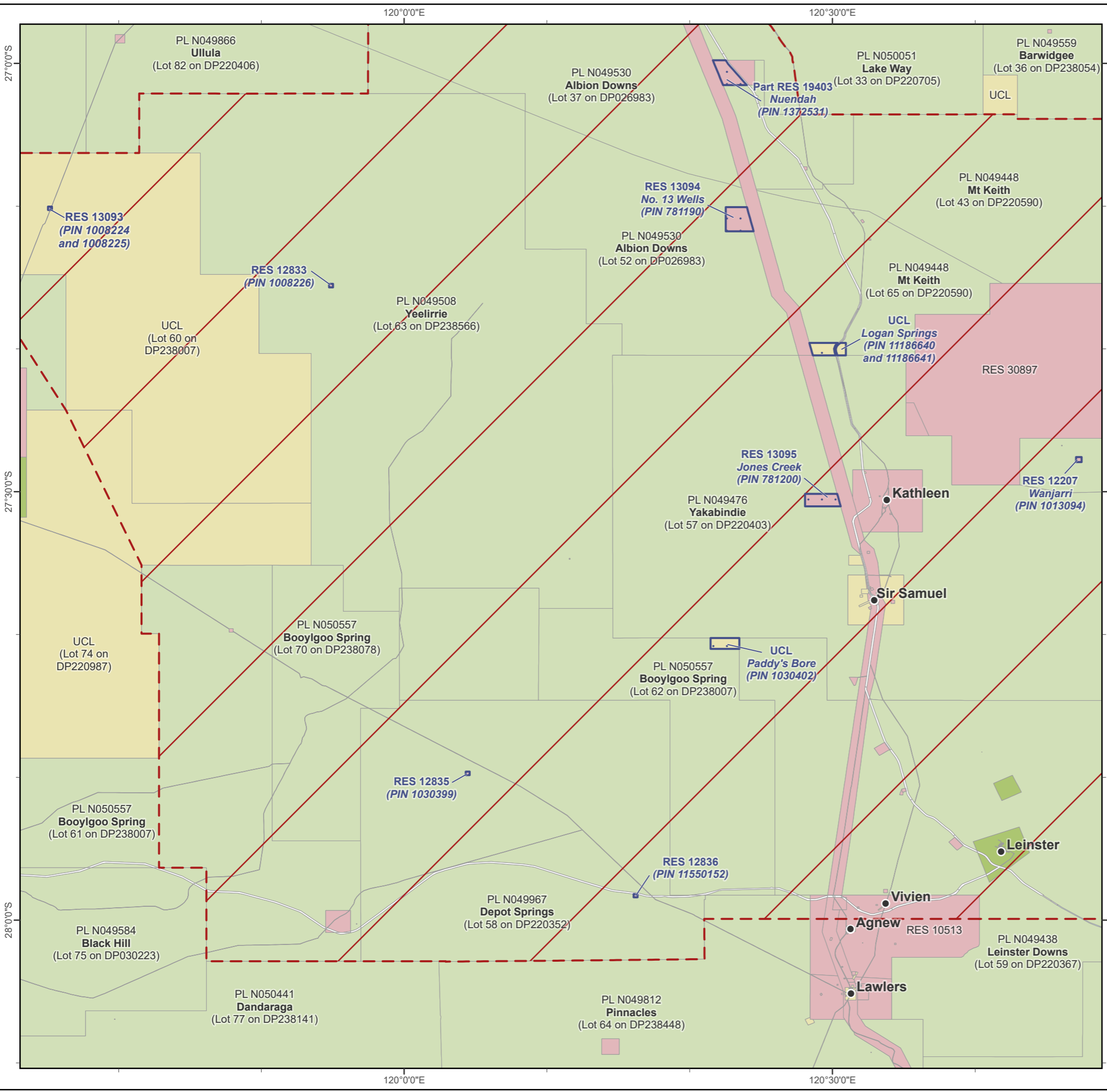
- #### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
 - Mining information: Department of Mines, Industry Regulation and Safety, 12/10/2022
 - Administrative boundaries: Landgate Administrative Boundaries Dataset.
 - Topographical data: PSMA Dataset.
 - Road names: Landgate Road Centreline Dataset.

- #### Data Notes
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Tjiwarl Palyakuwa (Agreement)

Overview Map

Legend

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Latitude and Longitude based on Geocentric Datum of Australia 2020

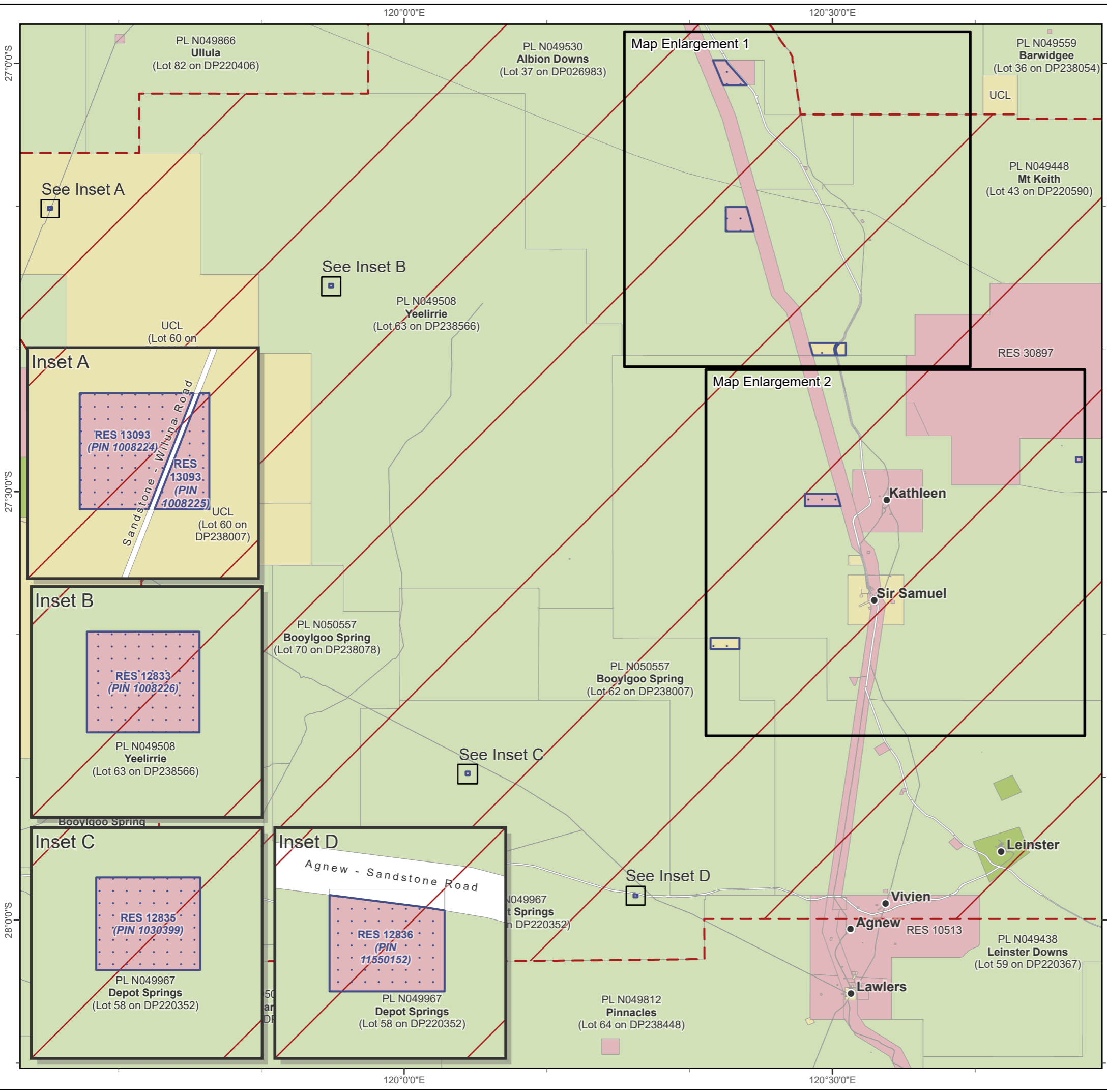
- #### Data Sources
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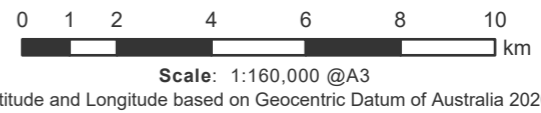


Tjiwarl Palyakuwa (Agreement)

Map Enlargement 1

Legend

-  First Stage Lands
 -  Tjiwarl Palyakuwa (Agreement) - Agreement Area
- #### Land Tenure
-  Freehold
 -  Pastoral Leases
 -  General and Special Purpose Leases
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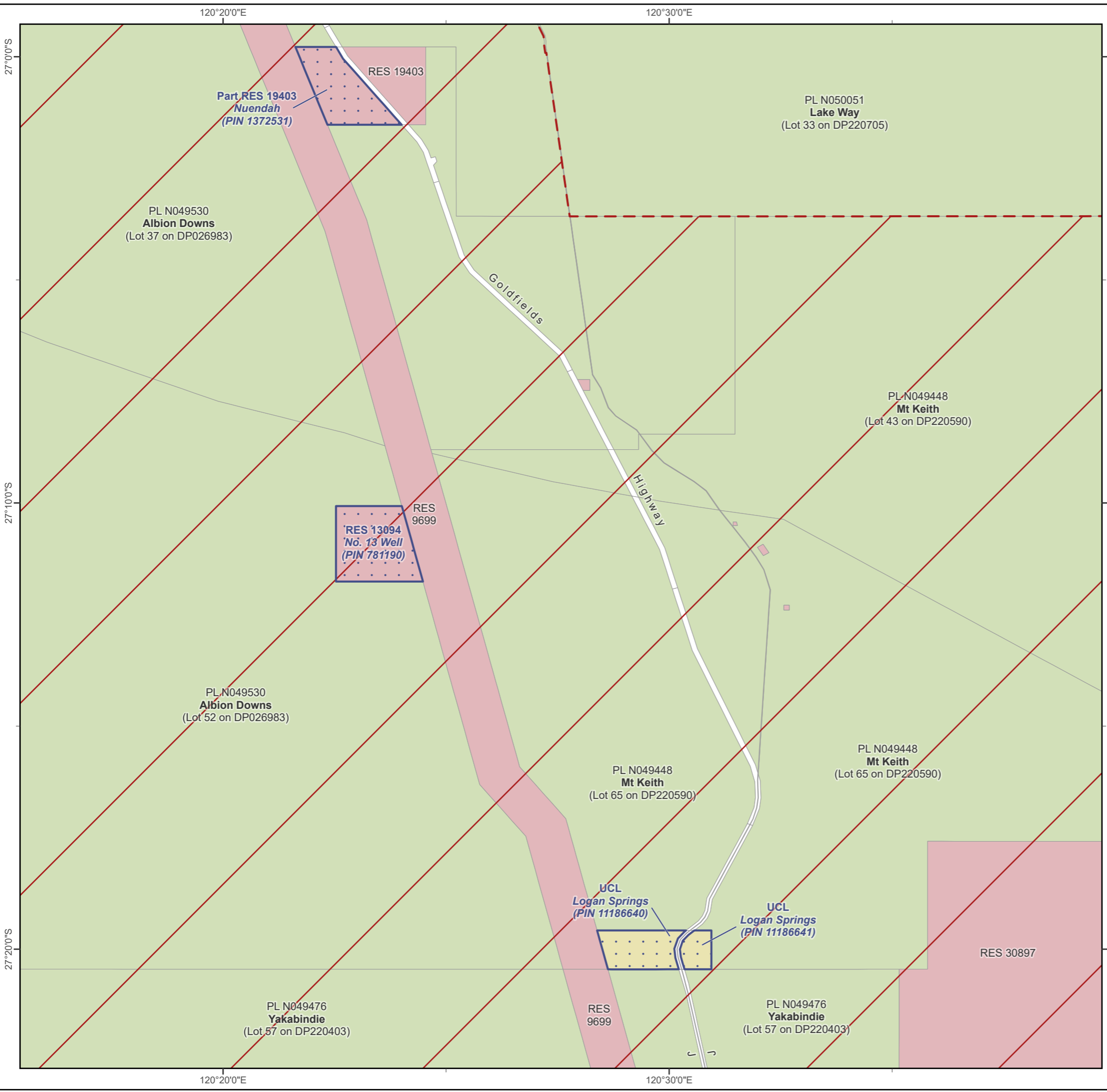
- #### Data Sources
- Cadastral and Tenure information: Landgate Spatial Cadastral Database (SCDB), 28/09/2022.
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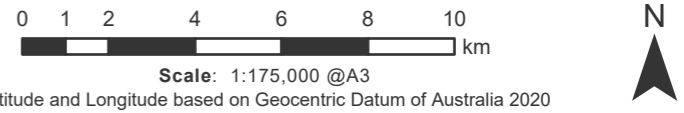


Tjiwarl Palyakuwa (Agreement)

Map Enlargement 2

Legend

-  First Stage Lands
 -  Tjiwarl Palyakuwa (Agreement) - Agreement Area
- ### Land Tenure
-  Freehold
 -  Pastoral Leases
 -  General and Special Purpose Leases
 -  Perpetual and Conditional Purchase Leases
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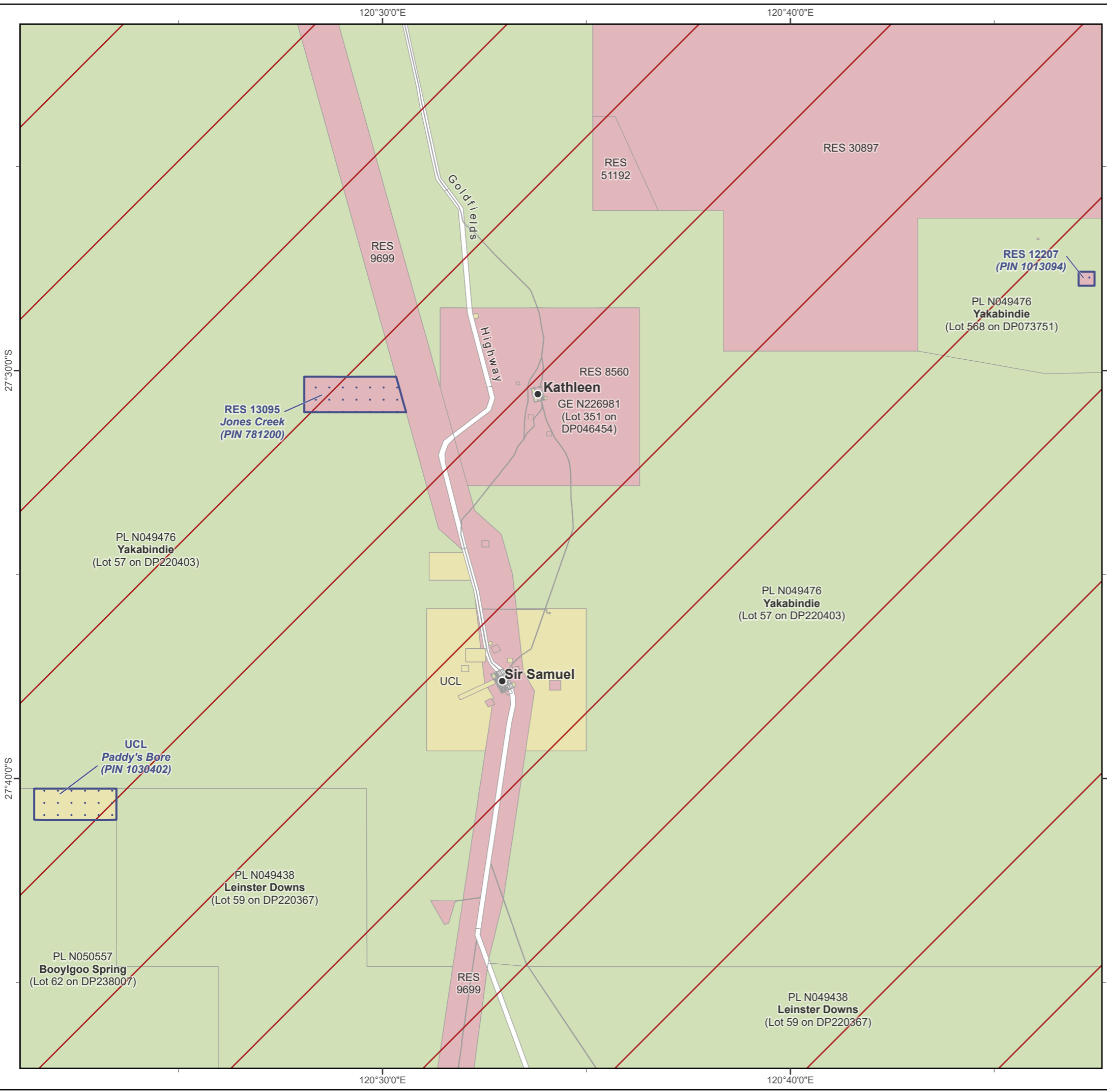
- ### Data Sources
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TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 6 – Annexure 4**

Freehold Deed

THIS DEED is made on the date specified on the cover page

BETWEEN

THE STATE OF WESTERN AUSTRALIA acting through the **MINISTER FOR LANDS**, a body corporate under section 7 of the LAA, care of Department of Planning, Lands and Heritage, 140 William Street, Perth, Western Australia (“**Minister**”)

and

[Tjiwarl Landholding Body] of [registered address]

RECITALS:

- A. [Tjiwarl ILUA Party], the State and the Minister, among others, have entered into the Tjiwarl Palyakuwa Agreement in relation to the Agreement Area.
- B. As part of the Tjiwarl Palyakuwa Agreement the Minister has agreed to the establishment of the Tjiwarl Land Estate which includes the transfer of freehold land to [Tjiwarl Landholding Body] pursuant to section 74 of the LAA.
- C. The Minister and [Tjiwarl Landholding Body] have entered into this Deed which sets out the terms and conditions on which the Minister will transfer Land, as identified in each Schedule, in freehold to [Tjiwarl Landholding Body].

COVENANTS AND CONDITIONS

THE PARTIES AGREE AS FOLLOWS:

1. DEFINED TERMS AND INTERPRETATION

1.1. OTHER DEFINITIONS

In this Deed, unless the contrary intention appears:

Agreement Area means the Agreement Area as defined in the Tjiwarl Palyakuwa Agreement.

Business Day means any day other than Saturday, Sunday or State public holiday in Western Australia.

Claims means actions, claims, proceedings, suits, judgments, demands, losses, damages, costs and expenses, including the costs of defending or settling any action, claim, proceeding, suit or demand.

Competent Authority, in relation to a circumstance mentioned in this Deed, means any Governmental Agency or other person who has responsibility for, or powers, functions or duties in relation to that circumstance under any Law.

Completion means the completion of a Handover in accordance with clause 3.

Completion Date means the date a Handover is effected.

Conclusively Registered has the meaning given in the Tjiwarl Palyakuwa Agreement.

Contaminated has the meaning given in the CSA, and **Contamination** is the state of being Contaminated.

CSA means the *Contaminated Sites Act 2003*.

Date of Commencement means the date specified on the cover page.

Deed means the deed constituted by this document and any amendments or variations of it and includes each Schedule.

DPLH means the Department of Planning, Lands and Heritage of 140 William Street, Perth, Western Australia.

Encumbrance means a mortgage, charge, bill of sale, lien, pledge, easement, reservation, condition, positive covenant, restrictive covenant, memorial (and any conditions or statements contained in the memorial), Notification, building condition, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest (whether registered or unregistered) of any third party affecting the Land or any part of the Land.

Environmental Law means all planning, environmental or Contamination or Pollution Laws and any regulations, orders, directions, ordinances or requirements, permissions, permits or licenses issued thereunder.

EPA means the *Environmental Protection Act 1986*.

Existing mining tenement means any mining tenement within the meaning in the Mining Act that have been granted or acquired by the Date of Commencement.

Governmental Agency means any State, Commonwealth, regional or local government or any governmental, semi-governmental, administrative, public, fiscal or judicial body, department, commission, authority, tribunal, agency, statutory authority or entity including any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, a Law.

GST has the meaning given in section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

Handover means the conveyance of each lot of Land, as identified in each Schedule, held by the State in any of its capacities or agencies, to [Tjiwarl Landholding Body] in freehold.

Interest Rate means the rate determined under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* from time to time.

LAA means the *Land Administration Act 1997*.

Land means each lot of land described in Item 1 of each Schedule (if there is more than one Schedule to this Deed) with all buildings and improvements on the Land.

Landgate means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006* and being the agency or department responsible for the registration of dealings relating to land in the register kept pursuant to the TLA.

Land Handover Terms has the same meaning as defined in the Tjiwarl Palyakuwa Agreement.

Tjiwarl Land Estate has the meaning given in the Tjiwarl Palyakuwa Agreement.

Law includes any requirement of any statute, and any regulation, proclamation, ordinance or by-law issued under that statute, present or future, and whether State, Federal or otherwise.

Mining Act means the *Mining Act 1978* (WA).

Minister means the Minister for Lands, being a body corporate continued under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

Notification means a notification endorsed on the certificate of Crown land title for the Land under section 70A of the TLA.

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

Outgoings means all rates, taxes, assessments, State land tax, Metropolitan Region Improvement Tax, charges (including charges for water consumption and fixed charges), and outgoings (periodic or otherwise) chargeable or payable in respect of the Land.

Party means the Minister or [Tjiwarl Landholding Body] as the case requires.

Pollution means anything that is pollution within the meaning of that term as defined in the EPA that is not authorised under any Law.

Register has the same meaning as defined in the TLA.

Registrar means the Registrar of Titles appointed under section 7 of the TLA.

Schedule means each schedule (if there is more than one schedule) to this Deed, and otherwise means the schedule to this Deed.

Special Conditions means the conditions, in addition to any other terms and conditions contained in this Deed, that are particular to the Land and are listed in Item 3 of each Schedule.

State means the State of Western Australia and any ministers, department and agency, instrumentality and body corporate expressed to be an agent or trustee of the State, and those entities listed in Schedule 1 of the *Public Sector Management Act 1994*.

Tjiwarl Palyakuwa Agreement means the Indigenous Land Use Agreement (pursuant to Part 2, Division 3, Subdivision C of the NTA) which has been Conclusively Registered and is described as [xxx].

TLA means the *Transfer of Land Act 1893*.

Transfer means a transfer of the Land, either as a single lot of Land described in a Schedule or as multiple lots of Land described in two or more Schedules, in a form approved by the Registrar under the TLA from the State to [Tjiwarl Landholding Body], which in substance and form is acceptable to Landgate for the purposes of registration under the TLA.

Trust means [If Tjiwarl's Landholding Body is a Trustee]

Trustee means [If Tjiwarl's Landholding Body is a Trustee]

1.2. INTERPRETATION

In the Deed, unless the context otherwise requires:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Deed or of any provision contained in this Deed;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;

- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses and subclauses, are references to clauses and subclauses of this Deed;
- (g) a reference to a party to this Deed includes that party's successors and permitted assigns and in the case of a natural person also includes that person's personal representatives and administrators;
- (h) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the next Business Day;
- (i) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (j) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (k) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this Deed or any of the provisions of this Deed;
- (l) a reference to any Law includes consolidations, amendments, re-enactments or replacement of it.
- (m) the word "including" is deemed to be followed by the words "but not limited to";
- (n) if a Governmental Agency, whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (o) a reference to the Deed or another instrument includes any variation of either of them;
- (p) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (q) words that are defined in the LAA and used in this Deed have the same meaning given to them under the LAA.

1.3. PERFORMANCE OF POWERS AND DUTIES

[Tjiwarl Landholding Body] acknowledges that:

- (a) any right, duty or power conferred or imposed on the State under this Deed may be exercised or performed by the Minister; and
- (b) under the provisions of the LAA the Minister may, under an instrument of delegation, delegate to a person any right, duty or power which this Deed authorises or requires the Minister to exercise or perform.

1.4. APPLICATION OF THE LAA

The Parties agree that:

- (a) the provisions of the LAA relating to freehold granted pursuant to section 74 of the LAA apply to the Handover of Land to [Tjiwarl Landholding Body] in freehold; and
- (b) the provisions of this Deed do not in any way alter or derogate from the Minister's rights or powers conferred under the LAA.

2. LAND AND ENCUMBRANCES

The Land is offered for transfer in freehold to [Tjiwarl Landholding Body] in accordance with this Deed free of all Encumbrances except:

- (a) as specified in Item 2 of each Schedule in relation to the Land described in Item 1 of the same Schedule; and
- (b) any easement, positive covenant, restrictive covenant, memorial (and any condition or statement contained in the memorial), reservation, condition, building condition or Notification recorded or registered or to be recorded or registered on the certificate of Crown land title for the Land.

3. COMPLETION

3.1. [TJIWARL LANDHOLDING BODY] EXECUTION OF TRANSFER

- (a) DPLH will provide a Transfer to the [Tjiwarl Landholding Body] for execution.
- (b) [Tjiwarl Landholding Body] must execute and deliver to DPLH a Transfer within 40 Business Days of receiving the Transfer from DPLH.
- (c) The period of 40 Business Days referred to in clause 3.1(b) may be extended by agreement in writing between DPLH and [Tjiwarl Landholding Body].
- (d) Where the timeframe specified at clause 3.1(b) has been extended pursuant to clause 3.1(c), any further extensions of time may be agreed in writing between DPLH and [Tjiwarl Landholding Body].
- (e) Where [Tjiwarl Landholding Body] fails to provide a Transfer duly executed by [Tjiwarl Landholding Body] within the timeframe specified at clause 3.1(b) or extended by agreement pursuant to clause 3.1(c) or 3.1(d), the Minister will provide [Tjiwarl Landholding Body] with a written notice of that fact and will provide [Tjiwarl Landholding Body] with a further 40 Business Days to execute and return the Transfer duly executed to DPLH.

3.2. WHERE [TJIWARL LANDHOLDING BODY] DOES NOT EXECUTE TRANSFER

If [Tjiwarl Landholding Body] fails to provide a Transfer duly executed to DPLH within this further period under clause 3.1(e):

- (a) the State and the Minister will no longer be under obligation to quarantine the Land, in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement, the subject of that Transfer from future dealings; and
- (b) the State and the Minister are under no obligation to ensure the Land the subject of that Transfer remains available for Handover to [Tjiwarl Landholding Body].

3.3. CERTIFICATE OF TITLE ACKNOWLEDGEMENT

[Tjiwarl Landholding Body] acknowledge that:

- (a) on the Completion Date, a Certificate of Title for the Land will not exist and the Minister is not obliged to produce to [Tjiwarl Landholding Body] a duplicate Certificate of Title for the Land upon Completion;
- (b) a duplicate certificate of Crown land title for the Land does not exist and will not be delivered by the Minister to [Tjiwarl Landholding Body] upon Completion; and
- (c) a Certificate of Title will be created by the Registrar once the Transfer has been registered in accordance with the provisions of the TLA where the Registrar will endorse on the Certificate of Title the particulars of all dealings

and matters affecting the Land as specified in, or effected by, the Tjiwarl Palyakuwa Agreement, the Land Handover Terms, this Deed and the Transfer.

4. POSSESSION AND RISK

4.1. POSSESSION

Subject to [Tjiwarl Landholding Body] having performed all of its obligations under this Deed, [Tjiwarl Landholding Body] will be entitled to and the Minister will deliver to [Tjiwarl Landholding Body] possession of the Land on the Completion Date.

4.2. RISK

Despite any rule of law or equity to the contrary, the Land is at the risk of [Tjiwarl Landholding Body] from and including the Completion Date.

5. OUTGOINGS

5.1. NO OUTGOINGS ASSESSED ON THE LAND

The Land is not subject to any Outgoings, as the Land is owned by the State.

5.2. NO ADJUSTMENT OF OUTGOINGS

- (a) Consistent with clause 5.1, no Outgoings will be apportioned between the State and [Tjiwarl Landholding Body].
- (b) [Tjiwarl Landholding Body] is responsible for the payment of all Outgoings chargeable or payable in respect of the Land from the Completion Date.

6. GENERAL PROVISIONS

6.1. [TJIWARL LANDHOLDING BODY] ACKNOWLEDGEMENTS

[Tjiwarl Landholding Body] acknowledges and agrees that, except as disclosed in this Deed:

- (a) no warranty or representation has been given or made to, [Tjiwarl Landholding Body] or to anyone on [Tjiwarl Landholding Body]'s behalf, by the State, the Minister, or any agent, employee or contractor of DPLH or any other person on the State's or Minister's behalf as to:
 - (i) the title to the Land;
 - (ii) any Encumbrance, restriction or right in favour of any third party affecting the Land;
 - (iii) the condition or state of repair of the Land or any part of the Land;
 - (iv) the condition or state of repair of the improvements or any part of the improvements on the Land;
 - (v) the suitability of the Land for any use or purpose of any kind;
 - (vi) whether or not the fences (if any) purporting to be on the boundaries are in fact on the proper boundaries of the Land;
 - (vii) whether there is a constructed road, a gravel road, a track or other means of physical access over any dedicated legal access to the Land; and
 - (viii) the existence or suitability or safety of physical access (if any) to the Land;

- (b) any statement, representation or warranty implied by virtue of any statute or otherwise will not apply to, or be implied in this Deed, and any such statement, representation or warranty is excluded to the extent permitted by Law;
- (c) the Land is transferred as it stands with all existing faults, defects or characteristics whether they are apparent or ascertainable on inspection or not and without any obligation on the Minister or the State to disclose or particularise any faults, defects or characteristics known to the Minister or the State;
- (d) [Tjiwarl Landholding Body] is deemed to accept the Handover of Land in reliance on [Tjiwarl Landholding Body]'s own inspection of, and enquiries in relation to, the Land;
- (e) the Minister and the State will not be liable under any circumstances to make any allowance or compensation to [Tjiwarl Landholding Body] for the exclusion of warranties or representations made in this clause 6.1 or for any fault, defect or characteristic in the Land;
- (f) this clause will apply despite the contents of any brochure, document, letter or publication made, prepared by or published by the State, the Minister or DPLH or any other person with the express or implied authority of the State, the Minister or DPLH; and
- (g) there is no obligation on the part of the State or the Minister to:
 - (i) provide physical access to the Land;
 - (ii) maintain or upgrade physical access to the Land;
 - (iii) provide or fund the installation, maintenance, repair or replacement of water, drainage, sewerage, gas, electricity, telephone, internet or other services or connections to the Land; or
 - (iv) clear any rubbish from the Land.

6.2. REQUISITIONS ON TITLE

[Tjiwarl Landholding Body] is not entitled to make any objection to or requisition on the title to the Land, and the State and the Minister will not be obliged to furnish answers to any objection or requisition on the title to the Land delivered by [Tjiwarl Landholding Body], it being acknowledged by [Tjiwarl Landholding Body] that:

- (a) the Land is Crown land within the meaning of the LAA;
- (b) the State is entitled to be recorded as the registered proprietor of the Land by virtue of section 29(5) of the LAA;
- (c) the Minister is authorised pursuant to section 74 of the LAA to transfer Crown land in fee simple; and
- (d) the Land is transferred under section 74 of the LAA and the provisions of the LAA relating to the transfer of Crown land in fee simple apply to the Handover of Land to [Tjiwarl Landholding Body] in freehold.

6.3. NO COMPENSATION

[Tjiwarl Landholding Body] is not entitled to make any objection, requisition or claim for compensation, or to terminate this Deed in respect of:

- (a) the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone, internet or other services or connections to the Land, or in respect of the fact that any services or connections may be joint services to any other

land or because any facilities for services for any other land pass through the Land;

- (b) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
- (c) the location of any sewerage, water or drainage pipes or services affecting the Land, or any sewer that passes through or penetrates the Land;
- (d) the suitability of the Land for any use or purpose of any kind;
- (e) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use Law, scheme or regulation;
- (f) the zoning of the Land and whether it will allow the Land to be used for the Landholding Body's or any subsequent registered proprietor's intended use, whether with the approval or permission of the relevant planning authority or otherwise;
- (g) the fact that any fence on the Land is not on the proper boundaries of the Land; or
- (h) the fact that the area of the Land is different from the area indicated on any plan, brochure or document issued or published by or on behalf of DPLH or Landgate or as indicated on the certificate of Crown land title to the Land.

6.4. PLANNING AND OTHER MATTERS

[Tjiwarl Landholding Body] acknowledges that the Land is transferred subject to the following as at the Completion Date:

- (a) the provision of any town planning scheme, zoning by-laws and other Laws affecting the Land;
- (b) any order or requisition affecting the Land;
- (c) any proposal or scheme for the widening, realignment, closure, siting or alteration of the level of any road or rights of way adjacent to the Land by any Competent Authority or person;
- (d) any resumption or proposal to resume the Land or any part of the Land; and
- (e) any easement, memorial (and any conditions or statement contained in the memorial), Notification, reservation, condition, building condition, positive covenant or restrictive covenant affecting the Land,

and [Tjiwarl Landholding Body] will take title to the Land subject to the above, and [Tjiwarl Landholding Body] will not be entitled to make any objection, requisition, or claim for compensation, or to terminate this Deed in respect of any of the above.

6.5. TRUSTEE'S WARRANTIES [DELETE WHERE TJIWARL CONFIRM NO TRUSTEE]

- (a) Where [Tjiwarl Landholding Body] is a Trustee of a Trust, [Tjiwarl Landholding Body] represents and warrants to the Minister that [Tjiwarl Landholding Body] has the full powers pursuant to its constitution and its deed of trust (generally and together (if more than one) called "the [xxx Trust]") under which it purports to act when entering into this Deed.
- (b) Except where [Tjiwarl Landholding Body] has otherwise disclosed in writing to the Minister and the Minister has given his or her prior written consent to the matter disclosed, [Tjiwarl Landholding Body] further covenants in favour of the State and the Minister that:

- (i) the [xxx Trust] is lawfully and validly constituted and all other instruments in respect of the [xxx Trust] have been properly executed and that the Trust will remain so constituted;
 - (ii) the [xxx Trust] will remain unrevoked and not varied other than with the prior written consent of the Minister, which will not be unreasonably withheld;
 - (iii) the assets of the [xxx Trust] as well as the assets of [Tjiwarl Landholding Body] will at all times be available to satisfy the obligations of [Tjiwarl Landholding Body] under this Deed;
 - (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the [xxx Trust] have been obtained and all necessary conditions precedent for that purpose have been met;
 - (v) no one has taken or threatened nor is [Tjiwarl Landholding Body] aware of any one who is likely to take action to have the [xxx Trust] wound-up or otherwise administered by action brought in any Court or to charge [Tjiwarl Landholding Body] or any person at any time connected with [Tjiwarl Landholding Body] or acting on behalf or purportedly on behalf of [Tjiwarl Landholding Body] with any breach of trust or misappropriation of trust moneys in connection with the [xxx Trust]; and
 - (vi) no facts are known to [Tjiwarl Landholding Body] where the [xxx Trust] might be wound-up voluntarily or otherwise or [xxx Trustee] might be changed or the assets of the [xxx Trust] vested in any other person or the [xxx Trust] may cease to operate or be deprived of funds such that it would be unable to satisfy the obligations of [xxx Trustee] under this Deed.
- (c) The representations and warranties made by [Tjiwarl Landholding Body] under clause 6.5(b)(i) to 6.5(b)(vi) are taken to be made continuously until the Completion Date.

6.5. [TJIWARL LANDHOLDING BODY] WARRANTIES

- (a) [Tjiwarl Landholding Body] represents and warrants to the Minister that [Tjiwarl Landholding Body] has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) Except where [Tjiwarl Landholding Body] has otherwise disclosed in writing to the Minister and the Minister has given his or her prior written consent to the matter disclosed, [Tjiwarl Landholding Body] further covenants in favour of the State and the Minister that:
 - (i) [Tjiwarl Landholding Body] is lawfully and validly constituted and all instruments in respect of [Tjiwarl Landholding Body] have been properly executed and [Tjiwarl Landholding Body] will remain so constituted;
 - (ii) [Tjiwarl Landholding Body]'s constitution will remain unrevoked and not varied other than with the prior written consent of the Minister, which will not be reasonably withheld;
 - (iii) the assets of [Tjiwarl Landholding Body] will at all times be available to satisfy the obligations of [Tjiwarl Landholding Body] under this Deed;

- (iv) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of [Tjiwarl Landholding Body] have been obtained and all necessary conditions precedent for that purpose have been met;
 - (v) no one has taken or threatened nor is [Tjiwarl Landholding Body] aware of any one who is likely to take action to have [Tjiwarl Landholding Body] wound-up or otherwise administered by action brought in any Court or to charge [Tjiwarl Landholding Body] or any person at any time connected with [Tjiwarl Landholding Body] or acting on behalf or purportedly on behalf of [Tjiwarl Landholding Body] with any breach of trust or misappropriation of moneys in connection with [Tjiwarl Landholding Body]; and
 - (vi) no facts are known to [Tjiwarl Landholding Body] where [Tjiwarl Landholding Body] might be wound-up voluntarily or otherwise or the assets of [Tjiwarl Landholding Body] might be vested in any other person or [Tjiwarl Landholding Body] may cease to operate or be deprived of funds such that it would be unable to satisfy the obligations of [Tjiwarl Landholding Body] under this Deed.
- (c) The representations and warranties made by [Tjiwarl Landholding Body] under clause 6.5(b)(i) to 6.5(b)(vi) are taken to be made continuously until the Completion Date.

7. DIVIDING FENCES

7.1. STATE AND MINISTER NOT LIABLE

The State and the Minister will not be liable to [Tjiwarl Landholding Body] or any other party claiming through [Tjiwarl Landholding Body] to contribute to the cost of erecting or repairing any dividing fence whether under the *Dividing Fences Act 1961* or otherwise and [Tjiwarl Landholding Body] will assume any existing liability from and including the Completion Date.

7.2. [TJIWARL LANDHOLDING BODY] TO INDEMNIFY THE STATE AND MINISTER

Clause 7.1 will not prejudice or affect the rights of [Tjiwarl Landholding Body] as between [Tjiwarl Landholding Body] and adjoining owners other than the State, and [Tjiwarl Landholding Body] agrees to indemnify the State and the Minister against all Claims in respect of the cost of erecting or repairing any dividing fence from any current or future owner, whether legal or equitable, of any adjoining land.

8. CAVEATS

8.1. NO LODGEMENT OF CAVEATS

[Tjiwarl Landholding Body] may not lodge a caveat on any Land after entering into this Deed if the Minister has lodged with the Registrar a memorial pursuant to section 17 of the LAA over the Land so as to quarantine the Land from further dealings in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement until the Completion of a Handover to [Tjiwarl Landholding Body].

8.2. WITHDRAWAL OF CAVEAT

- (a) If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date, by or in relation to [Tjiwarl Landholding Body] or [Tjiwarl Landholding Body]'s interest (if any) in the Land, [Tjiwarl Landholding Body] will provide a withdrawal of caveat duly executed to DPLH prior to Completion, for lodgement at Completion.

- (b) If clause (a) is not complied with:
 - (i) the State and the Minister will no longer be under obligation to quarantine the Land, over which there is a caveat, from dealings in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement from future dealings; and
 - (ii) the State and the Minister is under no obligation to ensure the Land over which there is a caveat remains available for Handover to [Tjiwarl Landholding Body].

8.3. CAVEAT LODGED BY OTHER INTERESTS

If a caveat is lodged against the certificate of Crown land title for any Land before the Completion Date (other than a caveat registered by or in relation to [Tjiwarl Landholding Body] or [Tjiwarl Landholding Body]'s interest in the Land), and the Minister is unable to produce to [Tjiwarl Landholding Body] for Completion a withdrawal of the caveat:

- (a) despite any other clause in the Tjiwarl Palyakuwa Agreement or this Deed, the Minister may by written notice to [Tjiwarl Landholding Body] extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the caveat to be withdrawn, removed or lapsed from the Register;
- (b) if the Minister for whatever reason cannot cause the caveat to be withdrawn, removed or lapsed from the Register on or before the extended Completion Date under sub-clause 8.3(a), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is a caveat and there will be no further claim under this Deed or the Tjiwarl Palyakuwa Agreement by either the State or the Minister or [Tjiwarl Landholding Body] against any of the other of them at Law or in equity in respect of the Handover of the Land over which there is a caveat; and
 - (i) the State and the Minister will no longer be under obligation to quarantine the Land, over which there is a caveat, from dealings in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement from future dealings; and
 - (ii) the State and the Minister is under no obligation to ensure the Land over which there is a caveat remains available for Handover to [Tjiwarl Landholding Body].

9. CERTIFICATE OF CROWN LAND TITLE NOT CREATED AND REGISTERED ON THE DATE OF COMMENCEMENT

9.1. APPLICATION

If a certificate of Crown land title for any Land has not been created and registered as at the Date of Commencement, this clause shall apply.

9.2. MINISTER TO APPLY FOR A CERTIFICATE OF CROWN LAND TITLE

The Minister will, at the Minister's expense as soon as practicable after the Date of Commencement, apply to the Registrar for the creation and registration of a separate certificate of Crown land title for the Land.

9.3. MINOR ALTERATIONS

[Tjiwarl Landholding Body] must not unreasonably object to minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown

land title as required by any third party whose consent or approval is required for the creation and registration of a certificate of Crown land title for the Land.

9.4. [TJIWARL LANDHOLDING BODY] TO ACCEPT TITLE

[Tjiwarl Landholding Body] must not refuse to accept title to the Land or make any claim for compensation for minor alterations to the area or boundaries of the Land shown on the relevant plan or the certificate of Crown land title for the Land.

9.5. NOTIFICATION OF CREATION AND REGISTRATION OF THE CERTIFICATE OF CROWN LAND TITLE

The Minister must send a notice notifying [Tjiwarl Landholding Body] in writing within 10 Business Days of the creation and registration of a certificate of Crown land title for the Land.

10. CONNECTIONS TO SEWER

If, at the [Date of Commencement]:

- (a) the Land is not connected to a sewer; and
- (b) the State or the Minister has not received a notice from a Competent Authority requiring the Land to be so connected,

and on or before Completion Date a Competent Authority issues to the State or the Minister a notice requiring the Land to be connected to a sewer, [Tjiwarl Landholding Body] will be responsible for the payment of all costs and expenses payable to the Competent Authority or any other body in respect of that connection.

11. TERMINATION OF HANDOVER

- (a) If for any reason outside of the control of the Minister, for example but without limitation if an injunction is granted, any Land cannot be transferred to [Tjiwarl Landholding Body] on the Completion Date (in this clause an "**Impediment**") and the Impediment is not created, maintained or supported by [Tjiwarl Landholding Body]:
 - (i) the Minister may by written notice to [Tjiwarl Landholding Body] extend the Completion Date by such period not exceeding 60 Business Days as the State shall elect in its absolute discretion to attempt to cause the Impediment to be removed; and
 - (ii) if the Minister for whatever reason cannot cause the Impediment to be removed on or before the extended Completion Date under subclause 11(a)(i), this Deed will be deemed to have come to an end to the extent that it covers Land over which there is an Impediment and there will be no further claim under the Tjiwarl Palyakuwa Agreement by either the State or the Minister or [Tjiwarl Landholding Body] against any of the other of them at Law or in equity in respect of the Handover of the Land over which there is an Impediment;

- (A) the State and the Minister will no longer be under obligation to quarantine the Land from dealings in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement from future dealings; and
 - (B) the Minister is under no obligation to ensure the Land over which there is an Impediment remains available for Handover to [Tjiwarl Landholding Body].
- (b) If the Impediment is created, maintained or supported by [Tjiwarl Landholding Body]:
 - (i) the State and the Minister will no longer be under obligation to quarantine the Land, from dealings in accordance with clause XX of the Schedule 6 of the Tjiwarl Palyakuwa Agreement from future dealings; and
 - (ii) the State and the Minister is under no obligation to ensure the Land over which there is an Impediment remains available for Handover to [Tjiwarl Landholding Body].

12. CONTAMINATION AND RELATED MATTERS

12.1. NO WARRANTY

The State or the Minister makes no representation or warranty:

- (a) as to the nature and extent to which the Land may be affected by any Contamination; and
- (b) that remediation works will not be required to be carried out by [Tjiwarl Landholding Body] for any use which it may make of the Land.

12.2. MEMORIAL

- (a) After the Date of Commencement, the Minister may lodge with the Registrar any other memorial pursuant to section 17 of the LAA over the Land:
 - (i) as specified in the Special Conditions of the relevant Schedule for the Land, which may include a statement warning of any Contamination of the Land or other relevant factors as a hazard or other factor affecting, or likely to affect, the use or enjoyment of the Land; or
 - (ii) as may be imposed by the WA Planning Commission as a condition of approval for subdivision.
- (b) Nothing in subclause (a) impacts on the Minister's power to lodge a memorial over land pursuant to the CSA or any other Act.
- (c) The Parties intend the memorial in subclause (a) to be lodged with the Transfer, but if this does not occur the Parties agree that, notwithstanding clause 14.10, such memorial to be lodged on the Certificate of Title for freehold land, can be lodged after Completion.
- (d) The Minister will provide notice of the intention to lodge a memorial pursuant to subclause (a) with the Transfer when it is sent to [Tjiwarl Landholding Body] for execution or give [Tjiwarl Landholding Body] seven days' notice before such memorial is lodged for registration.
- (e) [Tjiwarl Landholding Body]'s execution of this Deed evidences [Tjiwarl Landholding Body]'s acknowledgement and consent to any action by the Minister in accordance with subclauses (a) and (b) and may be relied upon

as its consent for the purpose of lodging any such memorial, under section 17(1) of the LAA.

12.3. NO COMPENSATION

Without limiting anything in clause 6, [Tjiwarl Landholding Body] agrees and acknowledges and accepts the Land in its present condition including without limitation the presence of any Contamination and shall not make or take any objection, requisition or claim for compensation, or terminate this Deed in relation to the presence of any Contamination in, over or on the Land which is present at, or may become apparent after, Completion.

12.4. [TJIWARL LANDHOLDING BODY] TO ASSUME ALL RESPONSIBILITY

[Tjiwarl Landholding Body] as owner of the Land must at its own cost and expense assume all responsibility for the presence of any Contamination found over, on or in the Land and must to the fullest extent permitted by the Law assume all responsibility for:

- (a) compliance with Environmental Laws;
- (b) the conduct and performance of any work required by any Competent Authority in respect of any Contamination or under any Environmental Laws; and
- (c) any liability under or in connection with or resulting from the presence of any Contamination over, on or in the Land.

12.5. RELEASE AND INDEMNITY

[Tjiwarl Landholding Body] releases and indemnifies and will keep indemnified, the State and the Minister from and against all Claims, compensation, costs of remediation, whatsoever which at any time may be brought, maintained or made against the State or the Minister arising from or relating to:

- (a) the state or condition of the Land;
- (b) any Contamination over, on or in the Land or emanating from the Land; or
- (c) both of the matters covered in subclauses (a) and (b).

13. GOODS AND SERVICES TAX

13.1. INTERPRETATION

Any reference in this clause 13 to a term defined or used in the GST Act is, unless the contrary intention appears, a reference to that term as defined or used in the GST Act.

13.2. AMOUNTS EXCLUSIVE OF GST

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

13.3. GST PAYABLE

- (a) If GST is or becomes payable by a supplier in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (recipient) for a supply from another Party (supplier), the recipient must pay to the supplier the amount of any GST for which the supplier is liable in relation to that supply (additional amount).

- (b) The obligation to pay the additional amount only arises once the supplier has issued a tax invoice (or an adjustment note) to the recipient in respect of the additional amount.
- (c) If a recipient is required under this Deed to reimburse or pay to a supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

14. MISCELLANEOUS

14.1. COSTS AND DUTIES

- (a) Subject to clause 13, the State and the Minister will bear any duties, or fees or taxes of a similar nature, and any related fines and penalties, associated with the registration of this Deed.
- (b) Each Party will bear its own costs including legal costs associated with the negotiation, drafting and execution of this Deed and the Completion of a Handover.

14.2. DEFAULT COSTS AND EXPENSES

- (a) [Tjiwarl Landholding Body] shall on demand pay to the Minister all debts, monies, costs, charges and expenses, including legal costs and expenses on an indemnity basis, incurred or expended by the State or the Minister under or in connection with or by reason of the breach or failure by [Tjiwarl Landholding Body] to observe and perform any of the covenants or conditions on the part of any of them in this Deed or by reason of or in relation to the exercise or attempted exercise by the State or the Minister of the rights, powers and authorities of the State or the Minister under this Deed.
- (b) If any amount payable by [Tjiwarl Landholding Body] under subclause 14.2(a) is not paid within 60 Business Days after it becomes due for payment, [Tjiwarl Landholding Body] is to pay to the Minister interest on demand, on the amount from the due date for payment until it is paid in full.
- (c) Interest is to be calculated on a daily basis, at the Interest Rate.

14.3. DEEMED DELIVERY OF DOCUMENTS

Where in this Deed reference is made to one Party delivering or submitting documents to another Party any such documents will be deemed to have been received:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 5 Business Days after the date of posting.

14.4. NOTICES

Any notice given or required to be given under this Deed:

- (a) must be in writing addressed as shown below:
 - (i) if to the State or the Minister:

Address: Minister for Lands
c/o Department of Planning Lands and Heritage
140 William Street
PERTH 6000
Locked Bag 2506
PERTH WA 6001

Attention: The Director-General

and if by fax to:

fax number: (08) 6118 8116

- (ii) if to [Tjiwarl Landholding Body]:
- (b) must be signed by the sender or an officer of, or under the common seal, of the sender or by the sender's authorised representative (as the case may be);
- (c) is to be regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person, when delivered to the addressee;
 - (ii) if by post (which posting must be by pre-paid security post), 5 Business Days after the date of posting to the addressee; and
 - (iii) if by facsimile transmission:
 - (A) on the date the notice or communication is transmitted in its entirety by a facsimile machine; and
 - (B) that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is to be regarded as being given at 9 am (addressee's time) on the next Business Day and can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct or authorised by the sender.

14.5. MORATORIUM

Unless application is mandatory by Law, a statute, proclamation, order, regulation or moratorium, present or future, is not to apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise affect the rights, powers, privileges, remedies or discretions given or accruing to a Party.

14.6. GOVERNING LAW AND JURISDICTION

- (a) This Deed is governed by, and must be construed according to, the Law applying in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

14.7. SEVERANCE

- (a) If any provision of this Deed is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the Law of any jurisdiction:
 - (i) that will not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
 - (B) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed, and
- (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.
- (b) If a part of this Deed is severed in accordance with subclause 14.7(a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.

14.8. VARIATION OF THIS DEED

This Deed may only be varied by a deed executed by or on behalf of each Party.

14.9. WAIVER

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power; and
- (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.

14.10. PROVISIONS TO SURVIVE COMPLETION

- (a) The benefit of any assumption of liability or responsibility, indemnity, release, representation or warranty, or the exclusion of any representation or warranty, survive Completion.
- (b) Without limitation, to the extent that any obligations under this Deed have not been complied with on or before Completion, those obligations survive Completion and must be complied with.

14.11. FURTHER ACTS AND DOCUMENTS

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by Law or reasonably requested by another Party to give full effect to this Deed and the matters contemplated by it.

14.12. ENTIRE AGREEMENT

To the extent permitted by Law, in relation to its subject matter, this Deed:

- (a) embodies the entire understanding of the Parties and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

EXECUTED as a Deed

Signed for the **STATE OF WESTERN**)
AUSTRALIA for and on behalf of the **MINISTER**)
FOR LANDS by:)

.....

.....
(print full name)

.....
(insert position title)

Department of Planning, Lands and Heritage)
pursuant to a delegation of the Minister for)
Lands' powers under section 9 of the *Land*)
Administration Act 1997 in the presence of:)

.....
Witness signature

.....
Full Name

.....
Occupation

.....
Address

.....

(INSERT execution clause of [Tjiwarl Landholding Body])

TJIWARL PALYAKUWA (AGREEMENT)**SCHEDULE 6 – Annexure 5**

Management Order Deed

THIS DEED is made on the date specified on the cover page.

BETWEEN

THE STATE OF WESTERN AUSTRALIA acting through THE MINISTER FOR LANDS a body corporate under section 7 of the LAA, care of Department of Planning, Lands and Heritage, 140 William Street, Perth, Western Australia (**Minister**)

AND

[TJIWARL LANDHOLDING BODY] (ICN xxx) of [registered address] (**Management Body**)

RECITALS

- A. The State and the Minister, among others, have entered into the Tjiwarl Palyakuwa Agreement in relation to the Agreement Area.
- B. As part of the Tjiwarl Palyakuwa Agreement, the Minister has agreed to the establishment of the Tjiwarl Land Estate which includes the creation of reserves and the making of management orders to the Management Body pursuant to Part 4 of the LAA.
- C. The Minister is authorised pursuant to section 46 of the LAA by order to place the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose, and on such terms and conditions as the Minister may determine.
- D. The Minister will by order place the care, control and management of the Reserve with the Management Body for the Term and on and subject to the provisions of the LAA and Management Order Conditions.
- E. The Minister and the Management Body have entered into this Deed setting out the terms and conditions on which the Minister will issue a Management Order giving the care, control and management of the Reserve to the Management Body.
- F. The Management Body has accepted the care, control and management of the Reserve on the terms and conditions contained in this Deed and Management Order Conditions.

COVENANTS AND CONDITIONS

The Parties agree as follows:

1. DEFINED TERMS AND INTERPRETATION

1.1. MANAGEMENT ORDER DEFINITIONS

Words and phrases defined in the MO Conditions have the same meanings where used in this Deed and appear with an initial capital letter, except where expressly provided otherwise.

1.2. OTHER DEFINITIONS

In this Deed, unless the contrary intention appears:

Deed means the deed constituted by this document and any amendments or variations of it and includes the Schedule and Annexure A.

GST has the same meaning as given in section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations and any legislation or regulations substituting for or amending any of the foregoing.

Management Order Conditions means all the conditions to which the Management Order is subject, being the conditions set out in the MO Conditions and any conditions set out in the Management Order.

MO Conditions means the conditions set out in Annexure A of this Deed.

Party means the Minister or the Management Body as the case requires.

Parties means the Minister and the Management Body.

Schedule means the schedule to this Deed.

1.3. INTERPRETATION

In this Deed, unless the context otherwise requires, the rules of interpretation and definitions defined in the MO Conditions apply.

2. GENERAL CONDITIONS

2.1. On the Date of Commencement the Management Body:

- (a) accepts the care, control and management of the Reserve including on the terms and conditions set out in this Deed; and
- (b) acknowledges and agrees that the conditions to which the Management Order is subject as specified under and for the purposes of section 46(1) of the LAA comprise the Management Order Conditions; and
- (c) covenants to observe and perform the Management Order Conditions.

2.2. The Management Body hereby agrees and consents to the revocation of the Management Order pursuant to section 50(1)(a) of the LAA:

- (a) in the event of a breach of an essential condition of the Management Order Conditions by the Management Body and failure by the Management Body to remedy the breach within 60 Business Days of receiving notice by the Minister or such other period as may be agreed by the Parties, which notice must specify the breach and require the Management Body to remedy it; or
- (b) if the Management Body:
 - (i) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
 - (ii) being a company, or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
 - (iii) being a company, or other body corporate, ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
 - (iv) being a company, is placed under official management under the *Corporations Act 2001* (Cth) or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this subclause (b) applies to any such event that may occur in relation to the Management Body if it is an Aboriginal and Torres Strait Islander corporation

- under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
or
- (v) does not pay any debts, costs, expenses or interest which is payable in accordance with clause 6 of this Deed,
 - (vi) if the Management Body is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and a determination is made by the Registrar under that Act that the Management Body is to be under special administration.
- (c) Nothing in this Deed has the effect of constraining, placing any fetter on or otherwise affecting the power of the Minister to revoke the Management Order without consent under or in accordance with any other provision of the LAA and the Parties agree that any powers of the Minister under this clause 2.2 are in addition to, or in augmentation of, the powers contained in the LAA.
- 2.3.** Subject to clause 2.4, the Management Body hereby consents for the purposes of section 46(2) of the LAA, to the variation of the 14MO Conditions as may be required by the Minister from time to time to ensure good Crown land administration and management, where such variation is consistent with the conditions on which the Minister issues management orders to non-government management bodies prevailing at the time.
- 2.4.** The Minister reserves the right to vary the 14MO Conditions as contemplated under clause 2.3, not more than once every ten years.
- 2.5.** Nothing in this clause affects the operation of section 46 of the LAA and the Parties agree that any powers of the Minister under clauses 2.3 and 2.4 are in addition to, or in augmentation of, the powers contained in the LAA.
- 2.6.** The Minister will provide notice of the variation to the 14MO Conditions, as contemplated under clause 2.3 to the Management Body at least 40 Business Days before the registration of the variation order at Landgate.
- 2.7.** For the avoidance of doubt, nothing in this Deed (including 14MO Conditions), is to be construed as requiring or permitting any person to breach any provision of the LAA.
- 2.8.** If there is any inconsistency between this Deed (including 14MO Conditions) and the provisions of the LAA:
- (a) the LAA will prevail to the extent of the inconsistency; and
 - (b) the Parties must promptly consult with each other and negotiate in good faith, with a view to agreeing any appropriate amendments (if any) to this Deed so that the intent of this Deed may, to the extent possible, be achieved.

3. INDEMNITY, RELEASE AND INSURANCE

3.1. INDEMNITY

- (a) The Management Body hereby covenants with the Minister to indemnify, and keep indemnified, the Indemnified Parties from and against any and all Claims whatsoever which may at any time be brought, maintained, or made against or incurred by any one or more of the Indemnified Parties, whether alone or jointly with others:
 - (i) in respect of or arising from any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property (whether real or personal) of any person whether or not on the Reserve, and including the property of:

- (A) any of the Indemnified Parties;
 - (B) the Management Body or the Management Body's Authorised Users;
 - (C) the lessee, sub-lessee or licensee of the Reserve; or
 - (D) the holders of any Encumbrances on the Reserve and their Authorised Users;
 - (ii) in respect of the death of, injury to or illness of, any person including:
 - (A) any of the Indemnified Parties;
 - (B) the Management Body or the Management Body's Authorised Users;
 - (C) the lessee, sub-lessee or licensee of the Reserve; or
 - (D) the holders of any Encumbrances on the Reserve and their Authorised Users,directly or indirectly caused by or arising out of or in connection with:
 - (iii) the use of the Reserve by the Management Body and the Management Body's Authorised Users;
 - (iv) any work carried out by or on behalf of the Management Body under this Deed;
 - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the Management Body and the Management Body's Authorised Users under this Deed;
 - (vi) any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land caused or contributed to by the Management Body and the Management Body's Authorised Users;
 - (vii) any remediation required in respect of the Relevant Land in compliance with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use of the Relevant Land by the Management Body and the Management Body's Authorised Users;
 - (viii) any default by the Management Body or the Management Body's Authorised Users in the due and punctual performance of or compliance with any of the MO Conditions or the terms, covenants and conditions contained in this Deed, or any other Law that applies to the exercise of the Management Body's rights in respect of the Reserve; or
 - (ix) any negligent or other tortious act or omission of the Management Body or the Management Body's Authorised Users.
- (b) The obligations of the Management Body under this clause 3.1 are unaffected by the obligation to take out insurance, and the obligations of the Management Body to indemnify are paramount.
 - (c) This indemnity will not apply to the extent that a Claim is caused or contributed to by fraud, wilful default or a negligent act or negligent omission on the part of any of the Indemnified Parties.
 - (d) The Indemnified Parties must use reasonable endeavours to mitigate the Claims that may be brought, maintained, or made against or incurred by or

sustained against each of them respectively for which they are indemnified under this clause.

3.2. RELEASE

- (a) The Management Body agrees to take and be subject to the same risks and responsibilities to which it would be subject in respect of persons and property (whether real and personal) if, during the Term, it were the owner and occupier of the land in the Reserve.
- (b) The Management Body releases, to the fullest extent permitted by Law, the Indemnified Parties from:
 - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property (whether real or personal) or death of, injury to, or illness of, any person, of any nature in or near the Reserve;
 - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land at any time during the Term whether or not identified in an audit undertaken by the Management Body; and
 - (iii) without limiting paragraph (i), destruction, loss, injury or damage to the fixtures or personal property of the Management Body or the Management Body's Authorised Users,

except to the extent that such loss or damage is caused or contributed to by fraud, wilful default or a negligent act or omission on the part of any of the Indemnified Parties.

- (c) The release contained in this clause 3.2 continues in full force and effect notwithstanding expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to expiry or revocation of the Management Order or the termination of this Deed.

3.3. INSURANCE

- (a) The Management Body must effect, maintain and keep current each and every Insurance Policy required to be taken out in accordance with condition 4 of the MO Conditions. The requirement to take insurance pursuant to this clause is an essential term of this Deed.
- (b) If the Management Body fails to take out or maintain an Insurance Policy as required under condition 4 of the MO Conditions, the State or the Minister may in their discretion do one or both of the following;
 - (i) at any time take out and maintain the insurance, and the cost incurred by the State or the Minister (as the case may be) will be a debt due from the Management Body; and/or
 - (ii) treat that failure to insure, or failure to maintain insurance, as a breach of an essential condition of the MO Conditions.
- (c) Nothing in subclause (b) affects the obligations to comply with condition 4 of the MO Conditions.

4. YIELDING UP

On the expiry or within two months of the revocation of the Management Order, or such longer period as the Minister allows, the Management Body must, to the reasonable satisfaction of the Minister:

- (a) surrender peaceably and yield up the Reserve to the Minister:
 - (i) clean;
 - (ii) free from rubbish; and
 - (iii) in a state of good repair and condition;
- (b) fill in, consolidate and level off any unevenness, excavation or hole caused by the Management Body or by the Management Body's care, control and management of the Reserve;
- (c) remove any equipment, materials, fixtures, fittings or any other property of the Management Body or the Management Body's Authorised Users on the Reserve as may be required by the Minister;
- (d) remove anything constructed or placed on the Reserve by the Management Body or the Management Body's Authorised Users which is not an Authorised Improvement;
- (e) remove any Authorised Improvement, excluding any Authorised Improvements which existed on the Reserve as at the Date of Commencement, at the request of the Minister;
- (f) promptly make good any damage caused by the removal in subclauses (c), (d) or (e); and
- (g) promptly make good and rehabilitate the Reserve and remediate any Contamination, Pollution or Material Environmental Harm of or to the Relevant Land arising from, or connected with the care, control and management of the Reserve by the Management Body or the Management Body's Authorised Users whether such use and occupation is or was under the terms of the Management Order or some other lease, licence or agreement.

5. REMEDY MANAGEMENT BODY'S DEFAULT

- (a) The Minister may (unless any clause specifically provides otherwise), but is not obliged to, remedy any default by the Management Body in performing or complying with the MO Conditions or this Deed provided the Minister has given the Management Body at least 30 Business Days' prior notice.
- (b) Notwithstanding subclause (a), the Minister is not required to give any notice to the Management Body before entering onto the Reserve to remedy any default by the Management Body:
 - (i) if the Minister is of the opinion those works are required as a matter of urgency including for the protection of persons or property (whether real or personal); or
 - (ii) where the Minister is remedying any default by the Management Body in performing or complying with clause 4 of this Deed.

6. RECOVER COSTS AND INTEREST FROM MANAGEMENT BODY

6.1. RECOVER COSTS

If the Minister carries out any works under sub-condition 7.2(b) of the MO Conditions which it is the Management Body's obligation to do under the Management Order or remedies a default under clause 5 of this Deed, the Management Body is to pay to the Minister on demand all debts, costs and expenses, including legal costs and expenses, incurred by the Minister as a result of carrying out those works or remedying that default.

6.2. INTEREST

- (a) If any amount payable by the Management Body under subclause 6.1 is not paid within 30 Business Days after it becomes due for payment, the Management Body is to pay to the Minister interest on demand, on the amount from the due date for payment until it is paid in full.
- (b) Interest is to be calculated on a daily basis, at the Interest Rate.
- (c) Nothing in this clause affects or prejudices any other right that the State or the Minister may have in respect of the Management Body's failure to pay any amount by the due date for payment.

7. CONTINUATION OF CERTAIN RIGHTS AND OBLIGATIONS

7.1. CONTINUATION OF THE MO CONDITIONS

The conditions contained in condition 4 of the MO Conditions continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

7.2. CONTINUATION OF RIGHTS AND OBLIGATIONS OF DEED AFTER EXPIRY OR REVOCATION OF MANAGEMENT ORDER

The rights and obligations under clauses 2, 3, 4, 5 and 6 of this Deed continue after the expiry or revocation of the Management Order in respect of any act, deed, matter or thing occurring before the expiry or revocation of the Management Order.

7.3. CONTINUATION OF RIGHTS AND OBLIGATIONS – DEED

The rights and obligations under clauses 2, 3, 4, 5 and 6 continue even if, for any reason, this Deed comes to an end in respect of any act, deed, matter or thing occurring before the Deed comes to an end.

8. GENERAL PROVISIONS

8.1. EXCLUSION OF WARRANTIES

The Management Body acknowledges having inspected the Reserve that, in entering into this Deed and accepting management of the Reserve, the Management Body has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by Law and which cannot be contracted out of) by or on behalf of the State or the Minister whether express or implied, other than the statements, representations and warranties expressly set out in this Deed.

8.2. SUITABILITY AND SAFETY OF RESERVE

- (a) The State or the Minister do not represent or warrant that:
 - (i) the Reserve is suitable to be used for the Reserve Purpose;
 - (ii) any Improvements on the Reserve on the Date of Commencement are suitable to be used for the Reserve Purpose;

- (iii) the Reserve may lawfully be used for the Reserve Purpose; or
 - (iv) the zoning of the Reserve will allow the Reserve to be used for the Reserve Purpose, whether with the approval or permission of the relevant planning authority or otherwise.
- (b) Without affecting the generality of subclause (a), it is the Management Body's responsibility to make its own enquiries about zoning and the Management Body warrants that, before executing this Deed, the Management Body has done so to its own satisfaction.
- (c) The Management Body acknowledges that:
 - (i) other approvals and permissions may be required before the Management Body can undertake activities that are otherwise in accordance with the Reserve Purpose; and
 - (ii) having satisfied themselves that the Reserve is suitable and safe to be used for the Reserve Purpose, they agree to take all measures necessary to ensure that the Reserve remains safe and free from hazards to the Management Body and all persons entering the Reserve.
- (d) There is no obligation on the State or the Minister to provide or fund the installation, maintenance, repair or replacement of any Services on or to the Reserve.

8.3. CONTAMINATION, POLLUTION OR ENVIRONMENTAL HARM

- (a) The State or the Minister make no representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.
- (b) The Management Body relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Reserve.
- (c) There is no obligation on the part of the State or the Minister to clear any rubbish from the Reserve.

8.4. ACCESS TO THE RESERVE

- (a) Where there is dedicated legal access to the Reserve, the State or the Minister make no representation or warranty that this will ensure there is a constructed road, a gravel road, a track or other means of physical access over the dedicated legal access to the Reserve.
- (b) The State or the Minister make no representation or warranty as to the existence or suitability or safety of physical access (if any) to the Reserve.
- (c) There is no obligation on the State or the Minister to provide physical access to the Reserve nor to maintain or upgrade physical access to the Reserve, if any.

8.5. MANAGEMENT BODY'S WARRANTIES

- (a) The Management Body represents and warrants to the Minister that the Management Body has the full powers pursuant to its constitution under which it purports to act when entering into this Deed.
- (b) Except where the Management Body has otherwise disclosed in writing to the Minister and the Minister has given his or her prior written consent to the

matter disclosed, the Management Body further covenants in favour of the State and the Minister that:

- (i) the Management Body is lawfully and validly constituted and all other instruments in respect of the Management Body have been properly executed, and that the Management body will remain so constituted;
 - (ii) the assets of the Management Body will at all times be available to satisfy the obligations of the Management Body under this Deed;
 - (iii) the consents or approvals of all parties necessary to execute this Deed so as to bind the property of the Management Body have been obtained and all necessary conditions precedent for that purpose have been met;
 - (iv) no one has taken or threatened nor is the Management Body aware of any one who is likely to take action to have the Management Body wound-up or otherwise administered by action brought in any Court or to charge the Management Body or any person at any time connected with the Management Body or acting on behalf or purportedly on behalf of the Management Body; and
 - (v) no facts are known to the Management Body where the Management Body might be wound-up voluntarily or otherwise or the assets of the Management Body vested in any other person or the Management Body may cease to operate or be deprived of funds prior to expiration of the Term.
- (c) The Management Body further covenants in favour of the State and the Minister that it will disclose to the Minister within 20 Business Days in writing if the Management Body or an Officer of the Management Body becomes aware of any action to have the Management Body wound-up, or takes action to be voluntarily wound up, or otherwise administered by action brought in any Court or a charge is brought against the Management Body or an Officer of the Management Body or any person acting on behalf or purportedly on behalf of the Management Body with in connection with the Management Body.
- (d) The representations and warranties made by the Management Body under clauses 8.5(b)(i) to (iv) and 8.5(c) are taken to be made continuously throughout the Term.

9. NOTICES

9.1. SERVICE OF NOTICES ON THE MANAGEMENT BODY OR THE TRUSTEE

Any notice or other document to be served on the Management Body under this Deed will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

9.2. SERVICE OF NOTICES ON THE MINISTER

Any notice or other document to be served on the State or the Minister under this Deed may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at Item 1 of the Schedule or at such other address most recently notified to the Management Body by the Department; or

- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out at Item 1 of the Schedule or to such other address or facsimile number most recently notified to the Management Body by the Department.

9.3. REQUIREMENTS OF NOTICES ON THE MINISTER

A notice or other document to be served on the Minister under this Deed must be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

10. GOODS AND SERVICES TAX

10.1. INTERPRETATION

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

10.2. AMOUNTS EXCLUSIVE OF GST

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

10.3. GST PAYABLE

- (a) If GST is or becomes payable by a Supplier in relation to any supply that it makes under, in connection with or resulting from this Deed, the Parties agree that, in addition to any consideration provided by a Party (Recipient) for a supply from another Party (Supplier), the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (additional amount).
- (b) The obligation to pay the additional amount only arises once the Supplier has issued a tax invoice (or an adjustment note) to the Recipient in respect of the additional amount.
- (c) If a Recipient is required under this Deed to reimburse or pay to a Supplier an amount calculated by reference to a cost, expense or an amount paid or incurred by that Supplier, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which the Supplier is entitled in respect of any acquisition relating to that cost, expense or other amount.

11. GENERAL

11.1. COSTS AND DUTIES

- (a) Subject to GOODS AND SERVICES TAX, the State will bear any duties, or fees or taxes of a similar nature, and any related fines and penalties, associated with the registration of this Deed.
- (b) Each Party will bear its own costs including legal costs associated with the negotiation, drafting and execution of this Deed.

11.2. GOVERNING LAW AND JURISDICTION

- (a) This Deed is governed by, and must be construed according to, the Law applying in the State of Western Australia.

- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.

11.3. SEVERANCE

- (a) If any provision of this Deed is or becomes void, voidable by any Party, unenforceable, invalid or illegal in any respect under the Law of any jurisdiction:
 - (i) it will not affect or impair:
 - (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
 - (B) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed; and
 - (ii) the provision will be read down so as to be legal, valid and enforceable or, if it cannot be so read down, the provision (or where possible the offending words), will be severed from this Deed to the extent necessary unless it would materially change the intended effect and objectives of this Deed.
- (b) If a part of this Deed is severed in accordance with subclause (a), the Parties will attempt to renegotiate, in good faith, that part and seek to achieve a result as near as reasonably practicable as is consistent with the intention of the severed component.

11.4. VARIATION OF THIS DEED

Except as provided for in subclauses 2.3 and 2.4 of this Deed, this Deed may only be varied by a deed executed by or on behalf of each Party.

11.5. WAIVER

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

- (a) no other conduct of a Party (including a failure to exercise, a delay in exercising or a partial exercise of a right or power or any forbearance or indulgence granted by one Party to another Party in respect of a right or power) operates as a waiver of the right or power or otherwise prevents the exercise of that right or power;
- (b) a waiver of a right or power on one or more occasions by a Party does not operate as a waiver of that right or power if it arises again in the future or prejudices that Party's other rights or powers or future rights or powers in respect of the right or power waived;
- (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.

11.6. NO MERGER

The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

11.7. FURTHER ACTS AND DOCUMENTS

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by Law or reasonably requested by another Party to give full effect to this Deed and the matters contemplated by it.

11.8. ENTIRE AGREEMENT

To the extent permitted by Law, in relation to its subject matter, this Deed and the Management Order:

- (a) embody the entire understanding of the Parties, and constitute the entire terms agreed by the Parties; and
- (b) supersede any prior written or other agreement of the Parties.

SCHEDULE OF DEED

ITEM

**1. Minister's Address
for Service of Notices:**

Minister for Lands
C/- Department of Planning, Lands and Heritage
Level 2, 140 William Street
PERTH WA 6000

Locked Bag 2506
PERTH WA 6001

Attention: The Director-General

Facsimile No:

(08) 6118 8116

ANNEXURE A MANAGEMENT ORDER CONDITIONS

1. DEFINITIONS, INTERPRETATION, EXERCISE OF MINISTER'S POWERS AND APPLICATION OF STATUTE

1.1. DEFINED TERMS

In this Annexure A, unless the contrary intention appears:

Aboriginal Cultural Business means any law business including sorry camp, a funeral, ceremony, ritual or cultural duty that the directors of the Management Body are required to attend under traditional laws and customs or which otherwise affects the capacity of the Management Body to perform its obligations under the Management Order in accordance with traditional laws and customs.

Agreement Area has the meaning given to it in the Tjiwarl Palyakuwa Agreement.

Authorisation includes a consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Governmental Agency or required under any Law and all conditions attached to those authorisations.

Authorised Improvement means an Improvement which:

- (a) existed on the Reserve at the Date of Commencement;
- (b) is constructed in accordance with an approval by the Minister under a Management Plan pursuant to sub-condition 2.2(d)(ii); or

[Delete subparagraph 1.1(c) if Option 2 is chosen in condition 2.2.]

- (c) is constructed in accordance with a Lease approved by the Minister pursuant to sub-condition 2.2(d)(ii).

Authorised Users means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the entity or person holding an Encumbrance and any person entering onto the Reserve with the express or implied authority of that entity or person who holds an Encumbrance, except and excluding the State's Authorised Users or the Management Body's Authorised Users.

Business Day means any day other than a Saturday, Sunday or State public holiday in Western Australia.

Camp means to stay or lodge (whether in a Camping Unit or otherwise) during any period of 24 hours and **Camping** has a corresponding meaning.

Camping Unit means a tent or other portable thing of any kind used or capable of being used for habitation and includes a Caravan or other vehicle.

Caravan means a vehicle fitted or designed for habitation.

Claims means actions, claims, proceedings, suits, judgments demands, losses, damages, costs and expenses, including but not limited to the cost of defending or settling any action, claims, proceedings, suits or demand.

Conclusively Registered has the meaning given in the Tjiwarl Palyakuwa Agreement.

Contamination is the state of being contaminated as that term is defined in the CSA.

CSA means the *Contaminated Sites Act 2003*.

Date of Commencement means the date of registration of the Management Order on the Register as that term is defined in the TLA.

Deed means the deed between the Minister and the Management Body to which this Annexure A is attached.

Department means the department principally assisting the Minister in the administration of the LAA from time to time.

Encumbrances mean the limitations, interests, encumbrances and notifications specified in PAYMENTS BY MANAGEMENT BODY.

Environmental Harm has the same meaning as given in the EPA.

Environmental Law means all planning, environmental, Contamination or Pollution Laws and any regulations, orders, directions, ordinances or all requirements, permissions, permits or licences issued thereunder.

Environmental Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from or by any Governmental Agency, whether written or oral and in connection with any Environmental Law.

EPA means the *Environmental Protection Act 1986*.

Governmental Agency means any State, Commonwealth, regional or local government or any governmental, semi-governmental, administrative, public, fiscal or judicial body, department, commission, authority, tribunal, agency, statutory authority or entity including any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, a Law.

Improvements mean any building, facility or structure on the Reserve.

Indemnified Parties means the Minister, the State and the State's Authorised Users.

Insurance Amount means the amount specified in APPOINTMENT OF MANAGEMENT BODY or such other amount as the Minister may reasonably require from time to time.

Insurance Policies means each of the policies of insurance required to be taken out under condition 4.

Interest Rate means the rate determined under section 8(1) of the *Civil Judgements Enforcement Act 2004* from time to time.

LAA means the *Land Administration Act 1997*.

Landgate means the statutory authority established under the *Land Information Authority Act 2006* which is responsible for Western Australia's land and property information.

Law includes any requirement of any statute, and any regulation, proclamation, ordinance or by-law issued under that statute, present or future, and whether State, Federal or otherwise.

Management Body means the person specified in the Management Order as the management body.

Management Body's Authorised Users means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the Management Body and any person entering onto the Reserve with the express or implied authority of the Management Body.

Management Order means the management order comprising LAA Form 1023 to which the Deed is attached.

Management Plan means a management plan submitted by the Management Body as required under condition 2.3 and approved by the Minister under section 49 of the LAA, and includes that management plan as may be varied from time to time under condition 2.4 and in accordance with section 49 of the LAA.

Material Environmental Harm has the same meaning as given in the EPA.

Minister means the Minister for Lands, being a body corporate under section 7(1) of the LAA and being the Minister to whom the administration of the LAA is from time to time committed by the Governor.

Officer has the same meaning as given in the *Corporations Act 2001* (Cth).

Pollution means anything that is pollution within the meaning of that term as defined in the EPA that is not authorised under any Law.

Relevant Land means the Reserve and Surrounding Area.

Representing in relation to a Governmental Agency, includes acting as an officer, employee, agent or contractor for, on behalf of or under delegation of, that Government Agency.

Reserve means the land described in the Management Order and identified by the reserve number described in the Management Order.

Reserve Purpose means the designated purpose described in the order creating the Reserve and purposes ancillary and beneficial to that purpose.

Schedule means a schedule to the MO Conditions.

Services includes all public utility services including roads (whether dedicated or not), footpaths, water supply, sewerage, drainage, waste disposal, electricity and gas reticulation and telecommunications equipment.

Special Conditions means the conditions, in addition to any other terms and conditions contained in this Deed, that are particular to the Land and are contained in SCHEDULE 2 of ANNEXURE A.

State means the State of Western Australia and any ministers, department and agency, instrumentality and body corporate expressed to be an agent or trustee of the State, and those entities listed in Schedule 1 of the *Public Sector Management Act 1994*.

State's Authorised Users means the officers, employees, agents, contractors, licensees, consultants and invitees of the State or the Minister and any person entering onto the Reserve with the express or implied authority of the State or the Minister.

Surrounding Area means any land or water adjacent to or in the vicinity of the Reserve and the air generally above the Reserve, and includes any land or water which is an affected site within the meaning of that term as defined in the CSA in relation to the Reserve as the source site as that term is defined in the CSA.

Term means the term of this Management Order specified in DEFINITIONS, INTERPRETATION, EXERCISE OF MINISTER'S POWERS AND APPLICATION OF STATUTE.

TLA means the *Transfer of Land Act 1893*.

Tjiwarl Palyakuwa Agreement means the Indigenous Land Use Agreement entered into (pursuant to Part 2, Division 3, Subdivision C of the NTA which has been Conclusively Registered and is described as [xxx]).

Tjiwarl Land Estate has the meaning given to it in the Tjiwarl Palyakuwa Agreement.

1.2. INTERPRETATION

In this MO Conditions, unless the contrary intention appears:

- (a) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of the Management Order or of any provision contained in this Management Order;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders;
- (d) an expression importing a natural person includes a company, partnership, joint venture, unincorporated association, corporation or other body corporate or a Governmental Agency;
- (e) a reference to a thing includes a part of that thing but without implying that part performance of an obligation is performance of the whole;
- (f) references to clauses and subclauses are references to clauses and subclauses of the Deed unless otherwise indicated;
- (g) references to conditions, sub-conditions and schedules are references to conditions, sub-conditions and schedules of this MO Conditions unless otherwise indicated;
- (h) a reference to a party to the Deed includes the party's successors and in the case of a natural person also includes that person's personal representative and administrators;
- (i) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the next Business Day;
- (j) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (l) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of the Deed or of any of the provisions of the Management Order;
- (m) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (n) the word "including" is deemed to be followed by the words "but not limited to";
- (o) if a Governmental Agency whether statutory or not ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;
- (p) a reference to the Management Order or another instrument includes any variation of either of them;
- (q) if a word or phrase is defined, cognate words or phrases have corresponding definitions; and
- (r) words defined in the LAA and used in the Management Order have the same meaning given to them under the LAA.

1.3. PERFORMANCE OF POWERS AND DUTIES

The Management Body acknowledges that:

- (a) any right, duty or power conferred or imposed on the State under this Management Order may be exercised or performed by the Minister; and
- (b) under the provisions of the LAA, the Minister may, under an instrument of delegation, delegate to a person any right, duty or power which this Deed authorises or requires the Minister to exercise or perform.

1.4. APPROVAL OF THE MINISTER

- (a) Where pursuant to the Management Order the doing or executing of any act matter or thing by the Management Body is dependent on the approval or consent of the Minister, such approval or consent;
 - (i) will not be effective unless it is given in writing;
 - (ii) may be given or withheld by the Minister in the Minister's discretion but the Minister must act reasonably; and
 - (iii) may be given subject to such reasonable conditions as the Minister may determine, unless otherwise provided in the Management Order.
- (b) Any failure by the Management Body to comply with or perform a condition imposed under sub-condition (a) will constitute a breach of a condition under the Management Order.

1.5. APPLICATION OF LAA

The Parties agree that:

- (a) the provisions of the LAA relating to management orders placed pursuant to section 46 of the LAA apply to the Management Body;
- (b) the provisions of this Management Order do not in any way alter or derogate from the Minister's rights or powers conferred under the LAA; and
- (c) the conditions set out in this Management Order are in addition to any requirements of the LAA.

2. APPOINTMENT OF MANAGEMENT BODY

2.1. CARE, CONTROL AND MANAGEMENT FOR RESERVE PURPOSE

The care, control and management of the Reserve is placed with the Management Body for the Reserve Purpose for the Term, on and subject to the terms and conditions of the Management Order.

2.2. [OPTION 1] POWER TO LEASE OR SUBLEASE OR LICENCE SUBJECT TO CONDITIONS

- (a) Subject to sub-conditions 2.2(b) to (h), (j) and (k), and pursuant to section 46(3)(a) of the LAA, the Management Body is granted the power to grant a lease or licence, and to consent to the grant of a sub-lease over any part of the Reserve, for a purpose consistent with the Reserve Purpose for a term:
 - (i) that is not to exceed 21 years but may include or provide an option or options to renew for a further term or terms with the aggregate of the further term or terms not to exceed 21 years, and provided the term of any lease or licence or consent to a sub-lease shall cease upon the revocation of the Management Order; and

- (ii) is to include a condition that no option for a further term or right of renewal is enforceable if the lessee, licensee or sub-lessee is in breach of any obligation to pay monies or other term or condition of its existing grant at the time of the exercise of the option to renew.
- (b) The Management Body must not permit a lessee, licensee or sub-lessee to renew their interest if that person is in breach of any obligation to pay monies or other term or condition of its existing grant at the time of the exercise of the option to renew, except on such terms as may be required by the Management Body and agreed by the relevant lessee, licensee or sub-lessee.
- (c) Section 18 of the LAA applies to the exercise of power conferred upon the Management Body by sub-condition (a).
- (d) Without limiting section 18 of the LAA, the Management Body must not, without the prior written approval of the Minister:
 - (i) agree to or permit any encroachment into, upon, over or against the Reserve;
 - (ii) construct or erect or permit to be constructed or erected any Improvement on the Reserve except where it is approved under a Management Plan or pursuant to a lease approved by the Minister; or
 - (iii) deal with any interest whatsoever in the Reserve.
- (e) The Management Body does not have the power to and may not:
 - (i) agree to, permit or grant an easement burden over or receive an easement benefit in favour of the Reserve;
 - (ii) mortgage, charge or in any way encumber its rights and powers as the Management Body of the Reserve; or
 - (iii) dispose of, deal with, or assign its rights or powers as Management Body of the Reserve.
- (f) The Minister may, before giving his or her approval pursuant to section 18 of the LAA or sub-condition (d), in writing require:
 - (i) such information concerning the transaction for which approval is sought as the Minister specifies; and
 - (ii) information furnished in compliance with sub-condition (i) to be verified by statutory declaration.
- (g) Without limiting section 18 of the LAA, a condition for obtaining the approval of the Minister pursuant to section 18(5) is that the Minister is satisfied that any lease, licence or sub-lease proposed to be granted or consented to provides for the following:
 - (i) the lessee, licensee or sub-lessee acknowledges and agrees that on the Management Order being revoked pursuant to section 50 of the LAA, the lease, licence or sub-lease may also terminate on the date of the revocation of the Management Order, and if it does terminate, the lessee, licensee or sub-lessee has no right of compensation from the State or Minister arising from that termination;

- (ii) compliance by the grantee of the lease, licence or sub-lease with section 18 of the LAA in respect of transactions dealt with by that section;
 - (iii) where the grant of the lease, licence or sub-lease envisages construction of Improvements, that it requires the grantee of the lease, licence or sub-lease to insure those Improvements for replacement value, to take out the relevant insurances appropriate to the use intended, to maintain the Improvements and provision to deal with what is to occur if the Improvement is destroyed or substantially damaged; and
 - (iv) that the grantee of the lease, licence or sub-lease, where relevant, is to observe and perform the conditions of the Management Order and, if required by the Minister, the directors or shareholders of the lessee, licensee or sub-lessee are to guarantee the performance of the obligations of the lessee, licensee or sub-lessee (if the proposed lessee, licensee or sub-lessee is a company).
- (h) Without limiting section 18 of the LAA, in considering whether or not to give his or her approval, and on what conditions such approval may be given;
- (i) the Minister may have regard to the effect the proposed use or development under any lease, licence or sub-lease may have on the amenity of the Relevant Land; and
 - (ii) for the purpose of this sub-condition (i) the word amenity includes natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life value relating to the Relevant Land.
- (i) Without limiting section 18 of the LAA, in considering whether or not to give his or her approval, and on what conditions such approval may be given, the Minister may have regard to whether the lessee, licensee or sub-lessee will have sufficient funds or the means to meet its obligations including the maintenance requirements of the Improvements for the term of the proposed grant.
- (j) Without limiting section 18 of the LAA, as a condition of approval by the Minister any lease, licence or sub-lease granted by the Management Body must include the terms set out in Schedule 3 hereto or with such variations or amendments as are agreed by the Minister and any other terms as the Minister may require.
- (k) The Management Body must, when exercising the power to grant a lease or the power to consent to a sub-lease, ensure that any lease granted is registered on the Register as that term is defined in the TLA and that a condition of the consent to sub-lease, includes the requirement that the Lessee register any sub-lease granted on the Register as that term is defined in the TLA.
- (l) For the avoidance of doubt, the grant of a lease, licence or sub-lease as contemplated in this condition is not intended to release the Management Body from any liability arising under the terms of the Deed.

[OPTION 2] NO POWER TO DEAL WITH ANY INTEREST IN THE RESERVE

- (m) The Management Body does not have the power and may not;
- (i) lease or licence any part of the Reserve or otherwise deal with any interest in the Reserve;

- (ii) agree to, permit or grant an easement burden over or receive an easement benefit in favour of the Reserve;
 - (iii) mortgage, charge or in any way encumber its rights and powers as the Management Body of the Reserve; or
 - (iv) dispose of, deal with, or assign its rights or powers as Management Body of the Reserve.
- (n) Without limiting section 18 of the LAA, the Management Body must not without the prior written approval of the Minister;
- (i) agree to or permit any encroachment into, upon, over or against the Reserve; or
 - (ii) construct or erect or permit to be constructed or erected any Improvement on the Reserve except where it is approved under a Management Plan.

2.3. MANAGEMENT PLAN

- (a) Where there is no approved Management Plan as at the Date of Commencement:
- (i) the Minister may pursuant to section 49 of the LAA request a Management Body to submit a Management Plan for approval;
 - (ii) where the Management Body has submitted a Management Plan for approval, the Management Body must amend and resubmit to the Minister within the time period specified by the Minister, the Management Plan to incorporate any changes which the Minister requires to the Management Plan; and
 - (iii) once the Management Plan has been approved by the Minister, the approved Management Plan is to form part of the Management Order Conditions and the Management Body will at all times promptly and in a proper manner perform and comply with the terms of the Management Plan.
- (b) Where a Management Plan is approved by the Minister at the Date of Commencement:
- (i) the said Management Plan forms part of the Management Order Conditions; and
 - (ii) the Management Body will at all times promptly and in a proper manner perform and comply with the terms of the Management Plan.

2.4. VARIATION OF APPROVED MANAGEMENT PLAN

Where there is a variation of the Management Plan, either at the request of the Management Body or the Minister, sub-conditions 2.3(a)(iii) and 2.3(b) shall apply to the approval of each variation of the Management Plan pursuant to this sub-condition.

3. PAYMENTS BY MANAGEMENT BODY

3.1. PAYMENT OF RATES, TAXES, ETC SEPARATELY ASSESSED

The Management Body must pay, when due and payable, all rates, taxes (including State land tax) and other charges (including impositions, assessments, outgoings, duties and fees) of any Governmental Agency which are separately charged upon the Reserve or imposed or levied upon the Minister or the Management Body in respect of the Reserve separately.

3.2. PAYMENT OF SERVICE CHARGES SEPARATELY ASSESSED

The Management Body must, in respect of the supply of any water, gas, electricity, telephone, internet, waste disposal or other services separately metered or charged for the Reserve, pay all accounts when they become due and payable.

3.3. PROVISION OF SERVICES

The Management Body must arrange at its own cost the installation, maintenance, repair or replacement of any Services it requires to service the Reserve and, in this regard:

- (a) must arrange directly with the relevant supplier:
 - (i) for the supply, maintenance, repair or replacement of any Services required to the Reserve;
 - (ii) for any additional services;
 - (iii) for the installation, maintenance, repair or replacement of any meter, wire, pipe or other apparatus required to deliver the Service or measure consumption of it; and
- (b) must punctually pay to any supplier:
 - (i) the costs of installing, repairing, maintenance or replacement of any meter, wire, pipe or other apparatus required for supplying the relevant service referred to in condition (a) or to measure consumption of it;
 - (ii) any rates, usage fees, service fees, licence fees and other charges whatsoever connected or relevant to the Services; and
 - (iii) any levy imposed by any Governmental Agency.

3.4. OVERLAP AND DAILY ACCRUAL

The rates, taxes, other charges and service charges referred to in sub-conditions 3.1, 3.2 and 3.3 include such of those items as are attributed wholly or partly to the period of time that is the Term, whether the account, notice, bill or statement is generated before, during or after the Term and whether the account, notice, bill or statement relates wholly or only partly to the period of time that is the Term.

4. INSURANCE

- (a) The Management Body must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the *Insurance Act 1973* (Cth) and to the satisfaction of the Minister:
 - (i) a public liability insurance policy in respect of the Reserve for the Insurance Amount (or such other amount as the Minister may reasonably require at any time from time to time consistent with usual prudent commercial practice) for any one occurrence and unlimited in the aggregate during any one period of insurance, and which includes the interests of the State and the Minister under this Management Order, and covering all Claims howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:
 - (A) any illness of, injury to or death of, any person;
 - (B) any loss, damage or destruction to any property (whether real or personal) including to the property of any of the Indemnified Parties;

- (C) the loss of use of any property (whether real or personal), including the property of any of the Indemnified Parties;
 - (D) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Relevant Land caused or contributed to by the Management Body or the Management Body's Authorised Users; or
 - (E) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under the Deed in respect of which insurance is ordinarily obtainable;
 - (ii) a policy of insurance for each Improvement insured to its full insurable value on a replacement or reinstatement basis against loss or damage by fire, flood, storm, tempest, rainwater, cyclones, explosion, smoke, lighting and such other risks against which in the Minister's opinion a Management Body may and does ordinarily insure, to its full replacement value.
- (b) Where applicable, the Management Body must during the continuance of this Management Order effect, maintain and keep current and ensure that if applicable each of its contractors or subcontractors effects, maintains and keeps current:
 - (i) a contractors risk insurance policy to cover all works undertaken or to be undertaken in relation to the construction of any development, for loss, destruction or damage of or to property insured arising from any one cause for not less than 110% of the full amount of the contract sum under any building contract; and
 - (ii) an employer's indemnity insurance, including workers compensation insurance, in respect of all employees employed around or on the Reserve and in respect of any other liability under common law or any Law to pay damages or compensation.
- (c) Every Insurance Policy must contain such conditions, endorsements, exclusions and excesses as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
- (d) The Management Body must give to the Minister a copy of the certificate of currency for the Insurance Policies at the Date of Commencement, and the Management Body is to submit evidence to the Minister on each anniversary of the Date of Commencement, or as otherwise requested by the Minister, which shows that the Insurance Policies are still current.
- (e) The Management Body is:
 - (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policies;
 - (ii) to notify the Minister immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policies or which could prejudice the Insurance Policies;
 - (iii) to comply with the lawful directions of any Governmental Agency, the Insurance Council of Australia and any insurer, including in relation to fire protection of any Improvements, when they are being constructed and also when constructed;

- (iv) to expend any monies received in respect of a claim made under the Insurance Policies in satisfaction of the relevant Claim;
- (v) to have the interests of the State and the Minister noted on the Insurance Policies and to ensure that under the Insurance Policies the insurer has no rights of subrogation against the State or the Minister and the insurer agrees to give the State and the Minister not less than 10 Business Days' notice of any intention to materially vary, cancel or permit any of the Insurance Policies to lapse;
- (vi) to indemnify the State and the Minister against any loss arising from a breach of sub-condition (v), and the indemnities contained in this sub-condition (vi) continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of the Deed for any reason in respect of any act, deed, matter or thing occurring prior to termination of the Deed;
- (vii) to ensure that all premiums in respect of the Insurance Policies and renewals of the Insurance Policies are paid punctually;
- (viii) to ensure that it does not at any time during the Term do or bring upon the Reserve anything where the Insurance Policies may be rendered void or voidable; and
- (ix) to ensure that if the Management Body does anything or brings anything onto the Reserve where the rate of premium on the Insurance Policies will be liable to be increased, the Management Body will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Reserve is put by the Management Body.

5. GENERAL CONDITIONS

5.1. COMPLY WITH LAWS ETC.

The Management Body must comply with and observe all Laws relevant to and all lawful orders, notices and the lawful directions of any Governmental Agency having jurisdiction or authority in respect of one or more of:

- (a) the Reserve;
- (b) the care, control and management of the Reserve;
- (c) the use and occupation of the Reserve and any activities or services to be carried out for the Reserve Purpose; or
- (d) any Improvements, including any machinery, plant, equipment, fixtures and fittings on the Reserve; and
- (e) comply with and observe the special conditions, if any, contained in SCHEDULE 2 of ANNEXURE A.

5.2. AUTHORISATION ETC.

Without limiting sub-condition 5.1, the Management Body must:

- (a) obtain, comply with, observe and keep current, all Authorisations or other lawful directions or requirements under any Law required for any conduct, activity or use undertaken by the Management Body on the Reserve, including the Reserve Purpose before that conduct, activity or use is undertaken;

- (b) use the Reserve in a manner which complies with each Environmental Law and each Authorisation held by the Management Body in accordance with sub-condition (a);
- (c) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Reserve or any conduct or activity relating to the use of the Reserve;
- (d) punctually comply with any notice or direction served on the Management Body or the Minister (notice of which is given by the Minister to the Management Body) by a Governmental Agency requiring the destruction of noxious animals, plants or pests or the carrying out of repairs, alterations or works to the Reserve;
- (e) not cause or permit any damage to the Reserve;
- (f) not cause or permit any Contamination, Pollution or Material Environmental Harm to occur in, on or under the Relevant Land;
- (g) notify the Minister immediately on becoming aware of:
 - (i) the existence of any Contamination, Pollution or Material Environmental Harm affecting the Relevant Land;
 - (ii) an Environmental Notice being served on the Management Body or any other person which relates to the Reserve;
 - (iii) the making of a complaint to any person, including the Management Body or the commencement of proceedings against the Management Body relating to an alleged failure by the Management Body to observe or perform an obligation under an Environmental Law or Authorisation relating to the Reserve;
- (h) comply with every Environmental Notice on becoming aware of it being issued in respect of, arising from or relating to, the Management Body's care, control and management, use and occupation of the Reserve, whether the notice is served on the Minister or the Management Body;
- (i) have in place all necessary emergency plans, risk management and response procedures having regard to the type of activities to be undertaken on the Reserve and the number of the Management Body's Authorised Users involved;
 - (i) to prevent injury to the Management Body's Authorised Users;
 - (ii) to respond to injuries to the Management Body's Authorised Users; and
 - (iii) to provide for the emergency evacuation of the Management Body's Authorised Users.

5.3. REMEDIATION

Without:

- (a) affecting the obligations of the Management Body in condition 5.2 ; or
- (b) limiting any right of, or indemnity in favour of, the State or the Minister,

if any Contamination, Pollution or Material Environmental Harm occurs in breach of sub-condition 5.2(f), the Management Body must do everything necessary to minimise the effect of the Contamination, Pollution or Material Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and

harm, to the reasonable satisfaction of the Minister and in compliance with any Environmental Notice or Environmental Law.

5.4. NUISANCE

The Management Body must not carry on or permit to be carried on the Reserve:

- (a) any noxious, noisome or offensive activity, trade, business or calling;
- (b) anything which may be a nuisance, a fire hazard or an annoyance;
- (c) anything which will be inconsistent with, materially prejudice, interfere with or prevent the lawful use of the Reserve by other persons, including the beneficiary of any Encumbrance;
- (d) anything which causes damage or loss to the State or the Minister or the owners or occupiers of any adjoining property or any other person;
- (e) anything that might:
 - (i) endanger or affect the health, safety or wellbeing of any persons;
 - (ii) cause damage to the property (whether real or personal) of any person; or
- (f) any illegal activity.

5.5. KEEP CLEAN AND IN GOOD REPAIR

- (a) The Management Body must at the Management Body's expense:
 - (i) keep and maintain the Reserve, all Improvements and any machinery, plant, equipment, and fittings in or on the Reserve, in good and safe repair and condition;
 - (ii) keep and maintain the Reserve clean and tidy; and
 - (iii) make good any damage caused to the Reserve and all Improvements howsoever caused,to the reasonable satisfaction of the Minister.
- (b) Without limiting sub-condition (a), for the avoidance of doubt, the Management Body is obliged to:
 - (i) effect all necessary structural repairs to the Reserve and to the Improvements where necessary to bring them to and maintain them in a state of good and safe repair and condition; and
 - (ii) effect all structural and other repairs and improvements necessary to the Reserve and to the Improvements to comply with the lawful directions of any Governmental Agency whether imposed on the Management Body as occupier or the State as proprietor.

5.6. MANAGEMENT BODY NOT TO REMOVE MATERIALS EXCEPT WITH APPROVAL OF THE MINISTER

- (a) The Management Body must not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell, or similar substance or permit any other person to undertake any such action without the prior approval in writing of the Minister and subject to such conditions as the Minister may determine.
- (b) Sub-condition (a) does not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement or alteration authorised by or under the Management Order, provided that any such

removal digging up or excavation is undertaken in accordance with the lawful directions or requirements of that authority.

5.7. COST OF MANAGEMENT BODY'S OBLIGATIONS

- (a) Unless the Management Order provides otherwise, anything that must be done by the Management Body under the Management Order, whether or not at the request of the Minister, must be done at the risk and cost of the Management Body.
- (b) The Management Body must pay to the Minister:
 - (i) any fees that may be prescribed from time to time pursuant to the LAA and any regulation under the LAA, in relation to services provided for and on behalf of the Minister, including in relation to the grant of a lease, licence or sublease over any part of the Reserve, and in requesting a request for any consent or approval of the Minister; and
 - (ii) the Minister's reasonable legal and other costs and expenses arising out of a default by the Management Body in performance of the Management Body's obligations under this Management Order.
- (c) The Management Body is to pay to the Minister on demand all costs and expenses related to sub-condition (b).
- (d) If any amount payable by the Management Body under sub-condition (c) is not paid within 30 Business Days after it becomes due for payment, the Management Body is to pay to the Minister interest on demand, on the amount from the due date for payment until it is paid in full and:
 - (i) interest is to be calculated on a daily basis, at the Interest Rate; and
 - (ii) nothing in this sub-condition (d) affects or prejudices any other right that the State or the Minister may have in respect of the Management Body's failure to pay any amount by the due date for payment.

5.8. MANAGEMENT BODY TO MAKE RECOMMENDATION

- (a) Where the Management Body is requested by the Minister for Mines and Petroleum to provide a recommendation under section 24(5B) of the *Mining Act 1978*, the Management Body must make a written recommendation to the Minister for Mines and Petroleum within 20 Business Days of receiving the request.
- (b) If the Management Body fails to make the written recommendation pursuant to the required timeframe in sub-condition (a), the Management Body is deemed to have made a recommendation for the purposes of section 24(5B) of the *Mining Act 1978* that it has no comment with respect to giving of the consent under section 24(5A) of the *Mining Act 1978*.

5.9. REPORTING TO MINISTER

- (a) Unless the information is publicly available, commencing on the first anniversary of the Date of Commencement, and thereafter as soon as possible after any change in the requested information since the Minister was last notified, the Management Body must provide to the Minister the Management Body's address for service or registered address and the name and address of its office bearers.
- (b) The Minister may request at any time that the Management Body provide a report to the Minister detailing:

- (i) how the Reserve is being used;
- (ii) a schedule of all Improvements on the Reserve and their condition or state of repair; and
- (iii) any other matter that the Minister reasonably considers to be material and in respect of which the Minister requests the Management Body to report,

to the reasonable satisfaction of the Minister receiving this request.

- (c) The Management Body must provide the report requested pursuant to sub-condition (b) within 60 Business Days of receiving the Minister's request for the report.

5.10. CAMPING AND RESIDING

- (a) The Management Body's care, control and management of the Reserve does not permit the Management Body's Authorised Users to reside on the Reserve except where:
 - (i) all conditions and things required by applicable Laws to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable those persons to lawfully reside on the Reserve have been fulfilled or done;
 - (ii) the Management Body has provided written advice to the Minister that the conditions and things described in sub-condition (i) have been fulfilled or done; and
 - (iii) the Minister is satisfied (acting reasonably) that the conditions and things described in sub-condition (i) have been fulfilled or done.
- (b) Notwithstanding sub-condition (a) the Management Body may allow the Management Body's Authorised Users to Camp on the Reserve where:
 - (i) the Reserve is wholly outside a townsite:
 - (A) for a period of no more than 28 consecutive days; or
 - (B) in accordance with a Management Plan agreed by the Minister, whose agreement will not be unreasonably withheld provided that:
 - (1) Camping as proposed in the Management Plan complies with all relevant Laws; and
 - (2) the Management Plan adequately addresses the issues of health, public safety, protection of the environment, public nuisance, cleanliness, tidiness and the construction and erection of permanent or temporary buildings or structures;
 - (ii) the Reserve is wholly or partly within a townsite, and Camping is permitted in accordance with a Management Plan agreed by the Minister, whose agreement will not be unreasonable withheld provided that:
 - (A) Camping as proposed in the Management Plan complies with all relevant Laws; and
 - (B) the Management Plan adequately addresses the issues of health, public safety, protection of the environment, public

nuisance, cleanliness, tidiness and the construction and erection of permanent or temporary buildings or structures.

- (c) For the purpose of sub-condition (b), the term “townsite” means:
- (i) a townsite as defined in the LAA; and
 - (ii) a location that is occupied as a townsite,
- and if there is any dispute as to whether or not the Reserve is located partly or wholly within a townsite as defined in this sub-condition, the decision of the Minister on the matter shall be final.

5.11. ABORIGINAL CULTURAL BUSINESS

- (a) If the Management Body is prevented in whole or in part from carrying out its obligations under this Deed as a result of Aboriginal Cultural Business, it must promptly notify the Minister.
- (b) A notice under sub-condition 5.11(a) must:
- (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Aboriginal Cultural Business; and
 - (iii) estimate the time during which the Aboriginal Cultural Business will continue.
- (c) Following this notice, and while the Aboriginal Cultural Business continues, this Deed shall nevertheless continue and remain in force and effect but the obligations which cannot be performed because of the Aboriginal Cultural Business will be suspended, and any time limit for performance of those obligations will be extended by the period of the Aboriginal Cultural Business identified in the notice.
- (d) The Management Body must take all action reasonably practicable to mitigate any loss suffered by the State as a result of its failure to carry out its obligations under this Deed.

6. ESSENTIAL CONDITIONS

- (a) Without limiting the conditions of this Management Order which are essential conditions, it is agreed that each of the following conditions is deemed to be an essential condition of the Management Order:
- (i) Condition 1.4 (Approval of Minister);
 - (ii) Condition 2.2 [Option 1 (Power to Lease, Sub-Lease or Licence Subject to Conditions) / Option 2 (No power to Deal in the Reserve)];
 - (iii) Condition 2.3 (Management Plan);
 - (iv) Condition 3 (Payments by Management Body);
 - (v) Condition 4 (Insurance);
 - (vi) Condition 5 (General Conditions);
- and each special condition incorporated in Schedule 2.
- (b) In respect of the Management Body’s obligations to make payments, the acceptance by the Minister of any late payment shall not constitute a waiver of the essentiality of the Management Body’s obligation to make that payment or of the Management Body’s continuing obligation to pay during the Term.

7. RIGHT TO ENTER AND REMEDY

7.1. ENTRY BY GOVERNMENT AGENCY

A person Representing a Governmental Agency is, and will be, entitled to:

- (a) enter on and remain within the boundaries of the Reserve, except any locked buildings, in order to carry out the lawful exercise and performance of the functions (as that term is defined in the *Interpretation Act 1984*) of that Governmental Agency or under a Law relevant to the Reserve, the Reserve Purpose or the conduct, activity or use undertaken by the Management Body on the Reserve or the care, control and management of the Reserve; or
- (b) pass over any part of the Reserve in connection with the performance of the functions (as that term is defined in the *Interpretation Act 1984*) of that Governmental Agency, with or without vehicles, workers, plant, equipment and materials on all necessary occasions including for the purpose of accessing adjoining land,

without that person being required to obtain the prior approval of the Management Body.

7.2. RIGHT TO ENTER

The Minister or any person authorised by the Minister may enter on to the Reserve at all reasonable times with all necessary vehicles, workers, plant, equipment and materials to:

- (a) inspect the state and condition of the Reserve and the Improvements;
- (b) repair, maintain or carry out any works in relation to the Reserve, which the Management Body is liable to do under this Management Order and has failed to do within 20 Business Days of the Minister serving notice on the Management Body requiring it to carry out those works;
- (c) remove any harmful substance or carry out any maintenance or repairs to the Reserve; or
- (d) comply with the lawful directions of any Governmental Agency.

7.3. Entry on to the Reserve pursuant to sub-conditions 7.1 and 7.2 requires that:

- (a) a person Representing a Government Agency; and
- (b) the Minister or any person authorised by the Minister;

will give reasonable notice prior to entry on to the Reserve pursuant to sub-conditions 7.1 and 7.2, except where the person Representing a Government Agency, the Minister or any person authorised by the Minister is of the opinion that entry is required as a matter of urgency including for the protection of persons or property (whether real or personal).

8. NOTICES

8.1. SERVICE OF NOTICES

Any notice or other document to be served on the Management Body under the Management Order will be served in accordance with section 274 of the LAA as if it were service of notice under the LAA.

8.2. SERVICE OF NOTICE ON MINISTER

Any notice or other document to be served on the Minister under the Management Order may be effected:

- (a) by delivering the document to the offices of the Department personally at the address set out at 1 INSURANCE or at such other address most recently notified to the Management Body by the Department; or
- (b) by sending the document by letter (by pre-paid post) to the address or by facsimile to the facsimile number of the Department, as set out in INSURANCE or to such other address or facsimile number most recently notified to the Management Body by the Department.

8.3. REQUIREMENTS OF NOTICES ON THE MINISTER

A notice or other document to be served on the Minister under this Management Order must be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director or secretary of the corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

SCHEDULE 1 OF ANNEXURE A

ITEM

1. **Term:** Indefinitely
2. **Insurance Amount:** \$20,000,000.00
3. **Encumbrances:**
4. **Minister's Address for Service of Notices**
Minister for Lands
C/- Department of Planning, Lands and Heritage
140 William Street
PERTH WA 6000
Locked Bag 2506
PERTH WA 6001

Attention: The Director-General

Facsimile No: (08) 6552 4417

SCHEDULE 2 OF ANNEXURE A
Special Conditions

SCHEDULE 3 OF ANNEXURE A

CLAUSES THAT MUST BE INCLUDED AS A MINIMUM REQUIREMENT IN ANY LEASE, LICENSE OR SUB-LEASE APPROVED BY THE MANAGEMENT BODY AND THE MINISTER.

Terms defined in this Schedule 3 are to have the same meanings as in Annexure A, except where expressly provided otherwise.

1. INDEMNITY, RELEASE AND INSURANCE

1.1. DEFINITION

- (a) In subclauses 1.2, 1.3 and 1.4 words and phrases defined in Annexure A of the deed between the Minister and the Management Body have the same meaning where used in this Deed and appear with an initial capital letter, except where expressly provided otherwise.
- (b) In subclauses 1.2, 1.3 and 1.4 the word or phrase:
 - (i) **Authorised Users** means the officers, employees, agents, contractors, workmen, licensees, consultants and invitees of the entity or person holding an Encumbrance and any person entering onto the Reserve with the express or implied authority of that entity or person who holds an Encumbrance, except and excluding the State's Authorised Users, the Management Body's Authorised Users or the [Lessee, Licensee or Sub-Lessee]'s Authorised Users.
 - (ii) **[Lessee, Licensee or Sub-Lessee]'s Authorised Users** includes the officers, employees, agents, contractors, licensees, consultants, invitees and any other person acting or entering onto the Reserve with the express or implied authority or permission of the [Lessee, Licensee or Sub-Lessee].
 - (iii) **Deed** means the [Lease, License or Sub-Lease] approved by the Management Body and the Minister.
 - (iv) **Management Order** means the order placing the care, control and management of the Reserve with the Management Body pursuant to section 46 of the LAA and registered with Landgate on [xx date].
 - (v) **Term** means the term of the [Lease, License or Sub-Lease] approved by the Management Body and the Minister.

1.2. INDEMNITY

- (a) The [Lessee, Licensee or Sub-Lessee] hereby covenants with the Minister to indemnify, and keep indemnified, the Indemnified Parties from and against all Claims whatsoever (whether based in contract, tort or statute or otherwise howsoever arising or any combination thereof) which may at any time be brought maintained or made against or incurred by all or any one or more of the Indemnified Parties, whether alone or jointly with others:
 - (i) in respect of or arising from any destruction, loss (including loss of use), injury or damage of any nature or kind or to property (whether real or personal) of any person whether or not on the Reserve and including the property of:
 - (A) any of the Indemnified Parties;

- (B) the Management Body or the Management Body's Authorised Users;
 - (C) the [Lessee, Licensee or Sub-Lessee] of the Reserve and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
or
 - (D) the holders of any Encumbrances on the Reserve and their Authorised Users.
- (ii) in respect of the death of, injury to or illness of, any person including:
- (A) any of the Indemnified Parties;
 - (B) the Management Body or the Management Body's Authorised Users;
 - (C) the [Lessee, Licensee or Sub-Lessee] of the Reserve and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
or
 - (D) the holders of any Encumbrances on the Reserve and its Authorised Users,

directly or indirectly caused by or arising out of or in connection with:

- (iii) the use of the Reserve by the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
 - (iv) any work carried out by or on behalf of the [Lessee, Licensee or Sub-Lessee];
 - (v) the exercise or enjoyment or purported exercise or enjoyment of any of the rights conferred on the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
 - (vi) any Contamination Pollution or Environmental Harm in, on, under or to the Relevant Land caused or contributed to by the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
 - (vii) any remediation required in respect of the Relevant Land in compliance with any Environmental Notice or any other notice received from any Governmental Agency arising from or relating to the use of the Relevant Land by the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
 - (viii) any default by the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users in the due and punctual performance of or compliance with any of the conditions of the Management Order or the terms covenants and conditions contained in this Deed, or any other Law that apply to the exercise of the Management Body's rights in respect of the Reserve;
or
 - (ix) any negligent or other tortious act or omission of the [Lessee, Licensee or Sub-Lessee] and the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;
- (b) The obligations of the [Lessee, Licensee or Sub-Lessee] under this subclause 1.2 are unaffected by the obligation to take out insurance, and the

obligations of the [Lessee, Licensee or Sub-Lessee] to indemnify are paramount.

- (c) The indemnities contained in this subclause 1.2 continue in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or revocation of the Management Order or the termination of this Deed.

1.3. RELEASE

- (a) The [Lessee, Licensee or Sub-Lessee] agrees to take and be subject to the same risks and responsibilities to which it would be subject in respect of persons and property (whether real or personal) if, during the Term, it were the owner and occupier of the freehold of the Reserve.
- (b) The [Lessee, Licensee or Sub-Lessee] releases, to the fullest extent permitted by Law, the Indemnified Parties from:
 - (i) any liability which may arise in respect of any destruction, loss (including loss of use), injury or damage to property (whether real or personal) or death of, injury to, or illness of, any person, of any nature in or near the Reserve;
 - (ii) all Claims arising out of or in connection with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on, under or to the Relevant Land at any time throughout the duration of this Deed whether or not identified in an audit undertaken by the [Lessee, Licensee or Sub-Lessee]; and
 - (iii) without limiting paragraph (i), destruction, loss, injury or damage to fixtures or personal property of the [Lessee, Licensee or Sub-Lessee] or the [Lessee, Licensee or Sub-Lessee]'s Authorised Users;

except to the extent that such loss or damage is caused or contributed to by fraud, wilful default or a negligent act or omission on the part of any of the Indemnified Parties.

- (c) The release contained in this subclause 1.3 continues in full force and effect notwithstanding the expiry or revocation of the Management Order or the termination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to the expiry or revocation of the Management Order or the termination of this Deed.

1.4. INSURANCE

- (a) The [Lessee, Licensee or Sub-Lessee] must effect, maintain and keep current with an insurer authorised to carry on an insurance business under the *Insurance Act 1973* (Cth) and to the satisfaction of the Minister:
 - (i) a public liability insurance policy in respect of the Reserve for the Insurance Amount (or such other amount as the Minister may reasonably require at any time from time to time consistent with usual prudent commercial practice) for any one occurrence and unlimited in the aggregate during any one period of insurance, and which includes the interests of the State and the Minister under this Deed and covering all Claims howsoever arising or caused, consistent with usual prudent commercial practice, including those in respect of:

- (A) any illness of, injury to or death of, any person;
 - (B) any loss, damage or destruction to any property (real or personal) including to the property of any of the Indemnified Parties;
 - (C) the loss of use of any property (real or personal), including the property of any of the Indemnified Parties;
 - (D) liability arising out of any Contamination, Pollution or Environmental Harm of or to the Relevant Land caused or contributed to by the [Lessee, Licensee or Sub-Lessee] or the [Lessee, Licensee or Sub-Lessee]’s Authorised Users; or
 - (E) any Claim, risk or event covered under the indemnities provided to the Indemnified Parties under the Deed in respect of which insurance is ordinarily obtainable;
- (ii) a policy of insurance for each Improvement insured to its full insurable value on a replacement or reinstatement basis against loss or damage by fire, flood, storm, tempest, rainwater, cyclones, explosion, smoke, lighting and such other risks against which in the Minister’s opinion a (lessee, licensee or sublessee) may and does ordinarily insure, to its full replacement value.
- (b) Where applicable, the [Lessee, Licensee or Sub-Lessee] must during the continuance of this Deed effect, maintain and keep current and ensure that if applicable each of its contractors or subcontractors effects, maintains and keeps current:
 - (i) a contractors risk insurance policy to cover all works undertaken or to be undertaken in relation to the construction of any development, for loss, destruction or damage of or to property insured arising from any one cause for not less than 110% of the full amount of the contract sum under any building contract; and
 - (ii) an employer’s indemnity insurance, including workers compensation insurance, in respect of all employees employed around or on the Reserve and in respect of any other liability under common law or any Law to pay damages or compensation.
 - (c) Every Insurance Policy must contain such conditions, endorsements, exclusions and excesses as are consistent with usual prudent commercial practice and are reasonably acceptable to the Minister having regard to insurance commonly effected for the risks in question.
 - (d) The [Lessee, Licensee or Sub-Lessee] must give to the Minister and Management Body a copy of the certificate of currency for the Insurance Policies at the [Date of Commencement], and the [Lessee, Licensee or Sub-Lessee] is to submit evidence to the Minister on each anniversary of the Date of Commencement, or as otherwise requested by the Minister, which shows that the Insurance Policies are still current.
 - (e) The [Lessee, Licensee or Sub-Lessee] is:
 - (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policies;

- (ii) to notify the Management Body and the Minister immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policies or which could prejudice the Insurance Policies;
- (iii) to comply with the lawful directions of any Governmental Agency, the Insurance Council of Australia and any insurer, including in relation to fire protection of any Improvements, when they are being constructed and also when constructed;
- (iv) to expend any moneys received in respect of a claim made under the Insurance Policies in satisfaction of the relevant Claim;
- (v) to have the interests of the State and the Minister noted on the Insurance Policies and to ensure that under the Insurance Policies the insurer has no rights of subrogation against the Management Body, the State or the Minister and the insurer agrees to give the Management Body, the State and the Minister not less than 10 Business Days' notice of any intention to materially vary, cancel or permit any of the Insurance Policies to lapse;
- (vi) to indemnify the Management Body, the State and the Minister against any loss arising from a breach of subclause (v) and the indemnities contained in this subclause (vi) continue in full force and effect notwithstanding the determination of this Deed for any reason in respect of any act, deed, matter or thing occurring prior to termination of this Deed;
- (vii) to ensure that all premiums in respect of the Insurance Policies and renewals of the Insurance Policies are paid punctually;
- (viii) to ensure that it does not at any time during the Term do or bring upon the Reserve anything where the Insurance Policies may be rendered void or voidable; and
- (ix) to ensure that if the [Lessee, Licensee or Sub-Lessee] does anything or brings anything onto the Reserve where the rate of premium on the Insurance Policies will be liable to be increased, the [Lessee, Licensee or Sub-Lessee] will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Reserve is put by the [Lessee, Licensee or Sub-Lessee].

EXECUTED AS A DEED

Signed for the **STATE OF WESTERN**)
AUSTRALIA for and on behalf of the **MINISTER**)
FOR LANDS by:)

.....

.....
(print full name)

.....
(insert position title)

Department of Planning, Lands and Heritage)
pursuant to a delegation of the Minister for)
Lands' powers under section 9 of the *Land*)
Administration Act 1997 in the presence of:)

Witness signature:

Full name:

Occupation:

Address:
.....
.....

(INSERT execution clause of Management Body)